
STATES OF JERSEY



STATES OF JERSEY LAW 2005: DELEGATION OF FUNCTIONS – HEALTH CARE (REGISTRATION) (JERSEY) LAW 1995 – EXTENSION OF MINISTERIAL FUNCTIONS TO THE MEDICAL OFFICER OF HEALTH

**Presented to the States on 19th September 2013
by the Minister for Health and Social Services**

STATES GREFFE

REPORT

On 16th September 2013, the Minister for Health and Social Services made a Ministerial Decision delegating certain of her functions under Article 28 of the States of Jersey Law 2005 (MD-HSS-2013-0029, available at www.gov.je).

Article 28 of the States of Jersey Law 2005 permits a Minister to delegate, wholly or partly, functions to an Assistant Minister or an officer.

The Law states, *inter alia* –

“28 Power of Minister to delegate functions

- (1) A Minister may delegate, wholly or partly, functions conferred upon or vested in the Minister by or under this Law or any other enactment or any enactment of the United Kingdom having effect in Jersey, to –
 - (a) one of his or her Assistant Ministers;
 - (b) an officer.
- (2) A Minister shall not delegate –
 - (a) any power to make an enactment;
 - (b) any power to decide an appeal under an enactment;
 - (c) any function the delegation of which is prohibited by an enactment.
- (3) The delegation of functions by a Minister under this Article shall not prevent the Minister exercising those functions personally.
- (4) Where any licence, permit or authorization is granted in purported exercise of functions delegated under paragraph (1), no criminal proceedings shall lie against any person for any act done, or omitted to be done, in good faith and in accordance with the terms of the licence, permit or authorization, by reason that the functions had not been delegated, or that any requirement attached to the delegation of the functions had not been complied with.
- (5) In this Article –

“Minister” includes the Chief Minister;

“officer” means a States’ employee within the meaning of the Employment of States of Jersey Employees (Jersey) Law 2005 and includes a member of the States of Jersey Police Force and an officer appointed under paragraph 1(1) of Part 1 of Schedule 2 to the Immigration Act 1971 as extended to Jersey by the Immigration (Jersey) Order 1993.
- (6) The States may by Regulations amend the definition “officer” in paragraph (5).”

The terms of the delegations, and the legislation under which those delegations were made, were recorded in a Report attached to the Ministerial Decision, as shown below –

Health Care (Registration) (Jersey) Law 1995

Introduction

This report sets out the rationale for extending the delegated functions of the Medical Officer of Health under the above Law to include attaching conditions to the registration or renewal of registration of health professionals.

Background

The Medical Officer of Health has a number of delegated functions under the above Law, in particular related to the registration process. These are –

- approve the registration of persons in registrable occupations;
- remove the name of a registered person from the register if they do not apply for annual registration in the month of December;
- amend the register if any particulars are erroneous in any respect.

The scope of delegation, however, does not extend to the Minister's power under Article 6 to refuse or attach conditions to a registration or a renewal of registration.

Issue

On 25th April 2013, the NMC imposed an interim suspension on a nurse who is also registered in Jersey, on the grounds of protecting the public. The details of the case were forwarded to H.M. Attorney General to request, if possible, temporary removal from the Jersey register during the period of the suspension.

Unfortunately, the view from the Legal Adviser from the Law Officers' (Attorney General's) Department is that there is no provision under the Jersey Law for local suspension or removal on the grounds of interim suspension of registration by the NMC (there is provision in the case of the NMC striking off a registrant or suspension following a substantive hearing).

The Legal Adviser did, however, suggest an alternative route for future registrations of health professionals who are registered by virtue of holding a 'prescribed qualification', i.e. registration with a UK regulatory body. This relies on attaching a condition to all new registrations and for all renewal of registrations from 31st December 2013. This condition would require the registrant to hold the prescribed qualification for the whole period of his or her Jersey registration. Where there is a breach of this condition, there is power within the Law to make representation to the Royal Court to cancel the registration.

As currently only the Minister can apply such a condition, and the volume of registrations is considerable, it is requested that for logistical reasons this function is delegated to the Medical Officer of Health.

Drafting instructions are with the Law Draftsman's Office that will substantively amend the Health Care Registration Law and include greater powers of suspension and removal; however, this is likely to take some time, and the proposed is an interim suggestion until the Law is amended.

Recommendation

Delegate the Minister's responsibility under Article 6(1)(b) and 6(2) of the Health Care (Registration) (Jersey) Law 1995 to the Medical Officer of Health, namely –

'6 Determination of application for registration

- (1), the Minister may –
 - (a)
 - (b) attach conditions to the registration or renewal of registration of any person.
- (2) Where the Minister refuses to grant the application, or grants the application subject to conditions, he or she shall furnish the applicant with a statement in writing of the Minister's reasons for so doing.'