

STATES OF JERSEY



DRAFT MENTAL HEALTH (INDEPENDENT MENTAL HEALTH ADVOCATES) (JERSEY) REGULATIONS 201-

**Lodged au Greffe on 27th February 2018
by the Minister for Health and Social Services**

STATES GREFFE



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REPORT

Background

The [Mental Health \(Jersey\) Law 2016](#) (the “2016 Law”), to be commenced later this year, represents a major reform of mental health provision in Jersey (the background to the Law, and its scope and effect, can be understood by reference to the *Projet* which lodged the draft Law in 2016, [P.78/2016](#)). Part 11 of the 2016 Law introduces the statutory role of Independent Mental Health Advocate (“IMHA”). An IMHA is a specially-trained professional who will work within the framework of the 2016 Law. The statutory role is to support patients to understand their rights under the 2016 Law. The IMHA will achieve this by enabling patients to be part of the decision-making around their care and treatment, and by working alongside patients in order to support them to articulate their needs and wishes in respect of service provision. There are specific times when a person qualifies for the support of an IMHA. This is when a patient is under specific Articles of the 2016 Law. This will be for assessment, treatment or guardianship. In addition, some patients may be under an Article of the 2016 Law, but ‘on leave’ in the community. They would also be eligible for statutory support.

The Regulations

The Regulations provide for appointment of, and services to be provided by, IMHAs to represent patients and their rights under the 2016 Law.

Jersey Mencap and *Mind Jersey* provided input on a range of issues pertaining to IMHAs, and other matters, during the consultation phase of the development of the 2016 Law. They were also consulted on the drafting of the proposed Regulations.

Appointment of IMHA

The Regulations provide the Minister with powers to appoint suitably qualified IMHAs, or service providers who can provide statutory mental health advocacy services. The Regulations ensure that individuals carrying out this important role are trained professionals with integrity, as they contribute to safeguarding some of Jersey’s most vulnerable citizens.

Service provision by IMHAs

To carry out such important but sensitive support, the Regulations give IMHAs powers to access and gather information about a person’s current treatment. The Regulations ensure that the IMHA can see the person on their own as a safeguarding

measure, and have conversations with those involved in the current care or treatment of a person who is under a relevant Article of the Law. The Regulations also empower IMHAs, in statute, to provide details to patients about their rights to access statutory IMHA services, and to ensure that patients and relevant others receive information concerning their rights, including IMHA services. If the patient consents, the IMHA can support the patient with meetings about their compulsory treatment under the Article of the Law. The IMHA must ensure that patients can obtain and understand their rights regarding treatment and any restrictions imposed by being detained under an Article of the Law. This also includes ensuring that they are aware of other safeguards, such as their nearest person, and their right to appeal the decision for detention through the Mental Health Review Tribunal.

Cessation and termination of IMHA services

The Regulations provide necessary detail regarding cessation of IMHA services. This is of particular importance in safeguarding vulnerable people.

Financial and manpower implications

The cost to Health and Social Services for implementing these Regulations has been included in the overall funding within HSSD P82 and through the 2016–2019 MTFP, which covers the implementation of the new Mental Health (Jersey) Law 2016. The indicative requirements to maintain the 2016 Law from 2020 and beyond have been identified by HSSD, and are included as indicative requirements for growth funding within the next MTFP process. There are no additional financial or staffing implications for the States arising from the adoption of these draft Regulations.

Collective responsibility under Standing Order 21(3A)

The Council of Ministers has a single policy position on this proposition, and as such, all Ministers, and the Assistant Ministers for Health and Social Services, are bound by the principle of collective responsibility to support the proposition, as outlined in the Code of Conduct and Practice for Ministers and Assistant Ministers ([R.11/2015](#) refers).

Explanatory Note

These Regulations would make provision as to the appointment of, and services to be provided by, independent mental health advocates (“IMHAs”, as defined in *Regulation 2(1)*) to represent patients and their rights under the Mental Health (Jersey) Law 2016 (the “Law”).

