

# STATES OF JERSEY



## **DRAFT MENTAL HEALTH AND CAPACITY (CONSEQUENTIAL AMENDMENT AND TRANSITIONAL PROVISION) (JERSEY) REGULATIONS 201-**

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

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**STATES GREFFE**





Jersey

## **DRAFT MENTAL HEALTH AND CAPACITY (CONSEQUENTIAL AMENDMENT AND TRANSITIONAL PROVISION) (JERSEY) REGULATIONS 201-**

### **REPORT**

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The [Mental Health \(Jersey\) Law 2016 \(P.78/2016\)](#) (the “MHJL”) and the [Capacity and Self-Determination \(Jersey\) Law 2016 \(P.79/2016\)](#) (the “CSDL”) were approved by the States Assembly on 14th September 2016. When those Laws are commenced, certain consequential amendments to a range of existing legislation are required, together with transitional provision for the move from the [Mental Health \(Jersey\) Law 1969](#) (the “1969 Law”), which is to be repealed, to the new legislation.

#### ***Consequential amendments***

These Regulations will, for the most part, make a series of minor amendments to enactments –

- (1) References in enactments to the 1969 Law will be updated to the MHJL and, where equivalent provision to that contained in the 1969 Law has been brought forward in the MHJL, references to Article numbers have will be updated. For example –
  - (a) In the Health Insurance (Medical Benefit) (General Provisions) (Jersey) Order 1967, reference in Article 17(1)(a) to a guardianship application under Article 14 of the 1969 Law is updated to Article 29 of the MHJL. Other amendments of this nature are included in the Regulations.
  - (b) References to ‘insane’ offenders have been amended to reflect new provision in Part 8 of the MHJL for the Court’s determination of proceedings involving incapable defendants. See, for example, the amendment to Article 1(4)(b) of the Rehabilitation of Offenders (Jersey) Law 2001 and Article 1(2)(c) of the Sex Offenders (Jersey) Law 2010.
  - (c) References to ‘nearest relative’, another 1969 Law concept, have been updated to ‘nearest person’ which will feature in the MHJL. See, for example, the amendments to Article 72 of the Children (Jersey) Law 2002.
- (2) The CSDL, when enacted, will introduce into statute the concept of a ‘lack of capacity’ and will provide clear provision as to how a lack of capacity should be assessed and determined. The Regulations will amend, in places where it

appears in the statute book, references to a person having ‘mental incapacity’, and replace that with reference to the concept of a ‘lack of capacity’, which is to be determined in line with the CSDL. An example of this is Article 12(3) of the Supply of Goods and Services (Jersey) Law 2009.

- (3) A significant number of the amendments in the Regulations reflect the repeal of the 1969 Law and, with that, the abolition of curatorship under Article 43 of the 1969 Law. Curatorship will be replaced with the system of court-appointed delegates under Part 4 of the CSDL. There are various references across the statute book to both interdict and curator, concepts specific to the 1969 Law, which have been updated to reflect the role of ‘delegate’. For example –
- (a) In Article 3 of the Royal Court (Jersey) Law 1948, which provides grounds for the disqualification from appointment as a Jurat, reference to the appointment of a ‘curator’ as a ground for such disqualification has been replaced with reference to the appointment of a delegate under Part 4 of the CSDL. Generally speaking, a person will not be disqualified from office or otherwise required to cease an office simply by virtue of an attorney exercising authority for that person under a lasting power of attorney made under Part 2 of the CSDL. The distinction here is that delegates, under Part 4 of the CSDL, are appointed in cases where the Court has determined the question of capacity, on an application made to it under Article 25 of the CSDL. That determination is made authoritatively but, in the case of attorneys and by the very nature of that arrangement, it is acknowledged that in some cases an assessment of capacity, made by an attorney who might be a family member for example, might not be always be correct or compliant with the test set out in the CSDL. Accordingly, in order to ensure certainty as to appointments and holding office, the exercise of authority under a lasting power of attorney will not, without more, be a ground for cessation of office or disqualification.
- (b) In Item 30 of the table in Part 1 of the Schedule to the Stamp Duties and Fees (Jersey) Law 1998, that paragraph of the table is updated to reflect that, in place of curators making an applications, the Court will instead receive applications from delegates under Article 28(2) of the CSDL.

It is beyond the reasonable scope of this Report to explain every consequential amendment of this nature, but the paragraphs above seek to provide an overview of the nature of those amendments which are considered relatively minor in nature.

These Regulations will, in other cases, make consequential amendment which are more substantial or significant in nature –

1. *Amendment to the Inquests and Post-Mortem Examinations (Jersey) Law 1995*

Article 2(3) of the Inquests and Post-Mortem Examinations (Jersey) Law 1995 (the “1995 Law”) provides that where a person dies while in a legal place of detention, the person in charge of that place shall immediately give notice of the death to the Viscount, who is then bound to investigate the death and determine whether or not to hold an inquest.

The CSDL will, in Part 5 of that Law, make provision for the assessment and imposition of significant restrictions on the liberty of persons who lack

capacity where those restrictions are appropriate for the care or treatment of that person. The Viscount, who has been consulted as to this particular amendment, had expressed a concern that the death of any person for whom a significant restriction on liberty had been authorised under Part 5 would be deemed to have died in a ‘place of detention’ and, as a result, the Viscount would be obligated to carry out an investigation of that death. Performing mandatory inquests for such persons would have a significant impact on the Viscount’s coroner role, in terms of the resources required to undertake an inquest in every case, no matter the circumstances which prevail. Accordingly, the Viscount requested an amendment to the 1995 Law to reflect the impact of the CSDL here. A further reason for making an amendment is that families of those who die while under a significant restriction on liberty will be spared the impact of an unnecessary coroner investigation whilst ensuring that the deceased and their families will be protected by access to the normal process of coroner investigation where the circumstances of death require it.

A similar amendment has been made to the Coroners and Justice Act 2009 in England, given the equivalent impact of the Mental Capacity Act 2005 (the “2005 Act”) and its deprivation of liberty framework. That framework of provision and the impact of the 2014 judgments in *P v Cheshire West and Chester Council* and *P&O v Surrey County Council (Cheshire West)* led to a tenfold increase between 2013 and 2015 in received applications of deprivation of liberty authorisations under the provisions of the 2005 Act, and coroner inquests subsequently increased by over a quarter between 2014 and 2015<sup>1</sup>. In 2015 it was assessed that the vast majority of such deaths would not have otherwise required a coroner’s investigation (if the person had not been deprived of their liberty under the 2005 Act), with just 1% of such inquests concluded other than as a ‘death by natural causes’.

To address this, section 178 of the Policing and Crime Act 2017 amended section 48 of the Coroners and Justice Act 2009 to provide –

“(2A) But a person is not in state detention at any time when he or she is deprived of liberty under section 4A(3) or (5) or 4B of the Mental Capacity Act 2005.”

Regulation 10 of these Regulations will make an equivalent amendment to the 1995 Law, together with other associated alterations.

## 2. *Amendment to the Powers of Attorney (Jersey) Law 1995*

The Powers of Attorney (Jersey) Law 1995 (the “1995 Law”) makes provision for, among other things, the registration of powers of attorney. Article 2(5) of the 1995 Law provides that a power of attorney is not capable of being registered otherwise than in accordance with Article 3 of that Law. Article 3(1) provides that a ‘registrable power of attorney’ for the purposes of the 1995 Law is one which is intended to be used to effect a transaction which is required to be registered, in other words a transaction involving the disposal of immovable property. Article 3(1) goes on to provide that a registrable power of attorney shall not be exercisable to effect any transaction until the power has been registered, ‘registered’ meaning registered in the Public Registry.

