



Jersey

# **CAPACITY AND SELF-DETERMINATION (JERSEY) LAW 2016**

## **Official Consolidated Version**

This is an official version of consolidated legislation compiled and issued under the authority of the Legislation (Jersey) Law 2021.

Showing the law from 28 September 2021 to Current



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## CAPACITY AND SELF-DETERMINATION (JERSEY) LAW 2016

A **LAW** to make provision relating to individuals who lack capacity, and in particular to provide for the circumstances in which, and the procedures by which, certain decisions may be taken in relation to or on behalf of such individuals; to establish a new regime of assessments and authorizations for the proper care and management of such individuals; to make provision relating to anticipatory instructions refusing treatment; and for connected purposes

Commencement [[see endnotes](#)]

### PART 1

#### INTERPRETATION AND GENERAL PRINCIPLES

#### 1 Interpretation

- (1) In this Law –
  - “best interests” shall be interpreted in accordance with Article 6;
  - “child” means a person under 18 years of age;
  - “Court” means the Royal Court;
  - “delegate” means a person appointed as such under Article 24;
  - “lack of capacity” shall be interpreted in accordance with Article 4;
  - “life-sustaining treatment” means any treatment necessary, in the view of a person providing health care for a person lacking capacity, to sustain the latter person’s life;
  - “lasting power of attorney” or “LPA” has the meaning given by Article 11(1);
  - “Mental Health Law” means the [Mental Health \(Jersey\) Law 2016](#);
  - “permitted act” has the meaning given by Article 8(2);
  - “prescribed” means prescribed by an Order made by the Minister under Article 70.
- (2) A word or expression used in this Law and defined in the Mental Health Law shall, unless otherwise indicated or required by the context, be taken to have the same meaning for the purposes of this Law as that word or expression is given in the Mental Health Law.

## **2 Persons in respect of whom this Law applies**

- (1) The powers exercisable under this Law in respect of a person who lacks capacity shall not (subject to paragraph (2)) be exercisable in respect of a person under 16 years of age.
- (2) The Court, or a delegate appointed to do so under Part 4, may make decisions in relation to a person's property and affairs even though the person has not reached the age of 16, if the Court considers it is likely that the person will lack capacity to make such decisions when he or she reaches that age.

## **3 Principles to be applied**

- (1) In the application of this Law –
  - (a) a person must be assumed to have capacity, unless it is shown that the person lacks capacity in the sense given to that expression by Article 4;
  - (b) a person is not to be treated (under Article 5 or otherwise) as unable to make a decision –
    - (i) unless all practicable steps to enable that person to make the decision have been taken without success, nor
    - (ii) merely because the person makes an unwise decision;
  - and
  - (c) an act done, or a decision made, on behalf of a person lacking capacity must be done or made in the person's best interests.
- (2) Without derogation from the generality of the principle stated in paragraph (1)(c), before an act is done or a decision is made which is restrictive of the person's rights and freedom of action, regard must be had to whether the purpose for which the act or decision is needed can be achieved as effectively in a less restrictive way.
- (3) In paragraph (1)(b) and Articles 2, 4, 5 and 6, "decision" means a decision which is not excluded by the operation of Article 7.

## **4 Lack of capacity**

- (1) For the purposes of this Law, a person lacks capacity in relation to a matter if, at the material time –
  - (a) the person is unable to make his or her own decision in relation to the matter (as further provided by Article 5); because
  - (b) he or she suffers from an impairment or a disturbance in the functioning of his or her mind or brain.
- (2) For the purpose of the application of paragraph (1)(b) it does not matter –
  - (a) whether the impairment or disturbance is permanent or temporary; nor
  - (b) what the cause of the impairment or disturbance may be.
- (3) Lack of capacity cannot be established merely by reference to –
  - (a) a person's age or appearance; or
  - (b) a person's condition, or an aspect of a person's behaviour, which might lead others to make unjustified assumptions about the person's capacity.

- (4) In proceedings under this Law or any other enactment, the question as to whether a person lacks capacity for the purposes of this Law must be decided on the balance of probabilities.

## **5 Inability to make a decision**

- (1) For the purpose of the application of Article 4(1)(a), a person is unable to make his or her own decision if he or she cannot –
- (a) understand information relevant to that decision;
  - (b) retain the information for a period, however short, which is sufficient to make the decision;
  - (c) use or weigh the information in making the decision; or
  - (d) communicate the decision (whether by speech, sign language, or any other means).
- (2) Information relevant to a decision includes information about the reasonably foreseeable consequences of deciding one way or another, or of failing to make the decision.