Regulation 1 is an interpretation provision. *Regulation 2* would require the Minister to make arrangements for appointment of IMHAs, having regard to principles of diversity and being satisfied that the qualifications for appointment of an individual set out in *Regulation 3* are fulfilled. *Regulation 4* would confer the right of qualifying patients to request the provision of the help of an IMHA, whether generally or in relation to a specific matter. *Regulation 5* would require a responsible person (as defined in the Law) in relation to a qualifying patient to take reasonable steps to ensure that a qualifying patient understands that the help of an IMHA is available to him or her, and *Regulation 6* would enable a responsible person to request such help where the qualifying patient lacks capacity to do so.

Regulation 7 would set out further detail as to the nature of the services which may be provided by IMHAs, including (but not confined to) help in obtaining information about, and in understanding, the patient’s rights under the Law.

Under *Regulation 8*, the provision of services by an IMHA would cease upon the occurrence of any of the events listed in *Regulation 8(2)*, including various grounds on which the IMHA may become disqualified. By *Regulation 9*, the Minister (or the provider of services of an IMHA) would be obliged to terminate the appointment of an IMHA as such, if the individual IMHA ceases to fulfil any of the conditions for appointment. Where a provider continued to provide services of such an IMHA, the provider would be guilty of an offence and liable to a fine of level 3 on the standard scale (a maximum of £10,000 under the Criminal Justice (Standard Scale of Fines) (Jersey) Law 1993).

Regulation 10 would enable the Minister by Order to make provision relating to the payment of fees and reimbursement of expenses to IMHAs. *Regulation 11* would make various general provisions including the right of a patient to decline the help of an IMHA.

Regulation 12 would give the title by which these Regulations may be cited and provide for them to come into force immediately following the commencement of Article 79 of the Law.



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Arrangement

Regulation

1	Interpretation	9
2	Minister to appoint independent mental health advocates	10
3	Conditions for appointment as IMHA	10
4	Right to request services of IMHA	11
5	Information to be given concerning services of IMHAs	11
6	Qualifying patient lacking capacity	12
7	Nature of services to be provided by IMHAs	12
8	Cessation of services of IMHA	13
9	Termination of appointment of IMHA	15
10	Fees and expenses of IMHAs	15
11	General	16
12	Citation and commencement	16



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Made [date to be inserted]
Coming into force [date to be inserted]

THE STATES, in pursuance of Articles 79 and 94 of the Mental Health (Jersey) Law 2016¹, have made the following Regulations –

1 Interpretation

- (1) In these Regulations –
 - “Capacity Law” means the Capacity and Self-Determination (Jersey) Law 2016²;
 - “Law” means the Mental Health (Jersey) Law 2016³;
 - “provider” means a person other than the Minister (including a voluntary organization) which employs or engages individuals to provide services as IMHAs;
 - “responsible person” means –
 - (a) in relation to a qualifying patient liable to be detained under the Law in an approved establishment, the managers of that approved establishment; or
 - (b) in relation to a qualifying patient who is subject to guardianship, the Minister.
- (2) A word or expression used in these Regulations which also occurs in the Capacity Law shall have the same meaning for the purposes of these Regulations as the meaning given to it by the Capacity Law.
- (3) For the purposes of these Regulations and of the definition “independent” in Article 79(6) of the Law, an individual is not to be regarded as professionally concerned with a qualifying patient’s care or treatment if that individual –
 - (a) is representing the qualifying patient in accordance with arrangements made under these Regulations or Regulations under the Capacity Law in respect of independent capacity advocates; or

- (b) has in the past represented the qualifying patient in accordance with arrangements such as described in sub-paragraph (a) and in doing so was not otherwise professionally concerned with the care or treatment of that patient.
- (4) For the purposes of these Regulations and for the avoidance of doubt, a reference to a “qualifying patient” may include a patient admitted by reason of emergency under Article 15 of the Law, for the period during which that patient remains in the approved establishment.

