

STATES OF JERSEY



STATES OF JERSEY LAW 1966, AS AMENDED: DELEGATION OF FUNCTIONS- MEDICAL OFFICER OF HEALTH

Presented to the States on 8th November 2005
by the Health and Social Services Committee

STATES GREFFE

REPORT

On 7th October 2005, the Health and Social Services Committee made an Act delegating certain of its functions under the Opticians (Registration) (Jersey) Law 1962, the Nursing Agencies (Jersey) Law 1978, the Nursing and Residential Homes (Jersey) Law 1994, as amended by Article 7(2) of the Termination of Pregnancy (Jersey) Law 1997, the Health Care (Registration) (Jersey) Law 1995, the Nursing and Residential Homes (No. 2) (Jersey) Law 1997, the Ancillary Dental Workers (Jersey) Regulations 1974, as amended, the Residential Homes (General Provisions) (Jersey) Order 1995 and the Nursing Homes and Mental Nursing Homes (General Provisions) (Jersey) Order 1995.

The terms of the delegation were recorded in an Act of the Committee as follows –

“A15. The Committee considered an undated report from the Medical Officer of Health in which it was being recommended that certain functions currently delegated to the Medical Officer of Health be delegated to the Assistant Director, Health Protection. It was also proposed to extend the delegated functions to cover other areas of authority. In this connexion the Committee received a list which detailed the relevant delegated functions (attached as an enclosure to this Act).

The Committee was advised that in addition to delegating certain functions currently carried out by the Medical Officer of Health to the Assistant Director, Health Protection it was also being recommended to delegate the approval of applications for the registration of health care professionals whose criteria for registration was holding an acceptable qualification or training and practical experience to the Assistant Director, Health Protection; delegate authority for the cancellation of a registration for a person registered in accordance with the Nursing and Residential Homes (Jersey) Law 1994 to the Assistant Director, Health Protection; extend the delegation to include serving improvement notices under the Orders and authorise the Assistant Director, Health Protection to make decisions in this connexion.

The Committee, having considered the matter, endorsed the recommendations, as detailed above, and requested that a Rapport et Correspondance be prepared for presentation to the States at the earliest opportunity.”

REPORT FROM THE MEDICAL OFFICER OF HEALTH TO THE HEALTH AND SOCIAL SERVICES COMMITTEE

1. Introduction

The States of Jersey (Amendment No. 5) Law 1996 enabled Committees of the States to delegate any functions conferred upon or vested in it under a law; to –

- (a) its President; or
- (b) a sub-committee of its members; or
- (c) an officer.

The Committee should be aware that whenever a delegated function is exercised this is taken to be a decision of the Committee, although this does not mean the Committee as a body may not make the decision or revisit a decision taken on its behalf.

2. Background

The attached list comprises some of those functions that have previously been delegated by Act of the Committee to the Medical Officer of Health (MoH), and have been published in the form of an ‘R.C.’ report presented to the States. These functions do not require the specialist involvement of the MoH and are more appropriately dealt with by the Public Health Services enforcement team, namely Health Protection.

3. Proposals

- (a) It is proposed that the functions listed in the attached schedule are delegated by the Committee to the Assistant Director, Health Protection who has day-to-day management of the registration functions on behalf of the Committee.
- (b) In order to permit the more effective management of the registration of health care professionals it is also proposed that the Committee extend the delegated function to include the approval of applicants whose criteria for registration is holding a qualification or training and practical experience acceptable to the Committee. This was previously retained within the Committee’s control. The main reason for this proposal is that it moves the original decision for condition to the operational manager thereby relieving the Committee of this bureaucratic burden, and as there is a right of appeal to the Committee for any refusal of application or any condition that may be attached, the Committee will not be acting as judge and jury in the process.
- (c) For similar reasons it is also proposed that the Committee delegates the responsibility for cancelling a registration of a person under the Nursing and Residential Homes Law when this is at the registered person’s own request.
- (d) It is further proposed that the Committee extends the delegated function under Nursing and Residential Homes Law to include serving improvement Notices under the Orders. The main reason for this is to enable a timely response to any serious issues that may arise that may put residents or patients at risk. This is consistent with the Committee approach under the Food and Drugs, Piercing and Tattooing and Statutory Nuisance legislation.