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<sup>1</sup> See Explanatory Notes to the Policing and Crime Act 2017:  
<http://www.legislation.gov.uk/ukpga/2017/3/notes/division/3/index.htm>

A lasting power of attorney made under Part 2 of the CSDL may, if the donor so wishes, provide an attorney with authority to make decisions as to property and financial affairs of the donor. That authority might include, for example, authority to bring about the sale or other disposition of the donor's immoveable property, e.g. the donor's house. Lasting powers of attorney made under Part 2 of the CSDL are required to be registered in the Judicial Greffe in order to be valid. However, a lasting power of attorney under the CSDL and dealing with the affairs of a donor that include disposing of the donor's immoveable property would amount to a 'registrable power of attorney' for the purposes of the 1995 Law.

The practical effect of the application of the 1995 Law to lasting powers of attorney made under the CSDL would be that such instruments would be required to be registered in both the Public Registry, under the 1995 Law, and the Judicial Greffe, under the CSDL, before they could take effect. That would represent a duplication of registration for the donor of the instrument, defeating the policy objective of ensuring lasting powers of attorney represent an accessible and user-friendly way of making provision for one's future.

Accordingly, Regulation 5 of these Regulations will amend the 1995 to carve out lasting powers of attorney made under Part 2 of the CSDL from the registration, execution and witnessing requirements in the 1995 Law, together with other associated amendments. The effect of the amendment will be that lasting powers of attorney made under Part 2 of the CSDL and registered in accordance with the CSDL will be effective so as to deal with the affairs of the donor, including where the authority would enable the attorney to dispose of the donor's immoveable property.

### ***Transitional provision***

Regulation 67 of the Regulations makes transitional provisions to reflect the repeal of the 1969 Law and the commencement of the MHJL. The effect of Regulation 67 will be to ensure that admission applications made under the 1969 Law for the observation or treatment of a person suspected of suffering from a mental disorder will continue under the MHJL as if they were authorizations for assessment or treatment under that Law. Similar transitional provision is made with respect to applications for guardianship made under the 1969 Law. In other cases, as noted in the Law Draftsman's Explanatory Note, the application of Article 17 of the Interpretation (Jersey) Law 1954 will mean that those provisions in the 1969 Law which are repealed and re-enacted, with modification in the MHJL, will be construed as the same, ensuring continuity between the two legal frameworks: for example, applications made before the Mental Health Review Tribunal and not determined under the 1969 Law may continue under the MHJL.

### **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 CSDL and the MHJL. The indicative requirements to maintain the new Law from 2020 and beyond have been identified by HSSD and the non-ministerial departments, 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

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*Regulations 1 to 64* would make provision, consequential upon the enactment of the Mental Health (Jersey) Law 2016 (the “2016 Law”) and the Capacity and Self-Determination (Jersey) Law 2016, amending a range of enactments which cross-refer to provisions of, or offices or functions under, the Mental Health (Jersey) Law 1969 (the “1969 Law”). The 1969 Law would be repealed, and parts of it substantially re-enacted, by the 2016 Law. Most of the changes which would be effected by these Regulations reflect the change from the system of curatorships under Article 43 of the 1969 Law to that of delegates under Part 4 of the Capacity and Self-Determination (Jersey) Law 2016. Where it is necessary to displace the effect of Article 17(2) of the Interpretation (Jersey) Law 1954, *Regulation 65* would make transitional provision to give effect to certain applications, and to continue in effect certain matters, under the 1969 Law as though they were made or given effect by the 2016 Law. (This Regulation would come into force immediately upon the commencement of the 2016 Law and would expire 6 months later.)

*Regulation 66* gives the title by which these Regulations may be cited and provides for them (except Regulation 65) to come into force immediately following the coming into force of the 2016 Law or of the Capacity and Self-Determination (Jersey) Law 2016, whichever is later.





Jersey

## **DRAFT MENTAL HEALTH AND CAPACITY (CONSEQUENTIAL AMENDMENT AND TRANSITIONAL PROVISION) (JERSEY) REGULATIONS 201-**

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## **DRAFT MENTAL HEALTH AND CAPACITY (CONSEQUENTIAL AMENDMENT AND TRANSITIONAL PROVISION) (JERSEY) REGULATIONS 201-**

*Made* [date to be inserted]

*Coming into force* [date to be inserted]

**THE STATES**, in pursuance of Article 94 of the Mental Health (Jersey) Law 2016<sup>1</sup> and Article 69 of the Capacity and Self-Determination (Jersey) Law 2016<sup>2</sup>, have made the following Regulations –

### **1 Jersey Potato Export Marketing Scheme 2001 (Approval) (Jersey) Act 2001 amended**

In the scheme set out in the Schedule to the Jersey Potato Export Marketing Scheme 2001 (Approval) (Jersey) Act 2001<sup>3</sup> –

- (a) for paragraph 9(b) there shall be substituted the following sub-paragraph –
  - “(b) if, under Part 4 of the Capacity and Self-Determination (Jersey) Law 2016<sup>4</sup>, a delegate is appointed in relation to the member;”;
- (b) in paragraph 54 for the word “curator” there shall be substituted the word “delegate”.

### **2 Milk Marketing Scheme (Approval) (Jersey) Act 1954 amended**

In the scheme set out in the Schedule to the Milk Marketing Scheme (Approval) (Jersey) Act 1954<sup>5</sup> –

- (a) for paragraph 8(2) there shall be substituted the following sub-paragraph –
  - “(2) if, under Part 4 of the Capacity and Self-Determination (Jersey) Law 2016<sup>6</sup>, a delegate is appointed in relation to the member;”;
- (b) in paragraph 56 for the word “curator” there shall be substituted the word “delegate”.

**3 Agriculture (Loans) (Jersey) Regulations 1974 amended**

For Regulation 3(4)(d) of the Agriculture (Loans) (Jersey) Regulations 1974<sup>7</sup>, there shall be substituted the following sub-paragraph –

“(d) under Part 4 of the Capacity and Self-Determination (Jersey) Law 2016<sup>8</sup>, a delegate is appointed in relation to that person.”.

**4 Bankruptcy (Désastre) (Jersey) Law 1990 amended**

In Article 24(1) of the Bankruptcy (Désastre) (Jersey) Law 1990<sup>9</sup>, in the definition “private office” for the word “curator” there shall be substituted the word “delegate”.

**5 Powers of Attorney (Jersey) Law 1995 amended**

In the Powers of Attorney (Jersey) Law 1995<sup>10</sup> –

- (a) the existing text of Article 1 shall be numbered as paragraph (1);
- (b) after that paragraph there shall be inserted the following paragraph –

“(2) In Article 2, 6, 8 and 9, ‘power of attorney’ does not include a lasting power of attorney within the meaning given by Article 11 of the Capacity and Self-Determination (Jersey) Law 2016<sup>11</sup>.”;
- (c) in Article 3(1) after the words “A power of attorney” there shall be inserted the words “(other than a lasting power of attorney created and registered under Part 2 of the Capacity and Self-Determination (Jersey) Law 2016)”.

**6 Employment (Jersey) Law 2003 amended**

In Article 90(11) of the Employment (Jersey) Law 2003<sup>12</sup>, in paragraph (g) of the definition “sexual offence” for the words “Article 38 of the Mental Health (Jersey) Law 1969” there shall be substituted the words “Articles 74 to 76 of the Mental Health (Jersey) Law 2016<sup>13</sup>”.

**7 Employment and Discrimination Tribunal (Jersey) Regulations 2014 amended**

In Regulation 6(3) of the Employment and Discrimination Tribunal (Jersey) Regulations 2014<sup>14</sup> –

- (a) for sub-paragraph (b) there shall be substituted the following sub-paragraph –

“(b) on the appointment of a delegate, under Part 4 of the Capacity and Self-Determination (Jersey) Law 2016<sup>15</sup>, in relation to the member;”;
- (b) in sub-paragraph (c) for the word “1969” there shall be substituted the word “2016”.

