
STATES OF JERSEY



STATES OF JERSEY LAW 2005: DELEGATION OF FUNCTIONS – MINISTER FOR HEALTH AND SOCIAL SERVICES – DECEMBER 2018 – CAPACITY AND SELF- DETERMINATION (JERSEY) LAW 2016

**Presented to the States on 10th December 2018
by the Minister for Health and Social Services**

STATES GREFFE

REPORT

On 30th November 2018, 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](#) (see Decision reference MD-HSS-2018-0057, 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 –

The following functions of the [Capacity and Self-Determination \(Jersey\) Law 2016](#) (“CS-D Law”) are delegated by the Minister for Health and Social Services under the relevant Articles of that Law (as listed below), to the Capacity and Self-Determination Administrator (or their Deputy), Health and Community Services Department. All decisions made by the Officer delegated will be recorded and, where appropriate, included in the annual report to the Minister.

Article of the Law:	Scope of delegation:
<i>Article 40 – Arrangements to be made by the Minister: designation of assessors</i>	40(1)(a) – designate registered persons to act as assessors under Part 5 of the CS-D Law and maintain a register.
<i>Article 41 – Arrangements made by the Minister: requirement for authorization</i>	41(1)(b) – receive a report confirming the necessity for a deprivation of liberty; or 41(2) – as soon as practicable appoint an assessor to carry out an assessment.
<i>Article 42 – Urgent authorizations</i>	41(1) – receive an application on behalf of the Minister for an urgent authorization;

Article of the Law:	Scope of delegation:
	41(3) – upon receipt of an application duly made, give notice in writing to the Manager (“M”) that an urgent authorization is granted, and record in writing the grant of the authorization, the reasons for the grant, and any terms and conditions.
Article 43 – Requests for assessment	43(3) – receive, on behalf of the Minister, requests from M for an assessment in accordance with Article 44.
Article 44 – Manner of assessment	44(3)(b) – if required, on behalf of the Minister, designate a registered Medical Practitioner to have input into the assessment.
Article 45 – Report of assessment	45(1) – receive a report of an assessment on behalf of the Minister.
Article 46 – Effect of report	46(1)(a)&(b) – receive a request for a fresh application on behalf of the Minister.
Article 47 – Record of assessment etc.	47 – on behalf of the Minister keep a record of all assessments carried out and all authorizations granted.
Article 48 – Standard authorizations	48(2) – if appropriate, on behalf of the Minister authorize the imposition of significant restrictions on the liberty of a person (“P”); 48(3)&(4) – give notice in writing to the assessor and M of the authorization.
Article 51 – Advocates to be appointed	51(2) – on behalf of the Minister, nominate an independent capacity advocate to represent P.
Article 52 – Renewal of Standard authorization	52(3) – receive notice from M requesting a renewal; 52(4) – appoint an assessor to carry out further assessment.
Article 53 – Standard authorization: review by manager	53(3) – receive information from M of the date on which the restriction ceased to be imposed.
Article 54 – Continuity of authorization: changes of place and in management	54(1) – receive notification from M of the proposed change from the relevant place to which an authorization relates, to another relevant place.
Article 55 – Review of authorizations by Tribunal	55(1)(a)(iii) – on behalf of the Minister may request a review of an authorization by the Tribunal.
Article 56 – Monitoring of authorizations	56 – Monitor authorizations on behalf of the Minister.