2 Minister to appoint independent mental health advocates

- (1) The Minister must make arrangements for the appointment, either directly or by a provider, of individuals to act as independent mental health advocates (“MHAs” for the purposes of Article 79 of the Law, and referred to in these Regulations as IMHAs).
- (2) No individual shall be appointed under paragraph (1) unless –
 - (a) in the case of an appointment by the Minister, the Minister is satisfied that the individual fulfils the conditions in Regulation 3; or
 - (b) in the case of an appointment by a provider –
 - (i) the arrangements made between the Minister and that provider include a requirement that the provider be satisfied, in making the appointment, that the individual fulfils the conditions in Regulation 3, and
 - (ii) the provider is so satisfied.
- (3) The Minister may only make arrangements under this Regulation if he or she has had due regard to the diverse circumstances (including but not limited to the ethnic, cultural and demographic needs) of qualifying patients.
- (4) In particular, and without prejudice to the generality of paragraph (3), in making arrangements under this Regulation the Minister must ensure that, so far as practicable and as the Minister considers reasonable, there are appointed IMHAs with understanding of, and ability to communicate with, qualifying patients –
 - (a) who are from cultural or ethnic groups forming a minority among the population of Jersey; or
 - (b) who have physical or sensory impairments, learning disabilities or autistic spectrum disorders.

3 Conditions for appointment as IMHA

- (1) The conditions mentioned in Regulation 2(2) are that the individual in question –
 - (a) has appropriate experience and training such as may be further specified in a code of practice issued by the Minister under Article 90 of the Law;
 - (b) is an individual of integrity and good character; and

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- (c) is able to act independently, including independently of any person who requests the individual to visit or interview a qualifying patient.
 - (2) Evidence provided for the purpose of demonstrating fulfilment of the condition in paragraph (1)(b) must include, in respect of the individual in question, an enhanced criminal record certificate issued under section 113B of the Police Act 1997 of the United Kingdom as extended to Jersey, with modifications, by the Police Act 1997 (Criminal Records) (Jersey) Order 2010 (S.I. 1997/765 of the United Kingdom).
 - (3) In the case of an appointment by a provider, the arrangements made between the Minister and that provider must include a requirement that such a certificate as described in paragraph (2) be provided.
 - (4) The Minister may by Order prescribe such further terms and conditions as to the appointment of IMHAs as the Minister may think fit.

4 Right to request services of IMHA

- (1) A qualifying patient may, upon becoming or at any time after he or she becomes a qualifying patient, make a request to the responsible person for provision of the help of an IMHA, whether generally (subject to Regulation 7) or in relation to a specific matter.
- (2) Information to be given to a qualifying patient under Article 78 of the Law and Regulation 5 shall include information as to the right conferred by paragraph (1).

5 Information to be given concerning services of IMHAs

- (1) Without prejudice to the generality of Article 78 of the Law, the responsible person in relation to a qualifying patient must take such steps as are reasonable to ensure that the qualifying patient understands –
 - (a) that the help of an IMHA is available to him or her; and
 - (b) how he or she can obtain such help.
- (2) The steps to be taken under paragraph (1) must be taken –
 - (a) in the case of a qualifying patient liable to be detained under the Law in an approved establishment, as soon as practicable after the patient becomes liable to be detained; or
 - (b) in the case of a qualifying patient subject to guardianship, as soon as practicable after the qualifying patient becomes so subject.
- (3) In the cases described in paragraph (2), the responsible person must (except where the qualifying patient otherwise requests) provide the qualifying patient's nearest person with a copy of any information given to the qualifying patient in writing, either at the same time as that information is given to the qualifying patient or as soon as practicable thereafter.

6 Qualifying patient lacking capacity

Where a responsible person is of the opinion, in relation to a qualifying patient, that –

- (a) it would be in the best interests of the patient to receive help from an IMHA; but
- (b) despite the provision of information under Article 78 of the Law and Regulation 5, the patient is unwilling or unable, including by reason of a lack of capacity, to exercise his or her right to request such help,

the responsible person may request such help for and on behalf of the patient.