**8 Supply of Goods and Services (Jersey) Law 2009 amended**

In Article 12(3) of the Supply of Goods and Services (Jersey) Law 2009<sup>16</sup> for the words “mental incapacity” there shall be substituted the words “a lack of capacity (within the meaning given by Article 4 of the Capacity and Self-Determination (Jersey) Law 2016<sup>17</sup>)”.

**9 Court of Appeal (Jersey) Law 1961 amended**

In the Court of Appeal (Jersey) Law 1961<sup>18</sup> –

- (a) in Article 27(3) for the words “he or she was insane at the time that the act was done or the omission made,” there shall be substituted the words “at the time the act was done or the omission made, he or she suffered from a mental disorder (within the meaning given by Article 1 of the Mental Health (Jersey) Law 2016<sup>19</sup>)”;
- (b) in Article 28(4) for the word “1969” there shall be substituted the word “2016”.

**10 Inquests and Post-Mortem Examinations (Jersey) Law 1995 amended**

In Article 2 of the Inquests and Post-Mortem Examinations (Jersey) Law 1995<sup>20</sup> –

- (a) at the end of paragraph (3) after the word “Viscount” there shall be inserted the words “(but, for the purposes of this paragraph, a person shall not be taken to be in a legal place of detention by virtue only of the fact that the person is subject to a significant restriction on his or her liberty under Part 5 of the Capacity and Self-Determination (Jersey) Law 2016<sup>21</sup>)”;
- (b) for paragraph (4) there shall be substituted the following paragraph –
  - “(4) Where a person dies while –
    - (a) a patient in an approved establishment within the meaning of the Mental Health (Jersey) Law 2016<sup>22</sup>; or
    - (b) accommodated in a children’s or voluntary home within the meaning of the Children (Jersey) Law 2002<sup>23</sup>,the managers of the approved establishment or (as the case may be) the person in charge of the home shall immediately notify a police officer of the facts and circumstances relating to the death, and the police officer shall as soon as reasonably practicable notify the Viscount of those facts and circumstances.”.

**11 The Law Society of Jersey Law 2005 amended**

In the Law Society of Jersey Law 2005<sup>24</sup> –

- (a) for each of Articles 12(1)(e) and 19(4)(e) there shall be substituted the following sub-paragraph –

- “(e) on the appointment of a delegate, under Part 4 of the Capacity and Self-Determination (Jersey) Law 2016<sup>25</sup>, in relation to the member;”;
- (b) in Articles 12(1)(f) and 19(4)(f), for the reference to the Mental Health (Jersey) Law 1969 in each place there shall be substituted a reference to the Mental Health (Jersey) Law 2016<sup>26</sup>.

## 12 Royal Court (Jersey) Law 1948 amended

In the Royal Court (Jersey) Law 1948<sup>27</sup> –

- (a) for Article 3(c) there shall be substituted the following paragraph –
- “(c) under Part 4 of the Capacity and Self-Determination (Jersey) Law 2016<sup>28</sup>, a delegate is appointed in relation to that person;”;
- (b) in Article 9(1) for the words “unable, through physical or mental incapacity, or for any other reason,” there shall be substituted the words “unable (through physical incapacity or a lack of capacity within the meaning of Article 4 of the Capacity and Self-Determination (Jersey) Law 2016, or for any other reason)”.

## 13 Loi (1938) sur les honoraires des Jurés-Justiciers amended

In the Tarif to the Loi (1938) sur les honoraires des Jurés-Justiciers<sup>29</sup>, for the item “Curateurs” and the entries associated with that item there shall be substituted the following item and entries –

“DÉLÉGUÉS (Capacity and Self-Determination (Jersey) Law 2016 <sup>30</sup> )			
Pour l’examen d’une demande d’un délégué de vendre, échanger, grever, donner ou disposer du bien de la personne (“P”), telle demande étant faite conformément aux conditions ou restrictions stipulées par la Cour en vertu de l’Article 28(2) de la Loi de 2016.	£20	Demande de vendre, etc.	Greffier”.

## 14 Criminal Justice (Anonymity in Sexual Offence Cases) (Jersey) Law 2002 amended

In Article 2 of the Criminal Justice (Anonymity in Sexual Offence Cases) (Jersey) Law 2002<sup>31</sup>, for sub-paragraph (g) there shall be substituted the following sub-paragraph –

“(g) any offence under any of Articles 74 to 76 of the Mental Health (Jersey) Law 2016<sup>32</sup>;”.

**15 Criminal Justice (Evidence of Children) (Jersey) Law 2002 amended**

In Article 2 of the Criminal Justice (Evidence of Children) (Jersey) Law 2002<sup>33</sup> –

(a) for paragraph (1)(b)(iii) there shall be substituted the following clause –

“(iii) Part 10 of the Mental Health (Jersey) Law 2016<sup>34</sup>;”;

(b) for paragraph (2)(b) there shall be substituted the following sub-paragraph –

“(b) witness who is a patient within the meaning of the Mental Health (Jersey) Law 2016 and capable of giving evidence;”.

**16 Rehabilitation of Offenders (Jersey) Law 2001 amended**

In Article 1(4)(b) of the Rehabilitation of Offenders (Jersey) Law 2001<sup>35</sup> for the word “insanity” there shall be substituted the words “incapacity under Part 8 of the Mental Health (Jersey) Law 2016<sup>36</sup>”.

**17 Rehabilitation of Offenders (Exceptions) (Jersey) Regulations 2002 amended**

In the Rehabilitation of Offenders (Exceptions) (Jersey) Regulations 2002<sup>37</sup> –

(a) in Regulation 18, for sub-paragraph (1)(d) there shall be substituted the following sub-paragraphs –

“(d) for appointment –

(i) as a delegate under Part 4 of the Capacity and Self-Determination (Jersey) Law 2016<sup>38</sup>, or

(ii) as a nearest person under Part 2 of the Mental Health (Jersey) Law 2016<sup>39</sup>;

(e) to exercise authority conferred by a lasting power of attorney under Part 2 of the Capacity and Self-Determination (Jersey) Law 2016;”;

(b) in Regulation 23, for the word “1969” there shall be substituted the word “2016”.

**18 Education (Jersey) Law 1999 amended**

In paragraph 6(2)(c) of Schedule 5, and in paragraph 5(2)(c) of Schedule 6, to the Education (Jersey) Law 1999<sup>40</sup>, for the word “curator” in each place there shall be substituted the word “delegate”.

**19 Gambling (Channel Islands Lottery) (Jersey) Regulations 1975 amended**

In Regulation 3(4) of the Gambling (Channel Islands Lottery) (Jersey) Regulations 1975<sup>41</sup>, for sub-paragraph (d) there shall be substituted the following sub-paragraph –

“(d) under Part 4 of the Capacity and Self-Determination (Jersey) Law 2016<sup>42</sup>, a delegate is appointed in relation to the member;”.

**20 Licensing (Jersey) Law 1974 amended**

In Article 18(1) of the Licensing (Jersey) Law 1974<sup>43</sup>, for sub-paragraph (c) there shall be substituted the following sub-paragraph –

“(c) has a delegate appointed under Part 4 of the Capacity and Self-Determination (Jersey) Law 2016<sup>44</sup>; or”.

**21 Places of Refreshment (Jersey) Law 1967 amended**

In Article 6(6) of the Places of Refreshment (Jersey) Law 1967<sup>45</sup>, for sub-paragraph (f) there shall be substituted the following sub-paragraph –

“(f) has a delegate appointed under Part 4 of the Capacity and Self-Determination (Jersey) Law 2016<sup>46</sup> with authority to act for him or her in relation to such matters; or”.

**22 Adoption (Jersey) Law 1961 amended**

In the Adoption (Jersey) Law 1961<sup>47</sup> –

- (a) in Article 1(3A) after the words “a hospital” there shall be inserted the words “, an approved establishment within the meaning given by the Mental Health (Jersey) Law 2016<sup>48</sup>”;
- (b) in Article 33(2) –
  - (i) in sub-paragraph (a)(iii) after the words “a hospital” there shall be inserted the words “or approved establishment”;
  - (ii) in sub-paragraphs (b) and (c) for the references to the Mental Health (Jersey) Law 1969 in each place there shall be substituted references to the Mental Health (Jersey) Law 2016, and
  - (iii) in paragraph (3) after the words “sub-paragraph (2)” there shall be inserted the words “ ‘approved establishment’ ”.