4. Financial implications

There are no financial implications to the proposed changes.

5. Recommendations

The Committee is recommended to –

- (a) approve the functions listed and previously delegated to the Medical Officer of Health, to now be delegated to the Assistant Director, Health Protection or, in his absence, his nominated deputy, as listed in the attached schedule and to the extent specified in that schedule;
- (b) approve new functions as stipulated in the schedule as previously indicated;
- (c) inform the Greffier of the States that it wishes to approve the existing functions and the new functions as stipulated in the schedule, etc.

SCHEDULE OF AMENDED DELEGATED FUNCTIONS

Name changes to existing delegated functions

Legislation:	Health Care (Registration) (Jersey) Law 1995
Delegate:	Assistant Director, Health Protection or, in his absence, his nominated Deputy
Functions delegated:	Article 3– approval of registration of persons in registrable occupations.
Scope of delegation:	Authority to approve registrations if the applicant meets the conditions specified in Article 3(a) or (b) of the Law.
See modification below	Delegated authority does <u>not</u> extend to the refusal or cancellation of registration, application of conditions, consideration of appeals or on registration, the removal of a name from a register.

Legislation:	Nursing Agencies (Jersey) Law 1978
Delegate:	Assistant Director, Health Protection or, in his absence, his nominated Deputy
Functions delegated:	Article 2(2)– grant or renewal of licences only, according to the provisions of the Law.
Scope of delegation:	Delegated functions do not include authority to attach conditions to the grant of a licence under Article 2(2); to refuse or revoke a licence under Article 2(4); or to hear an appeal under Article 2(5).

Legislation:	Nursing and Residential Homes (Jersey) Law 1994, as amended by Article 7(2) of the Termination of Pregnancy (Jersey) Law 1997
Delegate:	Assistant Director, Health Protection or, in his absence, his nominated Deputy
Functions delegated:	<ul style="list-style-type: none"> (a) To maintain a register for each class of home to which the 1994 Law applies, according to Article 4(1) of the 1994 Law. (b) To register a person in respect of a home to which the 1994 Law applies, according to Article 4(6). (c) To enter the particulars specified in accordance with Article 4(7)(b) and (8)(b) of the 1994 Law (as amended). (d) To specify the conditions required under Article 6(1) of the

	1994 Law. (e) To give notice in respect of an application for registration, under Article 9(1) and Article 10(1) of the 1994 Law.
Scope of delegation:	Delegated authority does <u>not</u> extend to –
See modification below	(f) attachment of conditions by virtue of Article 6(2) and (2A). (g) variation or removal of conditions, or imposition of additional conditions, by virtue of Article 6(3). (h) refusal or cancellation of a registration (Articles 7 and 8), or consideration of any objections or representations according to Article 9(5) of the 1994 Law.

Legislation:	Nursing and Residential Homes (No. 2) (Jersey) Law 1997
Delegate:	Assistant Director, Health Protection or, in his absence, his nominated Deputy
Functions delegated:	(a) To register a person in respect of a nursing home, according to Article 3(1), and to request the particulars detailed in Article 3(3), i.e. whether or not the home is to receive women immediately before or after childbirth. (b) To determine whether or not premises are a residential home, according to Article 4(2)(a), and to serve a notice to that effect according to Article 4(2)(b). (c) To register a person in respect of a residential home, according to Article 4(3). (d) To register a person in respect of a mental nursing home, according to Article 5(2), and to request the particulars detailed in Article 5(3), i.e. whether or not it is proposed to receive patients liable to be detained under the 1969 Mental Health Law. (e) To serve a notice specifying proposals in regard to a number of persons or other conditions related to a registration, according to Article 7(2); and to issue a certificate according to Article 7(3).
Scope of delegation:	Delegated functions do <u>not</u> extend to the authority to consider any representations or appeals in regard to the conditions relating to a registration.