7 Nature of services to be provided by IMHAs

(1) The help to be provided by an IMHA to a qualifying patient shall include, so far as appropriate in the individual case –

- (a) help in obtaining information about, and in understanding, any of the following matters, namely –
 - (i) the provisions of the Law under which he or she is a qualifying patient,
 - (ii) the rights of the patient and his or her nearest person under the Law,
 - (iii) any conditions or restrictions to which he or she is subject by virtue of the Law,
 - (iv) the authority under which any treatment is or would be given,
 - (v) the requirements of the Law and of any subordinate legislation which apply, or would apply, in connection with the giving of such treatment,
 - (vi) any rights which may be exercised under the Law in relation to a qualifying patient; and
- (b) (to the extent of the IMHA's knowledge or expertise in such matters) help in obtaining, and understanding, any evidence-based information about –
 - (i) the nature of any medical treatment given to the patient, or proposed or discussed in his or her case, and
 - (ii) the reasons for such treatment.

(2) The help to be provided by an IMHA to a qualifying patient shall also include, so far as appropriate in the individual case, help by way of representation or otherwise in exercising the rights mentioned in paragraph (1)(a)(ii).

(3) For the purpose of providing help to a patient, an IMHA may –

- (a) visit and interview the patient in private;
- (b) visit and interview any person professionally concerned with the patient's medical treatment;

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- (c) with the patient's consent, attend meetings between the patient and any person professionally concerned with the patient's medical treatment;
 - (d) subject to paragraph (4), require the production of, and inspect, any records relating to –
 - (i) a qualifying patient's current treatment,
 - (ii) where the patient is detained in an approved establishment, his or her detention in that establishment, and
 - (iii) where the patient is subject to guardianship, his or her guardianship,(including any such records held by the Minister or by the Health and Social Services Department).
- (4) An IMHA is not entitled to production of records, or to inspect records, unless, in a case where the qualifying patient has capacity to consent to such production or inspection, he or she does so consent, or in any other case –
- (a) the production or inspection would not conflict with a decision made by –
 - (i) an attorney appointed under Part 2 of the Capacity Law and acting within the scope of the attorney's authority under that Law,
 - (ii) a delegate appointed under Part 4 of the Capacity Law and acting within the scope of the delegate's authority under that Law, or
 - (iii) the Royal Court; and
 - (b) the person holding the records, taking into account all the circumstances (including any known wishes or feelings of the patient, and the patient's best interests) considers that the production or inspection is appropriate.
- (5) For the purposes of paragraph (3)(a), managers of approved establishments shall make all reasonable arrangements for access to the patient by the IMHA.
- (6) An IMHA shall comply with any reasonable request for the IMHA to visit and interview a qualifying patient, made by –
- (a) an individual appearing to the IMHA to be the patient's nearest person;
 - (b) the patient's responsible medical officer; or
 - (c) an approved practitioner.

8 Cessation of services of IMHA

- (1) The provision of services by any individual IMHA to any particular patient shall cease upon the occurrence of any of the events listed in paragraph (2).
- (2) The events mentioned in paragraph (1) are that –