**23 Children (Jersey) Law 2002 amended**

In the Children (Jersey) Law 2002<sup>49</sup> –

- (a) in Article 1(1), in the definition “voluntary home”, in sub-paragraph (c) after the words “a hospital” there shall be added the words “or other approved establishment within the meaning given by the Mental Health (Jersey) Law 2016<sup>50</sup>”;



- (b) in Article 58(2)(h) for the words “Part 2 of the Mental Health (Jersey) Law 1969” there shall be substituted the words “Part 3 of the Mental Health (Jersey) Law 2016”;
- (c) in Article 72 –
  - (i) in paragraph (5)(c) for the words “nearest relative or, if that person” there shall be substituted the words “nearest person or, if the person so suffering”,
  - (ii) in paragraph (6) for the word “relative” there shall be substituted the word “person”, and
  - (iii) in paragraph (10), for the word “relative” there shall be substituted the word “person”, and for the word “1969” there shall be substituted the word “2016”;
- (d) in Schedule 3, in paragraph 4(1)(b) for the words “under Part 2 of the Mental Health (Jersey) Law 1969” there shall be substituted the words “Part 3 of the Mental Health (Jersey) Law 2016”.

**24 Children (Secure Accommodation) (Jersey) Order 2005 amended**

In Article 5(1) of the Children (Secure Accommodation) (Jersey) Order 2005<sup>51</sup> for the reference to the Mental Health (Jersey) Law 1969 there shall be substituted a reference to the Mental Health (Jersey) Law 2016<sup>52</sup>.

**25 Children’s Property and Tuteurs (Jersey) Law 2016 amended**

In the Children’s Property and Tuteurs (Jersey) Law 2016<sup>53</sup> –

- (a) in Article 1 for the definition “curator” there shall be substituted the following definition –
  - “ ‘delegate’ means a person appointed as such under Part 4 of the Capacity and Self-Determination (Jersey) Law 2016<sup>54</sup>;”;
- (b) in Article 6(2) for the word “curator” in each place in which it occurs there shall be substituted the word “delegate”.

**26 Civil Partnership (Jersey) Law 2012 amended**

In Article 1 of the Civil Partnership (Jersey) Law 2012<sup>55</sup>, in the definition “mental disorder” for the reference to the Mental Health (Jersey) Law 1969 there shall be substituted a reference to the Mental Health (Jersey) Law 2016<sup>56</sup>.

**27 Matrimonial Causes (Jersey) Law 1949 amended**

In the Matrimonial Causes (Jersey) Law 1949<sup>57</sup> –

- (a) in Article 1 for the definition “mental disorder” there shall be substituted the following definition –
  - “ ‘mental disorder’ has the meaning given by Article 1(1) of the Mental Health (Jersey) Law 2016<sup>58</sup>;”;

- (b) in Article 2 for paragraphs (a) and (b) there shall be substituted the following paragraphs –

- “(a) the person is liable to be detained in an approved establishment or other place of safety under the Mental Health (Jersey) Law 2016, or is subject to a significant restriction on his or her liberty under Part 5 of the Capacity and Self-Determination (Jersey) Law 2016<sup>59</sup>;
- (b) the person is liable to be detained in an a hospital, mental nursing home or place of safety under the Mental Health Act 1983 or in a hospital or place of safety under the Mental Health (Care and Treatment) (Scotland) Act 2003, being Acts of the Parliament of the United Kingdom, as amended until the date of commencement of the Mental Health (Jersey) Law 2016.”.

## 28 Companies (Jersey) Law 1991 amended

In the Companies (Jersey) Law 1991<sup>60</sup> –

- (a) in Article 1 the definition “interdict” shall be deleted;
- (b) in Article 3(6), for the words “must not be a minor or an interdict.” there shall be substituted the words “must not be –
- (a) a minor;
- (b) a person lacking capacity, for and on behalf of whom another person is acting by authority of a lasting power of attorney conferred under Part 2 of the Capacity and Self-Determination (Jersey) Law 2016<sup>61</sup>;
- (c) a person in respect of whom a delegate is appointed under Part 4 of the Capacity and Self-Determination (Jersey) Law 2016.”;
- (c) in Article 3H(1)(a) for the word “insanity” there shall be substituted the words “mental disorder”;
- (d) in the heading to Article 28 for the words “and interdicts” there shall be substituted the word “etc.”;
- (e) in Article 28 for the words “A minor or an interdict” there shall be substituted the words “A person mentioned in Article 3(6)(a) to (c)”;
- (f) in Article 73 for sub-paragraph (3)(b) there shall be substituted the following sub-paragraph –
- “(b) is such a person as mentioned in Article 3(6)(b) or (c)”;
- (g) in Article 127YB(1)(a) for the word “insanity” there shall be substituted the words “mental disorder”.

## 29 Companies (Standard Table) (Jersey) Order 1992 amended

In paragraph 51 of the Standard Table set out in the Schedule to the Companies (Standard Table) (Jersey) Order 1992<sup>62</sup> –

- (a) for the word “curator” in each place in which it occurs there shall be substituted the word “delegate”; and

- (b) for the words “appointed by that court” there shall be substituted the words “whether by a lasting power of attorney under Part 2 of the Capacity and Self-Determination (Jersey) Law 2016<sup>63</sup> or by appointment of that court”.

**30 Financial Services (Trust Company Business (Exemptions)) (Jersey) Order 2000 amended**

In paragraph 17 of the Schedule to the Financial Services (Trust Company Business (Exemptions)) (Jersey) Order 2000<sup>64</sup> –

- (a) for the heading there shall be substituted the following heading –  
“*Tuteurs, delegates etc.*”;
- (b) for the word “curator” there shall be substituted the word “delegate”; and
- (c) after the word “attorney,” there shall be inserted the words “person on whom authority is conferred by a lasting power of attorney under Part 2 of the Capacity and Self-Determination (Jersey) Law 2016<sup>65</sup>”.

**31 Foundations (Jersey) Law 2009 amended**

In Article 21(4) of the Foundations (Jersey) Law 2009<sup>66</sup>, for sub-paragraph (a) there shall be substituted the following sub-paragraph –

- “(a) a person in respect of whom a delegate has been appointed under Part 4 of the Capacity and Self-Determination (Jersey) Law 2016<sup>67</sup>, or equivalent arrangements have been made under a corresponding provision of the law of a jurisdiction other than Jersey; or”.

**32 Trusts (Jersey) Law 1984 amended**

In Article 59 of the Trusts (Jersey) Law 1984<sup>68</sup> –

- (a) in paragraph (1)(a) for the words “curator, *tuteur*, or special and general attorney” there shall be substituted the words “delegate, *tuteur*, special and general attorney, or person acting under the authority of a lasting power of attorney conferred under Part 2 of the Capacity and Self-Determination (Jersey) Law 2016<sup>69</sup>”;
- (b) in paragraph (3)(b) for the word “1969” there shall be substituted the word “2016”.

**33 Jersey Overseas Aid Commission (Jersey) Law 2005**

In paragraph 6.4 of Schedule 1 to the Jersey Overseas Aid Commission (Jersey) Law 2005<sup>70</sup>, for sub-paragraph (b) there shall be substituted the following sub-paragraph –

- “(b) under Part 4 of the Capacity and Self-Determination (Jersey) Law 2016<sup>71</sup>, a delegate is appointed in relation to his or her property and affairs”.