## **6 Best interests**

- (1) For the purposes of this Law, a determination as to what is in the best interests of a person lacking capacity –
- (a) must not be made merely on the basis of –
    - (i) the person's age or appearance, or
    - (ii) any other aspect of his or her condition or behaviour;
  - (b) must not be made unless, so far as reasonably practicable, the person lacking capacity has been permitted, encouraged and supported to participate as fully as possible in any act done for or any decision affecting that person; and
  - (c) must consider all relevant circumstances, including in particular the matters set out in paragraphs (2) to (4).
- (2) Such a determination must include consideration of whether it is likely that the person lacking capacity will at some time have capacity in relation to the matter in question, and if so, when that is likely to be.
- (3) Such a determination must include consideration, so far as the following matters are reasonably ascertainable, of –
- (a) the past and present wishes and feelings of the person lacking capacity as to the matter in question (including in particular any advance decision to refuse treatment or other written statement made by that person at a time when that person did not lack capacity);
  - (b) the beliefs and values of that person which would be likely to influence that person's decision if that person did not lack capacity;
  - (c) any other factors which that person would be likely to consider if that person did not lack capacity.
- (4) Such a determination must take into account, if it is practicable and appropriate to consult the following persons, the views of –

- (a) anyone named by the person lacking capacity as someone to be consulted on the matter in question or matters of that kind;
  - (b) anyone engaged in caring for that person or interested in that person's welfare;
  - (c) any person on whom authority is conferred under a lasting power of attorney granted by that person and applicable to the matter in question; and
  - (d) any delegate appointed by the Court under Part 4.
- (5) A determination relating to life-sustaining treatment shall be not regarded as being in the best interests of a person lacking capacity if the determination is motivated by a desire to bring about that person's death.
- (6) In the case of an act done or decision made under this Law by a person other than the Court, it is sufficient if (having complied with the requirements of paragraphs (1) to (5)) the person reasonably believes that the act or decision is in the best interests of the person lacking capacity on whose behalf the act is done or the decision is made.

## **7 Excluded decisions**

- (1) Nothing in this Law shall be taken to permit –
- (a) consent to be given, on behalf of another person, to –
    - (i) marriage or a civil partnership,
    - (ii) sexual relations,
    - (iii) a decree of divorce, or (in relation to a civil partnership) a dissolution order being made,
    - (iv) a child's being placed for adoption by the Adoption Service,
    - (v) the making of an adoption order,
    - (vi) organ donation, or
    - (vii) fertility treatment; or
  - (b) a decision to be made, on behalf of another person, on the discharge of parental responsibilities in matters other than those relating to a child's property.
- (2) The States may by Regulations amend paragraph (1) for the purpose of adding or removing any matter listed in that paragraph.
- (3) Nothing in this Law authorizes anyone –
- (a) to give a patient treatment for mental disorder; or
  - (b) to consent to such treatment being given to a patient,
- if, at the time when it is proposed to give the treatment, the patient's treatment is regulated by Part 6 of the Mental Health Law.
- (4) In paragraph (3) "treatment" has the meaning given by Article 1(1) of the Mental Health Law, and paragraph (3) may be disapplied, by Regulations made under Article 46 of that Law, in relation to a child who is capable of understanding the nature, purpose and likely effects of the treatment.
- (5) Nothing in this Law permits a decision on voting at an election for any public office, or in a referendum, to be made on behalf of another person.

## **8 Permitted acts in connection with care and treatment of persons lacking capacity**

- (1) Paragraph (2) applies, subject to Article 9, to an act done by one person (“C” in this Part) in connection with the care and treatment of another person (“P” in this Part), but only if –
  - (a) before doing the act, C has taken reasonable steps to establish whether P lacks capacity in relation to the matter in question; and
  - (b) when doing the act, C reasonably believes –
    - (i) that P lacks capacity in relation to the matter in question, and
    - (ii) it will be in P’s best interests for the act to be done.
- (2) C does not incur any liability for an act to which this paragraph applies (a “permitted act”) which C would not have incurred if P –
  - (a) had had capacity to give consent in relation to the matter in question; and
  - (b) had consented to C’s doing the act.
- (3) Nothing in this Article –
  - (a) excludes any civil or criminal liability of C resulting from C’s negligence in doing a permitted act; or
  - (b) affects the operation of Part 3.

