
STATES OF JERSEY



STATES OF JERSEY LAW 2005: DELEGATION OF FUNCTIONS – MENTAL HEALTH SERVICES – JANUARY 2017

Presented to the States on 31st January 2017
by the Minister for Health and Social Services

STATES GREFFE

REPORT

On 31st January 2017, the Minister for Health and Social Services made a Ministerial Decision delegating certain of his functions under Articles 28, 30 and 30A of the States of Jersey Law 2005 (MD-HSS-2017-0006, 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.
- (1A) A Minister shall not delegate to an Assistant Minister any function the delegation of which is wholly prohibited by an enactment.
- (1B) Where a Minister delegates to an Assistant Minister a power to make an enactment, paragraphs (4) and (5) of Article 26 shall apply to the making of an enactment by the Assistant Minister, in exercise of the delegated power, as they would apply to the making of the enactment by the Minister.
- (2) A Minister shall not delegate to an officer –
 - (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 wholly, or to an officer, 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).”

“30 Ministerial delegations to be presented to States

- (1) A Minister who delegates functions under Article 28 shall present to the States a report specifying the functions delegated and to whom.
- (2) A Minister shall not be required to present a report under paragraph (1) where the delegation is so immediate and of such brief duration that it is not practicable to present the report before the delegation ends.

30A List of delegations to be published

- (1) The Chief Minister shall cause to be established, maintained and published a consolidated list of –
 - (a) the functions for the time being discharged by the Chief Minister and by each Minister;
 - (b) the functions for the time being delegated by the Chief Minister and each Minister under Article 28, and to whom.
- (2) The list shall also specify which Minister is discharging, for the time being, the functions of another Minister under Article 27(1) or (2).
- (3) The information described in paragraph (1)(b) or (2) is not required to be incorporated in the list where the period for which the delegation has effect or for which one Minister’s functions are being discharged by another is so immediate and of such brief duration that it is not practicable to amend and publish the list to incorporate the information before the end of the period.
- (4) It shall be sufficient if the list is published on a website.”

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 –

Background

The following table gives a breakdown of the use of the Mental Health (Jersey) Law 1969 during 2016:

<i>Article</i>	<i>Type of request</i>	<i>Total number of times</i>
Article 6	Observation	63
Article 7	Treatment	62
Article 7	Renewal of treatment	6
Article 10A	Nurse holding powers	8
Article 10(2)(a)	Emergency – brought to Hospital	1
Article 10(2)(b)	Emergency – report of an in-patient	9
Article 14	Guardianship	10
Article 14	Renewal of Guardianship	2
Article 35	Transfer to a UK Hospital	5

There was also a total of 30 applications to the Mental Health Review Tribunal in 2016.

Delegation required

The Minister needs to receive reports and agree a Ministerial Decision in relation to Article 14 and Article 35 requests. Transfers to UK hospitals under Article 35 will often have urgency to them. Guardianship applications have to be delivered to the Minister within 14 days following the patient being seen by the medical practitioner making the recommendation.

There are times when the Minister is not available to sign an MD relating to the Mental Health (Jersey) Law 1969, which can introduce delays in the management of the process.

Deputy P.D. McLinton of St. Saviour, the Assistant Minister with political oversight for Mental Health Services¹, is therefore delegated the authority to sign Ministerial Decisions in relation to the Mental Health (Jersey) Law 1969.

¹ see [R.14/2016](#)