**34 States of Jersey Law 2005 amended**

In Article 8(1) of the States of Jersey Law 2005<sup>72</sup>, for sub-paragraphs (c) and (d) there shall be substituted the following sub-paragraphs –

- “(c) is detained in an approved establishment or is subject to guardianship under the Mental Health (Jersey) Law 2016<sup>73</sup>;
- (d) is a person in respect of whom a delegate has been appointed under Part 4 of the Capacity and Self-Determination (Jersey) Law 2016<sup>74</sup>.”

**35 Dwelling-Houses (Rent Control) (Jersey) Regulations 1946 amended**

In Regulation 2(2) of the Dwelling-Houses (Rent Control) (Jersey) Regulations 1946<sup>75</sup>, for sub-paragraph (c) there shall be substituted the following sub-paragraph –

- “(c) if, under Part 4 of the Capacity and Self-Determination (Jersey) Law 2016<sup>76</sup>, a delegate is appointed in relation to the chairman or member; or”.

**36 Food Safety (Jersey) Law 1966 amended**

In Article 61 of the Food Safety (Jersey) Law 1966<sup>77</sup> for paragraph (f) there shall be substituted the following paragraphs –

- “(f) under Part 4 of the Capacity and Self-Determination (Jersey) Law 2016<sup>78</sup>, has a delegate appointed in relation to him or her;
- (fa) has decisions made on his or her behalf in relation to his or her property and affairs, by a person exercising authority to do so conferred by a lasting power of attorney under Part 2 of the Capacity and Self-Determination (Jersey) Law 2016; or”.

**37 Long-Term Care Services (Health and Social Services Charges) (Jersey) Order 2014 amended**

In Article 3 of the Long-Term Care Services (Health and Social Services Charges) (Jersey) Order 2014<sup>79</sup> for the words “Article 6 or 7 of the Mental Health (Jersey) Law 1969” there shall be substituted the words “Article 21 or 22 of the Mental Health (Jersey) Law 2016<sup>80</sup>”.

**38 Medicines (Jersey) Law 1995 amended**

In Article 71 of the Medicines (Jersey) Law 1995<sup>81</sup> –

- (a) in paragraphs (1)(c), (3)(c) and (4)(c) for the word “curator” in each place there shall be substituted the word “delegate”;
- (b) in paragraph (1) the semi-colon and the word “or” at the end of sub-paragraph (b) shall be deleted and after sub-paragraph (c) there shall be inserted the following word and sub-paragraph –
  - “, or

- (d) the pharmacist has decisions made on his or her behalf in relation to his or her property and affairs, by a person exercising authority to do so conferred by a lasting power of attorney under Part 2 of the Capacity and Self-Determination (Jersey) Law 2016<sup>82</sup>”;
- (c) in paragraph (3) for the comma at the end of sub-paragraph (c) there shall be substituted a semi-colon, and after that sub-paragraph there shall be inserted the following sub-paragraph –
  - “(d) in a case falling within paragraph (1)(d), is a period of 3 years from the date on which the person on whom authority is conferred by the lasting power of attorney commenced to exercise that authority,”;
- (d) after paragraph (4)(c) there shall be added the following word and sub-paragraph –
  - “or
  - (d) in a case falling within paragraph (1)(d) means the person on whom authority is conferred by the lasting power of attorney.”.

### **39 Nursing and Residential Homes (Jersey) Law 1994 amended**

In the Nursing and Residential Homes (Jersey) Law 1994<sup>83</sup> –

- (a) in Article 1 for the definitions “mental disorder” and “mentally disordered” there shall be substituted the following definition –
  - “‘mental disorder’ has the meaning given by Article 1 of the Mental Health (Jersey) Law 2016<sup>84</sup>”;
- (b) in Articles 4(5)(c), 13(3), and 15(2)(e) and (f) for the word “1969” in each place in which it occurs there shall be substituted the word “2016”;
- (c) in Article 19(3) for the words “Article 19 of the Mental Health (Jersey) Law 1969” there shall be substituted the words “Article 53 of the Mental Health (Jersey) Law 2016”;
- (d) in Article 19(6) for the words “Article 19 or 40 of the Mental Health (Jersey) Law 1969” there shall be substituted the words “Article 53 or 92 of the Mental Health (Jersey) Law 2016”; and
- (e) in the Schedule –
  - (i) paragraph 3, and
  - (ii) in paragraph 7, the definition “1969 Law” shall be deleted.

### **40 Nursing Homes and Mental Nursing Homes (General Provisions) (Jersey) Order 1995 amended**

In Article 6(10) of the Nursing Homes and Mental Nursing Homes (General Provisions) (Jersey) Order 1995<sup>85</sup> for the word “1969” there shall be substituted the word “2016”.

**41 Building Bye-laws (Jersey) 2007 amended**

In bye-law 1(1) in the Building Bye-laws (Jersey) 2007<sup>86</sup>, in the definition “institution” for paragraph (a) there shall be substituted the following paragraph –

- “(a) suffering from disabilities due to illness, old age or physical incapacity, or a lack of capacity within the meaning of Article 4 of the Capacity and Self-Determination (Jersey) Law 2016<sup>87</sup>; or”.

**42 Planning and Building (Jersey) Law 2002 amended**

In Article 1(1) of the Planning and Building (Jersey) Law 2002<sup>88</sup>, in the definition “owner” for paragraph (d) there shall be substituted the following paragraph –

- “(d) a delegate appointed, under Part 4 of the Capacity and Self-Determination (Jersey) Law 2016<sup>89</sup>, in relation to a person; and”.

**43 Police Procedures and Criminal Evidence (Jersey) Law 2003 amended**

In the Police Procedures and Criminal Evidence (Jersey) Law 2003<sup>90</sup> –

- (a) in Article 93(2) for the words “or fitness to plead” there shall be substituted the words “, or incapacity of a defendant under Article 57 of the Mental Health (Jersey) Law 2016<sup>91</sup>”;
- (b) in the table in Schedule 3, for the item and entry relating to the Mental Health (Jersey) Law 1969 there shall be substituted the following item and entry –

“Mental Health (Jersey) Law 2016 Article 35”.

**44 Police Procedures and Criminal Evidence (Codes of Practice) (Jersey) Order 2004 amended**

In Code C of the Police Procedures and Criminal Evidence (Codes of Practice) (Jersey) Order 2004<sup>92</sup> –

- (a) in paragraph 1.10 for the word “1969” there shall be substituted the word “2016”;
- (b) in guidance note 1I for the sentence beginning “ ‘Mental disorder’ ” there shall be substituted the following sentence –
  - “ ‘Mental disorder’ is defined by Article 1(1) of the Mental Health (Jersey) Law 2016<sup>93</sup> as any disorder of disability of the mind, not including a learning disability (unless the person suffering that disability shows abnormally aggressive or seriously irresponsible conduct), nor dependence on alcohol or drugs.”;
- (c) in paragraph 3.11 for the words “of the Mental Health (Jersey) Law 1969” there shall be substituted the words “Part 5 of the Mental Health (Jersey) Law 2016”;

- (d) in paragraph 6 of Annex E for the word “1969” there shall be substituted the word “2016”.

#### **45 Sex Offenders (Jersey) Law 2010 amended**

In the Sex Offenders (Jersey) Law 2010<sup>94</sup> –

- (a) in Article 1(2)(b) for the words “insanity or infirmity of mind” there shall be substituted the words “mental disorder within the meaning given by Article 1 of the Mental Health (Jersey) Law 2016<sup>95</sup>”;
- (b) for Article 1(2)(c) there shall be substituted the following sub-paragraph –
- “(c) was found incapable, under Part 8 of that Law, of participating in proceedings but a court has determined that the person did the act alleged.”;
- (c) in Article 2(1)(d) the words “, 4.2 (sexual intercourse with a mentally deranged or retarded person)” shall be deleted;
- (d) for Article 2(1)(f) there shall be substituted the following sub-paragraph –
- “(f) an offence under Article 74 (sexual offences: prohibited acts), 75 (sexual offences: coercion) or 76 (sexual offences: relationship of care) of the Mental Health (Jersey) Law 2016.”.