## **9 Certain acts of restraint etc. which are not permitted**

- (1) An act by C which is intended to restrain P is not a permitted act, unless –
  - (a) C reasonably believes that it is necessary to do the act in order to prevent harm to P; and
  - (b) the act is a proportionate response to –
    - (i) the likelihood of P’s suffering harm, and
    - (ii) the seriousness of that harm.
- (2) For the purposes of paragraph (1), C restrains P if C –
  - (a) uses, or threatens to use, force to secure the doing of an act which P resists; and
  - (b) restricts P’s liberty of movement, whether or not P resists or objects to the restriction.
- (3) Article 8(2) and this Article do not generally authorize C to do any act which conflicts with a valid decision made by –
  - (a) any other person appointed under a LPA granted by P; or
  - (b) a delegate appointed for P by the Court.
- (4) But an act described in paragraph (3) may be a permitted act, where the act involves –
  - (a) providing life-sustaining treatment; or
  - (b) doing anything which C reasonably believes to be necessary to prevent a serious deterioration in P’s condition,while awaiting a decision of the Court in respect of any relevant issue.

**10 Payments by, and on behalf of, person lacking capacity**

- (1) If necessary goods or services are supplied to a person who lacks capacity to contract for the supply, that person must pay a reasonable price for the goods or services.
- (2) In paragraph (1), “necessary” means suitable, at the time of supply, to the person’s condition in life and to his or her actual requirements.
- (3) If a permitted act involves payment, C may –
  - (a) use money in P’s possession –
    - (i) to meet the payment, or
    - (ii) as reimbursement for payment made on P’s behalf by C;
  - (b) be otherwise indemnified by P; and
  - (c) pledge P’s credit for the purpose of the payment.
- (4) Paragraph (3) does not affect any other power under which C or any person –
  - (a) has lawful control of P’s money or other property; or
  - (b) has power to spend money for P’s benefit.

**PART 2****LASTING POWERS OF ATTORNEY****11 “Lasting power of attorney”: nature and definition**

- (1) In this Law, “lasting power of attorney” or “LPA” refers to a power of attorney –
  - (a) by which one person, who is aged 18 years or older and has capacity to do so (“P” in this Part), confers –
    - (i) on another person, who is a person fulfilling the requirements of Article 12(1) (“A” in this Part),
    - (ii) authority to make decisions about all or any of the matters specified in paragraph (2); and
  - (b) which includes authority to make such decisions in circumstances where P lacks capacity to do so.
- (2) The matters mentioned in paragraph (1)(a)(ii) are –
  - (a) P’s health and welfare, or specified matters concerning P’s health and welfare (and an instrument, or the part of an instrument, which deals with such matters is referred to in this Part as a “health and welfare LPA”); or
  - (b) P’s property and affairs, or specified matters concerning P’s property and affairs (and an instrument, or the part of an instrument, which deals with such matters is referred to in this Part as a “property and affairs LPA”).<sup>1</sup>
- (3) Authority conferred by any LPA may be made subject to such conditions or restrictions as may be specified in the LPA.
- (4) In particular, and without derogation from paragraphs (1) to (3), a property and affairs LPA may include provision permitting the exercise (whether generally or in specified circumstances) of A’s powers under the LPA where P does not lack capacity.

- (5) In this Part, reference to an instrument is to a form or other instrument by which a lasting power of attorney is conferred or purports to be conferred.

## **12 Persons appointed by LPA**

- (1) A lasting power of attorney may confer authority on one or more persons, but –
- (a) an individual person must for this purpose be aged 18 years or over; and
  - (b) a property and affairs LPA may not confer authority on a person who is subject to a declaration of bankruptcy in Jersey or any insolvency or proceedings of a similar nature to bankruptcy in any place outside Jersey.
- (2) Where authority is conferred on more than one person, the instrument may provide that such persons are to act –
- (a) in respect of all matters either jointly, or jointly and severally; or
  - (b) in respect of some specified matters, jointly and in respect of others, jointly and severally.
- (3) To the extent that any instrument does not make express provision as envisaged by paragraph (2), it is to be assumed that all persons on whom it confers authority are to act jointly.
- (4) If an instrument provides that persons are to act jointly and severally, and any one of those persons does not fulfil a requirement in paragraph (1)(a) or (b) –
- (a) the instrument shall not take effect in the case of that person; but
  - (b) this shall not prevent a lasting power of attorney being conferred on the other persons.
- (5) An instrument used to create a lasting power of attorney –
- (a) cannot give a person power to appoint a substitute or successor; but
  - (b) may itself appoint persons to act as substitutes on the occurrence of an event mentioned in Article 17(3) to (5).
- (6) Where authority is conferred by a lasting power of attorney upon 2 or more persons, “A” in this Part refers to all or any of those persons.

