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# STATES OF JERSEY



## **STATES OF JERSEY LAW 2005: DELEGATION OF FUNCTIONS – MINISTER FOR HEALTH AND SOCIAL SERVICES – MENTAL HEALTH LAW ADMINISTRATORS – JULY 2019**

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**Presented to the States on 11th July 2019  
by the Minister for Health and Social Services**

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**STATES GREFFE**

## REPORT

On 9th July 2019, 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-2019-0034, available at [www.gov.je](http://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.”

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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 –

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**Health and Community Services Department:  
functions delegated to Mental Health Law Administrator or deputy  
under Article 4 of the Mental Health (Jersey) Law 2016**

Further to an amendment to the [Mental Health \(Miscellaneous Provisions and Prescribed Forms\) \(Jersey\) Order 2018](#) (effective 10th July 2019 by [R&O.57/2019](#)), the [Mental Health \(Jersey\) Law 2016](#) (the “MHJL”) enables General Practitioners (“GPs”) to be approved as approved practitioners (“APs”), so that they may be appointed as medical members to the Mental Health Review Tribunal Panel (the “MHRT”).

The function of approving registered medical practitioners as approved practitioners under Article 16 of the MJHL has been delegated to the Mental Health Law Administrator (“MHLA”) (and any deputy MHLA as may be appointed, and any officer authorised to act in the absence of the MHLA or deputy).

The Minister requires that any approval, under Article 16 of the MJHL, of registered medical practitioners who are GPs, as approved practitioners for the purposes of being considered to be eligible for appointment as medical members to the MHRT, should be time-limited.

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This is because it is necessary in the immediate future, for operational reasons, for GPs to be eligible to sit as medical members on the MHRT. However, the Minister's policy objective is that, in the long term, off-Island specialists should be recruited by the Tribunal to act as medical members.

Time-limiting the approval of GPs provides a policy incentive to move toward recruiting off-Island practitioners, and provides a point by which the role of GPs sitting as medical members can be reviewed by the Minister, the MHLA and HCS Officers.

As such, the delegation of that part of the Minister's authority to the MHLA, to approve registered medical practitioners as approved practitioners for the purposes of being considered eligible for appointment to the MHRT, is subject to the MHLA only making such approvals for 6 months at a time, subject to renewal by the MHLA as each case requires.