#### **46 States of Jersey Police Force Law 2012 amended**

In Article 5(9)(d) of the States of Jersey Police Force Law 2012<sup>96</sup> for the words “physical or mental incapacity” there shall be substituted the words “physical incapacity or a lack of capacity within the meaning of Article 4 of the Capacity and Self-Determination (Jersey) Law 2016<sup>97</sup>”.

#### **47 Comptroller and Auditor General (Jersey) Law 2014 amended**

In Article 8(2) of the Comptroller and Auditor General (Jersey) Law 2014<sup>98</sup> –

- (a) in sub-paragraph (f) for the word “1969” there shall be substituted the word “2016”;
- (b) for sub-paragraph (g) there shall be substituted the following sub-paragraph –
- “(g) under Part 4 of the Capacity and Self-Determination (Jersey) Law 2016<sup>99</sup>, has a delegate appointed in relation to him or her.”.

#### **48 Income Tax (Jersey) Law 1961 amended**

In Articles 121(2), 122B(2), 124(1) and 127 of the Income Tax (Jersey) Law 1961<sup>100</sup>, for the word “curator” in each place in which it occurs there shall be substituted the word “delegate”.

**49 Stamp Duties and Fees (Jersey) Law 1998 amended**

In Item 30 of the table in Part 1 of the Schedule to the Stamp Duties and Fees (Jersey) Law 1998<sup>101</sup> –

- (a) in the heading for the word “1969” there shall be substituted the word “2016”;
- (b) for paragraph (a) and the entries relating to that paragraph there shall be substituted the following paragraph and entries –

“(a)	Application to sell, exchange, gift or dispose of P’s property, where such an application is required by the Court further to conditions or restrictions imposed by the Court on such sale, exchange etc. under Article 28(2) of the Capacity and Self-Determination (Jersey) Law 2016 <sup>102</sup> –			
(i)	in the case of a professional application	rate F	Application	Greffier
(ii)	in any other case	rate I	Application	Greffier”;

- (c) in paragraph (b) for the words in the second column “Application for appointment of acting nearest relative (Article 32)” there shall be substituted the words “Application for appointment of nearest person (Article 11)”;
- (d) in paragraph (c) for the words “Application for discharge or variation of order appointing acting nearest relative” there shall be substituted the words “Application for discharge or variation of order appointing nearest person (Article 12)”;
- (e) paragraph (d) and the entries relating to that paragraph shall be deleted.

**50 Motor Traffic (Jersey) Law 1935 amended**

In Article 36 of the Motor Traffic (Jersey) Law 1935<sup>103</sup> –

- (a) in paragraph (1)(b) for the words “Curator to” there shall be substituted the words “delegate in relation to”;
- (b) in paragraph (2)(b) for the word “Curator” there shall be substituted the word “delegate”.

**51 Food Costs Bonus (Jersey) Regulations 2016 amended**

In paragraph 6 of the Schedule to the Food Costs Bonus (Jersey) Regulations 2016<sup>104</sup> –



- (a) in sub-paragraph (1)(a) for the words “Article 14 of the Mental Health (Jersey) Law 1969” there shall be substituted the words “Article 29 of the Mental Health (Jersey) Law 2016<sup>105</sup>”;
- (b) for sub-paragraph (1)(b) there shall be substituted the following sub-paragraph –
  - “ (b) does not have, acting on his or her behalf –
    - (i) a delegate appointed under Part 4 of the Capacity and Self-Determination (Jersey) Law 2016<sup>106</sup>, or
    - (ii) a person acting under the authority of a lasting power of attorney conferred under Part 2 of that Law;”;
- (c) in sub-paragraph (2)(a) for the words “has a curator appointed” there shall be substituted the words “has appointed, in relation to him or her, such a person as mentioned in paragraph (1)(b)”.

## 52 Health Insurance (Jersey) Law 1967 amended

In Schedule 1 to the Health Insurance (Jersey) Law 1967<sup>107</sup> for paragraph 4(2)(c) there shall be substituted the following clause –

- “ (c) if, under Part 4 of the Capacity and Self-Determination (Jersey) Law 2016<sup>108</sup>, a delegate is appointed in relation to the chairman or member; or”.

## 53 Health Insurance (Medical Benefit) (General Provisions) (Jersey) Order 1967 amended

In the Health Insurance (Medical Benefit) (General Provisions) (Jersey) Order 1967<sup>109</sup> –

- (a) in Article 13(1)(c) for the words “any mental incapacity” there shall be substituted the words “a lack of capacity within the meaning of Article 4 of the Capacity and Self-Determination (Jersey) Law 2016<sup>110</sup>”;
- (b) in Article 17 –
  - (i) in sub-paragraph (1)(a) for the words “Article 14 of the Mental Health (Jersey) Law 1969” there shall be substituted the words “Article 29 of the Mental Health (Jersey) Law 2016<sup>111</sup>”;
  - (ii) for sub-paragraph (1)(b) there shall be substituted the following sub-paragraph –
    - “ (b) does not have, acting on his or her behalf –
      - (i) a delegate appointed under Part 4 of the Capacity and Self-Determination (Jersey) Law 2016, or
      - (ii) a person acting under the authority of a lasting power of attorney conferred under Part 2 of that Law; and”;
  - (iii) in sub-paragraph (2)(a) for the words “has a curator or *tuteur* appointed” there shall be substituted the words “has appointed, in relation to him or her, such a person as mentioned in paragraph (1)(b) or a *tuteur*”.

**54 Health Insurance (Pharmaceutical Benefit Advisory Committee) (Jersey) Order 2017**

For Article 3(2)(b) of the Health Insurance (Pharmaceutical Benefit Advisory Committee) (Jersey) Order 2017<sup>112</sup> there shall be substituted the following sub-paragraph –

“(b) if, under Part 4 of the Capacity and Self-Determination (Jersey) Law 2016<sup>113</sup>, a delegate is appointed in relation to the chairperson or member; or”.

**55 Income Support (General Provisions) (Jersey) Order 2008 amended**

In the Income Support (General Provisions) (Jersey) Order 2008<sup>114</sup> –

(a) in Article 9 –

(i) in sub-paragraph (1)(a) for the words “Article 14 of the Mental Health (Jersey) Law 1969” there shall be substituted the words “Article 29 of the Mental Health Law 2016<sup>115</sup>”,

(ii) for sub-paragraph (1)(b) there shall be substituted the following sub-paragraph –

“(b) does not have, acting on his or her behalf –

(i) a delegate appointed under Part 4 of the Capacity and Self-Determination (Jersey) Law 2016<sup>116</sup>, or

(ii) a person acting under the authority of a lasting power of attorney conferred under Part 2 of that Law; and”;

(iii) in sub-paragraph (2)(a) for the words “has a curator or *tuteur* appointed” there shall be substituted the words “has appointed, in relation to him or her, such a person as mentioned in paragraph (1)(b) or a *tuteur*”;

(b) in Article 15(6) –

(i) for sub-paragraph (b) there shall be substituted the following sub-paragraph –

“(b) on the appointment, under Part 4 of the Capacity and Self-Determination (Jersey) Law 2016, of a delegate in relation to the member;”, and

(ii) in sub-paragraph (c) for the word “1969” there shall be substituted the word “2016”.

**56 Long-term Care (General Provisions) (Jersey) Order 2014 amended**

In Article 8 of the Long-term Care (General Provisions) (Jersey) Order 2014<sup>117</sup> –

(a) in sub-paragraph (3)(a) for the words “Article 14 of the Mental Health (Jersey) Law 1969” there shall be substituted the words “Article 29 of the Mental Health (Jersey) Law 2016<sup>118</sup>”;

(b) for sub-paragraph (3)(b) there shall be substituted the following sub-paragraph –

“(b) does not have, acting on his or her behalf –

- (i) a delegate appointed under Part 4 of the Capacity and Self-Determination (Jersey) Law 2016<sup>119</sup>, or
  - (ii) a person acting under the authority of a lasting power of attorney conferred under Part 2 of that Law; or”;
- (c) in sub-paragraph (4)(a) for the words “has a curator or *tuteur* appointed” there shall be substituted the words “has appointed, in relation to him or her, such a person as mentioned in paragraph (3)(b) or a *tuteur*”.