## **13 Formalities for creation and registration of LPA**

- (1) A lasting power of attorney is not validly created in Jersey unless –
- (a) the instrument purporting to create it complies with the requirements of this Part, and with the requirements as to execution in, and prescribed under, Part 1 of the Schedule; and
  - (b) it is registered by the Judicial Greffe in accordance with the requirements as to registration in Part 2 of the Schedule.
- (2) Where a power of attorney is first registered (by “original registration”) in a jurisdiction of the British Islands other than Jersey, it may have effect in Jersey –
- (a) if such evidence as to the original registration as the States may by Regulations require is provided to the Judicial Greffe; and
  - (b) for so long as the original registration validly subsists,
- as though it were a lasting power of attorney created and registered in Jersey under paragraph (1), and for this purpose the Judicial Greffe shall register and deal with such a power of attorney in accordance with Part 2 of the Schedule subject to such

modifications as the States may by Regulations make to the Schedule for this purpose.

#### **14 Scope of LPA: health and welfare**

- (1) Authority conferred by a health and welfare LPA –
  - (a) does not extend to making decisions about P's personal welfare in circumstances other than those where P lacks capacity or A reasonably believes that P lacks capacity to make such decisions;
  - (b) is subject to the provisions of Part 3 (as to advance decisions to refuse treatment); and
  - (c) extends, subject to paragraph (2), to giving or refusing consent to the carrying out or continuation of treatment by a person providing health care for P.
- (2) Paragraph (1)(c) –
  - (a) does not authorize the giving or refusing of consent to the carrying out or continuation of life-sustaining treatment, unless the instrument contains express provision to that effect; and
  - (b) is subject to any conditions or restrictions in the instrument.

#### **15 Scope of LPA: property and affairs**

- (1) The authority conferred by a property and affairs LPA may include –
  - (a) to the extent provided by paragraph (2) and not otherwise, a right to dispose of P's property by making gifts; and
  - (b) power to do, or secure the doing of, anything necessary or expedient –
    - (i) for the maintenance or other benefit of P, P's family or dependants, and
    - (ii) for the payment of P's debts, whether legally enforceable or not.<sup>2</sup>
- (2) Subject to any conditions or restrictions in the instrument, A may make gifts of P's property –
  - (a) on customary occasions to persons (including A) who are related to or connected with P; and
  - (b) to any charity to which P made gifts or might have been expected to make gifts,if the value of each such gift is not unreasonable having regard to all the circumstances and in particular to the size of P's estate.
- (3) For the purposes of paragraph (2), a "customary occasion" means –
  - (a) the occasion or anniversary of a birth or marriage or formation of a civil partnership; and
  - (b) any other occasion on which presents are customarily given within families or among friends and associates.

**16 Scope of LPA: general**

- (1) A person on whom authority is conferred by lasting power of attorney is to be treated as P's agent in relation to anything done in accordance with the instrument and in the exercise of that authority.
- (2) In the absence of any condition or provision to the contrary in the instrument, a person on whom authority is conferred by lasting power of attorney –
  - (a) may, in the exercise of that power, do, or secure the doing of, anything which appears to the person to be necessary or expedient to be done to be in P's best interests;
  - (b) may be reimbursed (subject to such limit as may be prescribed, whether by reference to a proportion of P's property or to an amount or otherwise) out of P's property for reasonable expenses in the discharge of functions when acting in the exercise of that power.

**17 Revocation etc. of LPA**

- (1) This Article applies where –
  - (a) P has executed an instrument with a view to conferring a lasting power of attorney; or
  - (b) a lasting power of attorney is registered as having been conferred by P.
- (2) At any time when P has capacity to do so, P may revoke the lasting power of attorney (and in this Article, a reference to revocation includes revocation of the instrument by which the power is created).
- (3) A declaration of bankruptcy in relation to P has effect to revoke a property and affairs LPA conferred by P.
- (4) Subject to paragraph (6), an event occurring in relation to A which is listed in paragraph (5) has effect to revoke the lasting power of attorney and to terminate A's appointment under it.
- (5) The events mentioned in paragraph (4) are –
  - (a) disclaimer of the appointment by A, in accordance with such requirements as may be prescribed for that purpose;
  - (b) A's death;
  - (c) subject to paragraph (7) and Article 12(4), a declaration of bankruptcy in relation to A;
  - (d) subject to paragraph (8), dissolution or annulment of a marriage or civil partnership between P and A; and
  - (e) A's own lack of capacity.
- (6) An event occurring in relation to A which is listed in paragraph (5) has effect to terminate A's appointment but does not revoke the lasting power of attorney, if –
  - (a) A is replaced by a substitute, under the terms of the instrument; or
  - (b) A is one of 2 or more persons appointed to act jointly and severally in respect of any matter and, after the event, at least one such person (other than A) remains.
- (7) A declaration of bankruptcy in relation to A does not terminate A's appointment or revoke authority conferred on A to the extent that the authority relates to P's health and welfare.