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- (a) the patient ceases to be a qualifying patient;
 - (b) the patient declines the continuation of the services of the IMHA;
 - (c) the IMHA is unable to provide such services because he or she –
 - (i) ceases to be domiciled in Jersey,
 - (ii) is under sentence of imprisonment,
 - (iii) is declared bankrupt,
 - (iv) lacks the capacity to provide such services, or
 - (v) is suspended from any appointment by the Minister or by a provider of advocacy services;
 - (d) the appointment of the IMHA is terminated under Regulation 9;
 - (e) in the case of the provider in question being a registered charity within the meaning given to that term by the Charities (Jersey) Law 2014⁴ or an entity meeting the charity test under that Law, the provider ceases to be so registered or to meet that test;
 - (f) in the case of the provider in question being a company registered under the Companies (Jersey) Law 1991⁵, the provider ceases to be so registered.
- (3) Where the services of the IMHA in question were provided by the Minister, upon the occurrence of such an event as listed in paragraph (2)(c) or (d) the Minister must take all such steps as are reasonable to ensure that the qualifying patient (and with the consent of the qualifying patient, his or her nearest person, if any) is informed of –
- (a) the date when those services are to cease; and
 - (b) relevant details of the services which are to be provided in substitution for the services which have ceased,
- and must do so before the date mentioned in sub-paragraph (a) or as soon as reasonably practicable after that date.
- (4) Where the services of the IMHA in question were provided to a qualifying patient by a provider of advocacy services, upon the occurrence of such an event as listed in paragraph (2)(c), (d), (e) or (f) the provider must –
- (a) inform the Minister, as soon as reasonably practicable, of the occurrence of the event; and
 - (b) take all such steps as are reasonable to ensure that the qualifying patient (and with the consent of the qualifying patient), his or her nearest person, if any) is informed of –
 - (i) the date when those services are to cease, and
 - (ii) relevant details of the services which are to be provided in substitution for the services which have ceased,
- and must do so before the date mentioned in clause (i) or as soon as reasonably practicable after that date.
- (5) Where a patient ceases to be a qualifying patient by reason of being discharged from liability to detention, the notice of discharge to be given by the responsible medical officer under Article 27(4) of the Law shall

contain a statement that the provision of services of an IMHA will cease on the date of discharge.

9 Termination of appointment of IMHA

- (1) Where an individual ceases to fulfil any of the conditions for appointment specified in Regulation 3 –
 - (a) in the case of an individual appointed by the Minister, the Minister must terminate the appointment;
 - (b) in the case of an individual appointed by any provider, that provider must terminate the provision of services by that individual; and
 - (c) the individual must immediately cease to provide services as an IMHA.
- (2) The Minister or the provider, as the case may be, must as soon as reasonably practicable give notice in writing of termination of an appointment under this Regulation, to –
 - (a) the individual in question;
 - (b) any patients to whom services were provided by the individual; and
 - (c) in relation to each such patient, any nearest person (with the consent of the qualifying patient), responsible medical officer, guardian or managers of an approved establishment, as the case may be,

and the Minister or the provider must take all such steps as are reasonable, including but not limited to giving notice in writing, to ensure that any qualifying patient and any other person mentioned in subparagraph (c) is informed of relevant details of the services which are to be provided in substitution for the services which have ceased as a result of the termination of appointment.

- (3) A provider which continues, in breach of paragraph (1)(b), to provide services by an IMHA whose appointment has been terminated, is guilty of an offence and liable to a fine of level 3 on the standard scale.
- (4) An individual whose appointment as an ICA has been terminated but who nevertheless –
 - (a) holds himself or herself out as providing the services of an ICA; or
 - (b) by his or her omission, allows another person to believe that he or she is capable of providing such services or entitled or authorized to provide such services,

is guilty of an offence and liable to a fine of level 3 on the standard scale.

10 Fees and expenses of IMHAs

The Minister may by Order make provision regarding payment of fees to, and the reimbursement of expenses of, IMHAs providing services under these Regulations (whether individually or by way of providers of advocacy services),

including (but not limited to) provision as to the level of such fees, and different provision for different cases or types of case.

11 General

- (1) Nothing in the Law or in these Regulations shall prevent a qualifying patient from declining, at any time, the provision of help under these Regulations.
- (2) The appointment of IMHAs under these Regulations is without prejudice to and shall not affect the appointment of an independent capacity advocate or any entitlement to the help or services of an independent capacity advocate under the Capacity Law.
- (3) Notwithstanding paragraph (2), an individual may be appointed as an IMHA and as an independent capacity advocate, whether generally or in relation to a particular patient.

12 Citation and commencement

These Regulations may be cited as the Mental Health (Independent Mental Health Advocates) (Jersey) Regulations 201- and shall come into force immediately following the commencement of Article 79 of the Mental Health (Jersey) Law 2016⁶.

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- 1 *L.30/2016*
 - 2 *L.30/2016*
 - 3 *L.29/2016*
 - 4 *chapter 15.070*
 - 5 *chapter 13.125*
 - 6 *L.29/2016*