**57 Social Security (Bonus) (Jersey) Law 2014 amended**

In paragraph 8 of the Schedule to the Social Security (Bonus) (Jersey) Law 2014<sup>120</sup> –

- (a) in sub-paragraph (1)(a) for the words “Article 14 of the Mental Health (Jersey) Law 1969” there shall be substituted the words “Article 29 of the Mental Health (Jersey) Law 2016<sup>121</sup>”;
- (b) for sub-paragraph (1)(b) there shall be substituted the following sub-paragraph –
  - “(b) does not have, acting on his or her behalf –
    - (i) a delegate appointed under Part 4 of the Capacity and Self-Determination (Jersey) Law 2016<sup>122</sup>, or
    - (ii) a person acting under the authority of a lasting power of attorney conferred under Part 2 of that Law; and”;
- (c) in sub-paragraph (2)(a) for the words “has a curator or *tuteur* appointed” there shall be substituted the words “has appointed, in relation to him or her, such a person as mentioned in paragraph (3)(b) or a *tuteur*”.

**58 Social Security (Christmas Bonus) (Jersey) Regulations 2016 amended**

In Regulation 6(3) of the Social Security (Christmas Bonus) (Jersey) Regulations 2016<sup>123</sup> –

- (a) in sub-paragraph (a) for the words “Article 14 of the Mental Health (Jersey) Law 1969” there shall be substituted the words “Article 29 of the Mental Health (Jersey) Law 2016<sup>124</sup>”;
- (b) for sub-paragraph (b) there shall be substituted the following sub-paragraph –
  - “(b) is a person in respect of whom –
    - (i) a delegate has been appointed under Part 4 of the Capacity and Self-Determination (Jersey) Law 2016<sup>125</sup>, or
    - (ii) a person is acting under the authority of a lasting power of attorney conferred under Part 2 of that Law.”.

**59 Social Security (Health Bonus Scheme) Regulations 2016 amended**

In Regulation 10 of the Social Security (Health Bonus Scheme) (Jersey) Regulations 2016<sup>126</sup> –

- (a) in paragraph (3)(a) for the words “Article 14 of the Mental Health (Jersey) Law 1969” there shall be substituted the words “Article 29 of the Mental Health (Jersey) Law 2016<sup>127</sup>”;
- (b) for sub-paragraph (3)(b) there shall be substituted the following sub-paragraph –
  - “(b) is a person in respect of whom –
    - (i) a delegate has been appointed under Part 4 of the Capacity and Self-Determination (Jersey) Law 2016<sup>128</sup>, or
    - (ii) a person is acting under the authority of a lasting power of attorney conferred under Part 2 of that Law; or”;
- (c) in sub-paragraph (4)(a) for the words “has a curator or *tuteur* appointed as specified in paragraph (3)” there shall be substituted the words “has appointed, in relation to him or her, such a person as mentioned in paragraph (3)(b) or a *tuteur*”.

**60 Social Security (Claims and Payments) (Jersey) Order 1974 amended**

In Article 16 of the Social Security (Claims and Payments) (Jersey) Order 1974<sup>129</sup> –

- (a) in sub-paragraph (1)(a) for the words “Article 14 of the Mental Health (Jersey) Law 1969” there shall be substituted the words “Article 29 of the Mental Health (Jersey) Law 2016<sup>130</sup>”;
- (b) for sub-paragraph (1)(b) there shall be substituted the following sub-paragraph –
  - “(b) does not have, acting on his or her behalf –
    - (i) a delegate appointed under Part 4 of the Capacity and Self-Determination (Jersey) Law 2016<sup>131</sup>, or
    - (ii) a person acting under the authority of a lasting power of attorney conferred under Part 2 of that Law; and”;
- (c) in sub-paragraph (2)(a) for the words “has a curator or *tuteur* appointed” there shall be substituted the words “has appointed, in relation to him or her, such a person as mentioned in paragraph (1)(b) or a *tuteur*”.

**61 Social Security (Determination of Claims and Questions) (Jersey) Order 1974 amended**

In Article 8(6) of the Social Security (Determination of Claims and Questions) (Jersey) Order 1974<sup>132</sup> –

- (a) for sub-paragraph (b) there shall be substituted the following sub-paragraph –

“(b) on the appointment, under Part 4 of the Capacity and Self-Determination (Jersey) Law 2016<sup>133</sup>, of a delegate in relation to the member;”;

- (b) in sub-paragraph (c) for the word “1969” there shall be substituted the word “2016”.

**62 Social Security (Determination of Disablement Questions) (Jersey) Order 1974 amended**

In Article 6(6) of the Social Security (Determination of Disablement Questions) (Jersey) Order 1974<sup>134</sup> –

- (a) for sub-paragraph (b) there shall be substituted the following sub-paragraph –

“(b) on the appointment, under Part 4 of the Capacity and Self-Determination (Jersey) Law 2016<sup>135</sup>, of a delegate in relation to the member;”;

- (b) in sub-paragraph (c) for the word “1969” there shall be substituted the word “2016”.

**63 Social Security Advisory Council (Jersey) Order 1992 amended**

In Article 4(2) of the Social Security Advisory Council (Jersey) Order 1992<sup>136</sup> for sub-paragraph (c) there shall be substituted the following sub-paragraph –

“(c) if, under Part 4 of the Capacity and Self-Determination (Jersey) Law 2016<sup>137</sup>, a delegate is appointed in relation to the chairman or member; or”.

**64 Social Security (Television Licence Benefit) (Jersey) Regulations 2009 amended**

In Regulation 9 of the Social Security (Television Licence Benefit) (Jersey) Regulations 2009<sup>138</sup> –

- (a) for paragraph (3)(b) there shall be substituted the following sub-paragraph –

“(b) if, in relation to the senior, a guardian has been appointed under Part 4 of the Mental Health (Jersey) Law 2016<sup>139</sup>, or –

(ii) a delegate has been appointed under Part 4 of the Capacity and Self-Determination (Jersey) Law 2016<sup>140</sup>, or

(iii) a person is acting under the authority of a lasting power of attorney conferred under Part 2 of that Law, with power to act on the senior’s behalf in respect of the application under paragraph (1).”;

- (b) in paragraph (5) for the word “curator” there shall be substituted the word “delegate” and at the end for the full stop there shall be substituted a comma, and there shall be added the words “or that the senior has

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conferred authority on another person under a lasting power of attorney as described in paragraph (3)(b)(iii).”.