- (8) Dissolution or annulment of a marriage or civil partnership does not terminate A's appointment nor revoke a lasting power of attorney if the instrument provided that such an event was not to do so.
- (9) In this Article, "bankruptcy" includes any insolvency or proceedings of a similar nature to bankruptcy in any place outside Jersey.

## **18 Protection where LPA not valid**

- (1) Paragraphs (2) and (3) apply where –
  - (a) an instrument has been registered as a lasting power of attorney; but
  - (b) a lasting power of attorney was not created (whether or not the registration is cancelled at the time of an act or transaction mentioned in paragraphs (2) to (4)).
- (2) When acting in purported exercise of a lasting power of attorney, A does not incur any liability (to P or any other person) unless at the time of so acting –
  - (a) A knows that no lasting power of attorney has been created; or
  - (b) A is aware of circumstances which, if a lasting power of attorney had been created, would have terminated A's appointment.
- (3) Any transaction between A and another person is, in favour of that person, as valid as if a lasting power of attorney had been in existence unless at the time of the transaction that other person –
  - (a) knows that no lasting power of attorney has been created; or
  - (b) is aware of circumstances which, if a lasting power of attorney had been created, would have terminated A's appointment.
- (4) If the interest of a purchaser depends on whether a transaction between A and another person was valid by virtue of paragraph (3), it shall be conclusively presumed in favour of the purchaser that the transaction was valid if the other person makes an affidavit –
  - (a) either before, or within 3 months following, the completion of the purchase; and
  - (b) stating that the person did not at the material time know of the termination of A's appointment.

## **19 Powers of Court in relation to creation and validity of LPA**

- (1) The Court may determine any question arising as to whether –
  - (a) one or more of the requirements for the creation of a lasting power of attorney have been met; or
  - (b) a lasting power of attorney has been revoked or otherwise come to an end.
- (2) The powers conferred by paragraph (3) may be exercised if the Court is satisfied –
  - (a) that fraud or undue pressure was used to induce P –
    - (i) to execute an instrument for the purpose of creating a lasting power of attorney, or
    - (ii) to create a lasting power of attorney;or

- (b) that any person on whom authority is conferred by a lasting power of attorney has behaved, is behaving, or proposes to behave in a way which contravenes that authority or is otherwise not in P's interests.
- (3) Where the Court is satisfied as mentioned in paragraph (2), the Court may –
  - (a) direct that an instrument purporting to create a lasting power of attorney is not to be registered; and
  - (b) if P lacks capacity to do so, revoke the purported instrument or the lasting power of attorney.
- (4) In exercising the power conferred by paragraph (3)(b), the Court may revoke a lasting power of attorney in part only, including only to the extent that it confers authority on any particular person or is intended to do so.

## **20 Powers of Court in relation to operation of LPA**

- (1) The Court may determine any question as to the meaning or effect of a lasting power of attorney or of any instrument purporting to confer authority by a lasting power of attorney.
- (2) The Court may give directions –
  - (a) with respect to a decision which is within the authority conferred on A by a lasting power of attorney, if P lacks capacity to make the decision; and
  - (b) as to –
    - (i) the rendering of reports or accounts by A and the production of records kept by A for the purpose of such reports or accounts, and
    - (ii) A's remuneration or expenses, if P lacks capacity to do so.
- (3) The Court may give any consent or authorization to act which A would otherwise have had to obtain from P if P had capacity to give it, and in particular may authorize the making of gifts which are not permitted by Article 16.
- (4) The Court may require A to supply information, or to produce documents or any other things, which are within A's possession as a result of the authority conferred on A by a lasting power of attorney.
- (5) The Court may relieve A wholly or partly from any liability which A has or may have incurred as a result of breach of duties imposed on A by a lasting power of attorney.

## **PART 3**

### **ADVANCE DECISIONS TO REFUSE TREATMENT**

## **21 Decisions to which this Part applies**

- (1) In this Part, "advance decision" means a decision made by a person aged 16 years or over who has capacity to make the decision ("P" in this Part), that specified treatment is not to be carried out or continued by a person providing health care for P, if –

- (a) at a later time and in such circumstances as P may specify, the treatment is proposed to be carried out or continued; and
  - (b) at that time P lacks capacity to consent to the treatment.
- (2) For the purposes of paragraph (1) –
  - (a) a decision made before the coming into force of this Part may, if it otherwise fulfils the requirements as to validity and applicability in Article 22, be treated as an advance decision; and
  - (b) a decision may be regarded as specifying a treatment or circumstances even though the decision is expressed in non-medical terms.
- (3) P may alter or withdraw an advance decision at any time when P has capacity to do so, and –
  - (a) a withdrawal need not be in writing; and
  - (b) an alteration need not be in writing, except as required by Article 22(5) where the advance decision relates to life-sustaining treatment.