Legislation:	Ancillary Dental Workers (Jersey) Regulations 1974, as amended
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Delegate:	Assistant Director, Health Protection or, in his absence, his nominated Deputy.
Functions delegated:	To maintain a roll for each class of ancillary dental worker, including the information specified in Article 8. To determine whether or not a person fulfils the requirements under Article 9 of the Law.
Scope of delegation:	To enrol an applicant according to Article 9. To retain a name on the roll according to Article 10. To restore a name to the roll according to Article 11. The Committee does <i>not</i> delegate the authority to refuse enrolment, to refuse retention on the roll or to refuse restoration of a name to the roll.

Legislation:	Opticians (Registration) (Jersey) Law 1962
Delegate:	Assistant Director, Health Protection or, in his absence, his nominated Deputy
Functions delegated:	To register companies under Article 6 of the Opticians (Registration) (Jersey) Law 1962.
Scope of delegation:	Refusal of registration remains with the Committee.

New delegated functions

Legislation:	Nursing and Residential Homes (Jersey) Law 1994 – Article 6(2), (2A) and (3)
Delegate:	Assistant Director, Health Protection or, in his absence, his nominated Deputy
Function delegated: It should be noted that this delegation modifies the scope of the Committee's previous delegation of functions under this Law, dated 7th May 1997 (R.C.1/98). (<i>see above</i>)	The delegate may – (a) apply such conditions as he may consider appropriate for the purposes specified in Article 6(2) and 6(2A); (b) vary or remove any conditions for the time being in force in respect of a home by virtue of Article 6 of the Law; or (c) impose an additional condition. either on the application of a person registered in respect of it or without such an application.

Legislation:	Nursing and Residential Homes (Jersey) Law 1994 – Article 8(f)
Delegate:	Assistant Director, Health Protection or, in his absence, his nominated Deputy
Function delegated: It should be noted that this delegation modifies the scope of the Committee's previous delegation of functions under this Law, dated 7th May 1997. (R.C.1/98)	The delegate may – cancel the registration of a person in respect of a home to which the Law applies at the request of that registered person.
Scope of delegation:	The delegated authority does not extend to – cancellation of a registration (Article 8(1)(a), (b), (c), (d) or (e)), or consideration of any objections or representations according to Article 9(5) of the 1994 Law.

Legislation:	Nursing and Residential Homes (Jersey) Law 1994 Residential Homes (General Provisions) (Jersey) Order 1995 – Article 20
Delegate:	Assistant Director, Health Protection or, in his absence, his nominated Deputy
Function delegated:	To determine according to Article 20 that the person registered has contravened or failed to comply with Article 6, 10, 11, 13, 14, 15, 16 or 19 of the Order.
Scope of delegation:	To serve a Notice on the person registered specifying – <ul style="list-style-type: none"> (a) in what respect in its opinion the person registered has failed or is failing to comply with the requirements of that Article; (b) what action the person registered should take so as to comply with that Article; (c) the period not exceeding 3 months, within which the person should take action.

Legislation:	Nursing and Residential Homes (Jersey) Law 1994 Nursing Homes and Mental Nursing Homes (General Provisions) (Jersey) Order 1995 – Article 16(3)(a)
Delegate:	Assistant Director, Health Protection or, in his absence, his nominated Deputy
Function delegated:	To determine according to Article 16(1) and (2) whether an offence against the Order appears to have been committed.
Scope of delegation:	To serve a notice in writing on the person registered specifying – <ul style="list-style-type: none"> (a) the provision of the Order with which that person has failed or is failing to comply; (b) the respect in which that person has failed or is failing to comply with that provision; (c) the action which should be taken by that person so as to comply with that provision; and (d) the period within which such action should be taken.

Legislation:	Health Care (Registration) (Jersey) Law 1995
Delegate:	Assistant Director, Health Protection or, in his absence, his nominated Deputy
Functions delegated:	Article 3– approval of registration of persons in registrable occupations.
Scope of delegation:	Authority to approve registrations if the applicant meets the conditions specified in Article 3(1)(c) and (d) of the Law.
It should be noted that this modifies the scope of the previous delegation of function under this Law dated 19th December 1996	Delegated authority does <u>not</u> extend to the refusal or cancellation of registration, application of conditions, consideration of appeals or on registration, the removal of a name from a register.