## 65 Transitional and saving provisions

- (1) Notwithstanding the repeal, by Article 97(1) of the Mental Health (Jersey) Law 2016<sup>141</sup> (the “2016 Law”), of the Mental Health (Jersey) Law 1969<sup>142</sup> (the “1969 Law”), the provisions of the 1969 Law mentioned in paragraphs (2) to (7) shall continue in effect as and to the extent described in those paragraphs.
- (2) An admission of a person for observation, under Article 6 of the 1969 Law, which is in effect immediately before the commencement of the 2016 Law, shall continue to have effect –
  - (a) as if it were an admission of that person for assessment under Article 21 of the 2016 Law;
  - (b) for a period not exceeding 28 days beginning with the day on which the application under the 1969 Law was made.
- (3) An admission of a person for treatment, under Article 7 of the 1969 Law, which is in effect immediately before the commencement of the 2016 Law, shall continue to have effect –
  - (a) as if it were an admission of that person for treatment under Article 22 of the 2016 Law;
  - (b) for a period not exceeding 6 months beginning with the day on which the application under the 1969 Law was made.
- (4) Without prejudice to the specificity of paragraphs (2) and (3), a person’s liability to detention under Part 2 of the 1969 Law shall be deemed to continue subject to any arrangements as to leave of absence granted under Article 20 of that Law, but otherwise as though it were liability to detention under Part 3 of the 2016 Law.
- (5) Where, immediately before the commencement of the 2016 Law, an application for an admission such as described in paragraph (2) or (3) has been made but not determined, the application shall be treated –
  - (a) in the case of an application made under Article 6 of the 1969 Law, as though it were made under Article 21 of the 2016 Law; and
  - (b) in the case of an application made under Article 7 of the 1969 Law, as though it were made under Article 22 of the 2016 Law,and for the purposes of determining such an application the Minister may request the submission of such further particulars of the application or other information or documents as the Minister may reasonably specify.
- (6) Where, immediately before the commencement of the 2016 Law, a person is subject to guardianship pursuant to Article 16 of the 1969 Law, that person shall continue to be subject to guardianship –
  - (a) as though he or she had been received into guardianship under Article 30 of the 2016 Law;

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- (b) for a period not exceeding 6 months from the date on which the application for guardianship of that person was made under Article 14 of the 1969 Law.
  - (7) Where, immediately before the commencement of the 2016 Law, an application for admission into guardianship has been made under Article 14 of the 1969 Law, but not determined, the application shall be treated as though it were an application for admission into guardianship under Article 29 of the 2016 Law, and for the purposes of determining such an application the Minister may request the submission of such further particulars of the application or other information or documents as the Minister may reasonably specify.
  - (8) This Regulation shall –
    - (a) come into force immediately following the commencement of the 2016 Law; and
    - (b) cease to have effect at the end of the period of 6 months beginning with the date on which this Regulation comes into force.

## **66 Citation and commencement**

These Regulations may be cited as the Mental Health and Capacity (Consequential Amendment and Transitional Provision) (Jersey) Regulations 201- and (except for Regulation 65) shall come into force immediately following the commencement of the Mental Health (Jersey) Law 2016<sup>143</sup> or the Capacity and Self-Determination (Jersey) Law 2016<sup>144</sup>, whichever is the later.

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1	<i>L.29/2016</i>
2	<i>L.30/2016</i>
3	<i>chapter 01.160.42</i>
4	<i>L.30/2016</i>
5	<i>chapter 01.160.84</i>
6	<i>L.30/2016</i>
7	<i>chapter 01.400.25</i>
8	<i>L.30/2016</i>
9	<i>chapter 04.160</i>
10	<i>chapter 04.680</i>
11	<i>L.30/2016</i>
12	<i>chapter 05.255</i>
13	<i>L.29/2016</i>
14	<i>chapter 05.255.70</i>
15	<i>L.30/2016</i>
16	<i>chapter 05.800</i>
17	<i>L.30/2016</i>
18	<i>chapter 07.245</i>
19	<i>L.29/2016</i>
20	<i>chapter 07.455</i>
21	<i>L.30/2016</i>
22	<i>L.29/2016</i>
23	<i>chapter 12.200</i>
24	<i>chapter 07.570</i>
25	<i>L.30/2016</i>
26	<i>L.29/2016</i>
27	<i>chapter 07.770</i>
28	<i>L.30/2016</i>
29	<i>chapter 07.240</i>
30	<i>L.30/2016</i>
31	<i>chapter 08.160</i>
32	<i>L.29/2016</i>
33	<i>chapter 08.250</i>
34	<i>L.29/2016</i>
35	<i>chapter 08.840</i>
36	<i>L.29/2016</i>
37	<i>chapter 08.840.50</i>
38	<i>L.30/2016</i>
39	<i>L.29/2016</i>
40	<i>chapter 10.800</i>
41	<i>chapter 11.300.30</i>
42	<i>L.30/2016</i>
43	<i>chapter 11.450</i>
44	<i>L.30/2016</i>
45	<i>chapter 11.600</i>
46	<i>L.30/2016</i>
47	<i>chapter 12.050</i>
48	<i>L.29/2016</i>
49	<i>chapter 12.200</i>
50	<i>L.29/2016</i>
51	<i>chapter 12.200.80</i>
52	<i>L.29/2016</i>
53	<i>chapter 12.230</i>



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54	<i>L.30/2016</i>
55	<i>chapter 12.260</i>
56	<i>L.29/2016</i>
57	<i>chapter 12.650</i>
58	<i>L.29/2016</i>
59	<i>L.30/2016</i>
60	<i>chapter 13.125</i>
61	<i>L.30/2016</i>
62	<i>chapter 13.125.72</i>
63	<i>L.30/2016</i>
64	<i>chapter 13.225.55</i>
65	<i>L.30/2016</i>
66	<i>chapter 13.265</i>
67	<i>L.30/2016</i>
68	<i>chapter 13.875</i>
69	<i>L.30/2016</i>
70	<i>chapter 16.340</i>
71	<i>L.30/2016</i>
72	<i>chapter 16.800</i>
73	<i>L.29/2016</i>
74	<i>L.30/2016</i>
75	<i>chapter 18.270</i>
76	<i>L.30/2016</i>
77	<i>chapter 20.225</i>
78	<i>L.30/2016</i>
79	<i>chapter 20.570.40</i>
80	<i>L.29/2016</i>
81	<i>chapter 20.625</i>
82	<i>L.30/2016</i>
83	<i>chapter 20.725</i>
84	<i>L.29/2016</i>
85	<i>chapter 20.725.30</i>
86	<i>chapter 22.550.05</i>
87	<i>L.30/2016</i>
88	<i>chapter 22.550</i>
89	<i>L.30/2016</i>
90	<i>chapter 23.750</i>
91	<i>L.29/2016</i>
92	<i>chapter 23.750.20</i>
93	<i>L.29/2016</i>
94	<i>chapter 23.815</i>
95	<i>L.29/2016</i>
96	<i>chapter 23.820</i>
97	<i>L.30/2016</i>
98	<i>chapter 24.140</i>
99	<i>L.30/2016</i>
100	<i>chapter 24.750</i>
101	<i>chapter 24.960</i>
102	<i>L.30/2016</i>
103	<i>chapter 25.200</i>
104	<i>R&amp;O.108/2016</i>
105	<i>L.29/2016</i>
106	<i>L.30/2016</i>
107	<i>chapter 26.500</i>
108	<i>L.30/2016</i>
109	<i>chapter 26.500.16</i>

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110	<i>L.30/2016</i>
111	<i>L.29/2016</i>
112	<i>R&amp;O.63/2017</i>
113	<i>L.30/2016</i>
114	<i>chapter 26.550.20</i>
115	<i>L.29/2016</i>
116	<i>L.30/2016</i>
117	<i>chapter 26.600.30</i>
118	<i>L.29/2016</i>
119	<i>L.30/2016</i>
120	<i>chapter 26.880</i>
121	<i>L.29/2016</i>
122	<i>L.30/2016</i>
123	<i>chapter 26.880.10</i>
124	<i>L.29/2016</i>
125	<i>L.30/2016</i>
126	<i>chapter</i>
127	<i>L.29/2016</i>
128	<i>L.30/2016</i>
129	<i>chapter 26.900.06</i>
130	<i>L.29/2016</i>
131	<i>L.30/2016</i>
132	<i>chapter 26.900.28</i>
133	<i>L.30/2016</i>
134	<i>chapter 26.900.30</i>
135	<i>L.30/2016</i>
136	<i>chapter 26.900.80</i>
137	<i>L.30/2016</i>
138	<i>chapter 26.950.50</i>
139	<i>L.29/2016</i>
140	<i>L.30/2016</i>
141	<i>L.29/2016</i>
142	<i>chapter 20.650</i>
143	<i>L.29/2016</i>
144	<i>L.30/2016</i>