## **22 Validity and applicability of advance decisions**

- (1) An advance decision does not have effect in accordance with Article 23, unless at the material time the decision is –
  - (a) valid; and
  - (b) applicable to the treatment.
- (2) An advance decision is not valid if P does anything (including withdrawing the decision) which is inconsistent with the advance decision remaining P's fixed decision.
- (3) An advance decision is not applicable to any treatment if at the material time P has capacity to give or refuse consent to that treatment.
- (4) An advance decision is not applicable to the treatment in question if –
  - (a) the treatment is not treatment specified in the advance decision;
  - (b) any circumstances specified in the advance decision are absent; or
  - (c) there are reasonable grounds for believing that circumstances exist at the material time which P did not anticipate at the time of making the decision, but which would have affected P's decision if P had done so.
- (5) An advance decision is not applicable to life-sustaining treatment unless –
  - (a) it is verified by a statement by P that it is to apply to that treatment even if P's life is at risk;
  - (b) it is in writing signed by P or by another person in P's presence and at P's direction;
  - (c) the signature is made or acknowledged by P in the presence of a witness; and
  - (d) the witness signs the decision in P's presence.

## **23 Effect of advance decisions**

- (1) An advance decision which is –
  - (a) valid; and
  - (b) applicable to a treatment,

in accordance with Article 22 (an “effective advance decision”) has effect as if P made it, and had capacity to make it, at the time when a question arises as to whether the treatment should be carried out or continued.

- (2) A person does not incur liability for carrying out or continuing the treatment unless, at the time when that question arises, the person –
  - (a) knows that an effective advance decision exists; and
  - (b) despite that knowledge, carries out or continues the treatment.
- (3) A person does not incur liability for the consequences of withholding or withdrawing a treatment from P if, at the time, the person reasonably believes that an effective advance decision exists.
- (4) The Court may make declarations as to whether an advance decision –
  - (a) exists;
  - (b) is valid;
  - (c) is applicable to a treatment.
- (5) While a declaration of the Court is awaited, nothing in this Article or any apparent or apparently effective advance decision prevents a person –
  - (a) providing life-sustaining treatment; or
  - (b) doing any act which the person reasonably believes to be necessary to prevent a serious deterioration in P’s condition.

## PART 4

### APPOINTMENT OF DELEGATES AND RELATED POWERS OF THE COURT

#### **24 General power of the Court to make declarations and decisions, and to appoint delegates**

- (1) The Court may make declarations as to –
  - (a) whether a person (“P” in this Part) has or lacks capacity to make a decision specified in the declaration;
  - (b) whether P has or lacks capacity to make decisions on such matters as are described in the declaration;
  - (c) the lawfulness of any act done, or proposed to be done, in relation to P, and for the purpose of sub-paragraph (c), “act” includes a course of conduct.
- (2) If P lacks capacity in relation to a matter concerning P’s health or welfare or P’s property and affairs, the Court may, on an application made to it under Article 25 –
  - (a) by order make a decision on P’s behalf as to the matter; or
  - (b) appoint a delegate to make a decision on P’s behalf as to such matters, in accordance with this Part, and having regard in particular to Articles 3 to 6.
- (3) In appointing a delegate the Court must ensure that the scope and duration of the appointment are no greater than reasonably necessary having regard to all relevant circumstances.
- (4) Without derogation from Article 25, the Court may make an order, give directions or appoint a delegate on such terms as it considers are in P’s best interests even

though no application is before it for an order, directions or appointment in those terms.

- (5) Having regard to the provisions of this Part and to Article 34 in particular, the Court may –
- (a) make such further orders;
  - (b) give such directions; and
  - (c) confer such powers, or impose such duties,
- as the Court thinks necessary or expedient for giving effect to, or otherwise in connection with, an order or appointment under paragraph (2), including (where the Court is satisfied that it is in P's best interests to do so) varying or discharging any previous order.
- (6) In particular, in the exercise of its powers under paragraph (5), the Court may –
- (a) revoke the appointment of a delegate; or
  - (b) vary the powers conferred on a delegate,
- if the Court is satisfied that the delegate has behaved, is behaving or proposes to behave in a way that contravenes the authority conferred by the Court or is not in P's best interests.
- (7) Paragraph (8) applies where –
- (a) an application has been made to the Court under Article 25; and
  - (b) the Court intends to exercise its powers under paragraph (2).
- (8) Where this paragraph applies, the Court may, pending determination of the application, make an order or give directions in respect of any matter, if there is reason to believe that –
- (a) P lacks capacity as to the matter; and
  - (b) it is in P's best interests that the order is made, or the directions are given, without delay.
- (9) The specific powers conferred by this Article are without prejudice to or derogation from the general jurisdiction of the Court and the Court shall have, in relation to any proceedings under this Part, all such power to act of its own motion as it has in relation to any other proceedings.

## **25 Applications to Court for exercise of powers under Article 24**

- (1) An application for the exercise of the Court's power under Article 24(2) may be made by an applicant who is –
- (a) P, notwithstanding P is alleged to lack capacity;
  - (b) P's spouse or civil partner;
  - (c) where P and another person (whether of the same or the opposite sex) are not married to each other but are living together as spouses or civil partners, that other person;
  - (d) P's child or step-child;
  - (e) P's parent or step-parent, or (if P is aged under 18 years) any other person with parental responsibility for P;
  - (f) P's brother, sister, half-brother, half-sister, step-brother or step-sister;
  - (g) P's grandparent;

- (h) a delegate appointed for P by the Court (in relation only to the exercise of power under Article 24(2)(a));
  - (i) a person (“D” for the purposes of Part 2) appointed by P under a lasting power of attorney;
  - (j) a person named in an existing order of the Court made in relation to P, if the application relates to that order;
  - (k) an independent capacity advocate appointed to represent P under Article 51; or
  - (l) the Attorney General.
- (2) An application for such an exercise of the Court’s power may be made by a person not mentioned in paragraph (1) with the Court’s permission, and in deciding whether to admit such an application the Court must have regard to –
- (a) the applicant’s connection with P;
  - (b) the reasons for the application;
  - (c) the potential benefit to P of the proposed order or directions; and
  - (d) whether that benefit can be achieved in any other way.

## **26 Application in case of person admitted to approved establishment**

- (1) This Article applies where P is a person who –
- (a) has been admitted to an approved establishment under Part 3 of the Mental Health Law; or
  - (b) has been received into guardianship under Part 4 of that Law.
- (2) Where this Article applies, and –
- (a) no person has been appointed (whether under the Mental Health Law or under this Law) either to take decisions as to P’s health and welfare or to manage or administer P’s property and affairs; and
  - (b) in the opinion of the responsible medical officer or registered medical practitioner in charge of P’s treatment, P lacks capacity to make decisions as to P’s health and welfare or P’s property and affairs,
- the Minister shall report the matter to the Attorney General.
- (3) Where the Attorney General –
- (a) receives a report under paragraph (2) in respect of P; or
  - (b) otherwise has reason to believe that P lacks capacity to make decisions as to P’s health and welfare or P’s property and affairs,
- the Attorney General may apply to the Court for a delegate to be appointed under this Part (or for such other order as the Attorney General or the Court may think fit).

## **27 Specific provision which may be made under this Part as to P’s health and welfare**

- (1) Subject to paragraph (2), the power which may be exercised by the Court or by a delegate in relation to P’s health and welfare includes in particular the power of –
- (a) deciding where P is to live;

- (b) deciding what contact, if any, P is to have with specified persons; and
  - (c) giving or refusing consent to the carrying out or continuation of treatment by a person providing health care for P.
- (2) Only the Court (and not a delegate) may –
  - (a) prohibit a named person from having contact with P;
  - (b) direct a person providing health care for P to allow a different person to take over that responsibility; or
  - (c) refuse consent to the continuation of life-sustaining treatment.

## **28 Specific provision which may be made under this Part as to P's property and affairs**

- (1) Subject to paragraphs (2) and (3), the power which may be exercised by the Court or by a delegate in relation to P's property and affairs includes in particular all such powers as P might, on his or her own behalf and in accordance with the law of Jersey, exercise in relation to –
  - (a) the control and management of P's property;
  - (b) the sale, exchange, charging, gift or other disposition of P's property;
  - (c) the acquisition of property in P's name or on P's behalf;
  - (d) the carrying on, on P's behalf, of any profession, trade or business;
  - (e) decisions having the effect of dissolving a partnership of which P is a member;
  - (f) the carrying out of any contract entered into by P;
  - (g) the discharge of P's debts and of any of P's obligations whether legally enforceable or not;
  - (h) the conduct of legal proceedings in P's name or on P's behalf.
- (2) The sale, exchange, charging, gift or other disposition of P's property may not be carried out except in compliance with any conditions or restrictions imposed by the Court on such sale, exchange etc.
- (3) Only the Court (and not a delegate) may exercise, in accordance with the further requirements of Articles 30 and 31, power in relation to –
  - (a) the settlement of P's property, whether for P's own benefit or the benefit of others;
  - (b) the execution for P of a will;
  - (c) the exercise of any power (including a power to consent) vested in P whether beneficially or as trustee or otherwise.

## **29 Power of Court to order medical etc. reports**

- (1) Without derogation from the general power conferred by Article 24, the Court may, in accordance with paragraph (2) and where the Court considers it necessary or expedient to do so for the purpose of the exercise of its powers under this Part, order the preparation of a report as to P's condition or circumstances (including, but not limited to, P's medical or psychological condition, P's social circumstances or social factors affecting P).
- (2) The Court's order under paragraph (1) may be addressed to –

- (a) any party to the proceedings under Article 24; and
  - (b) where the Court is satisfied that it is reasonable to do so, any other person.
- (3) Where the Court makes an order under paragraph (1), the person preparing the report must be permitted by any other person having responsibility for P's care or treatment –
  - (a) to interview P in private;
  - (b) at all reasonable times to examine and take copies of any health records or records maintained by a person having responsibility for P's care or treatment; and
  - (c) to carry out such medical, psychiatric or psychological assessment of P as the person may be qualified to perform.

### **30 Powers of Court in relation to wills**

- (1) The power of the Court under Article 28(3)(b) extends to making any provision (including, but not limited to, the disposal of property or the exercise of a power) which could be made under a will executed by P if P had capacity to do so, and subject to paragraph (2), such provision shall have effect for all purposes as if it were provision made by a will validly executed under Jersey law by a person with capacity.
- (2) Paragraph (1) does not apply to the extent that –
  - (a) a will disposes of immovable property outside Jersey; or
  - (b) at the time when the will is to be executed, P is domiciled outside Jersey and any question of P's testamentary capacity would fall to be determined in accordance with the law of P's domicile.
- (3) For the purpose of the exercise of the Court's power under Article 28(3)(b) and this Article, the Court may make an order or give directions authorizing any person (whether appointed as a delegate under this Part or not) to execute a will on behalf of P.
- (4) Such an order or directions as mentioned in paragraph (3) shall include the requirements that the will executed on behalf of P must –
  - (a) state that it is signed by P acting by the authorized person;
  - (b) be signed by the authorized person with the name of P and that person's own name, in the presence of no less than 2 witnesses;
  - (c) be attested and subscribed by those witnesses in the presence of the authorized person; and
  - (d) be sealed with the official seal of the Court.

### **31 Powers of Court in relation to trusts**

- (1) The Court may, in the exercise of its power under Article 28(3), make such vesting or other orders as the case may require, including (for the avoidance of doubt) any order which the Court may otherwise make under the [Trusts \(Jersey\) Law 1984](#).
- (2) In particular and without derogation from the generality of the Court's powers, the Court may make orders and give directions as provided by paragraphs (3) to (5).
- (3) The Court may by order vary or revoke a settlement of P's property on trust, if –

- (a) the settlement makes provision for variation or revocation; or
- (b) the Court is satisfied that –
  - (i) a mistake was made in relation to the exercise of power over, or in relation to, a trust or trust property,
  - (ii) the power would not have been so exercised, but for that mistake, and
  - (iii) the mistake is of so serious a character as to render it just for the Court to make an order under this paragraph,and the Court may for this purpose give all such incidental or consequential directions as the Court considers necessary.
- (4) The Court may make orders and give directions in relation to the vesting of property in, or management of property by, a person other than P (whether that person is appointed as a delegate under this Part or not) if the Court is satisfied that –
  - (a) under the law prevailing in a place outside Jersey, that other person has been appointed to exercise powers of management of P's property and affairs on the ground (however formulated or expressed) that P lacks capacity in this respect; and
  - (b) having regard to the nature of the appointment and the circumstances of the case, it is expedient for the Court so to order or direct.
- (5) The Court may make such order or give such directions as it considers appropriate to preserve any person's interest in P's property where –
  - (a) that property is to be disposed of by order of the Court or by a delegate or person ordered or directed to do so under paragraph (4); and
  - (b) but for the disposal, the person would have benefited from an interest in P's property (whether under P's will or intestacy or any other legal interest, or by way of a gift perfected, or nomination taking effect on, P's death).

### **32 Powers of Court in relation to P's property**

- (1) The Court may make such orders or give such directions as it may consider appropriate for the purpose of maintaining or improving P's property or otherwise for the permanent benefit of P's property.
- (2) For the avoidance of doubt the power conferred by paragraph (1) includes power to make orders or give directions as to the expenditure of P's property for the purpose mentioned in that paragraph and as to securing such expenditure.

### **33 Regulations as to powers of Court under this Part**

The States may by Regulations make further provision as to the powers of the Court for the purposes of this Part, including, but not limited to, provision as to the circumstances in which the Court may appoint a person to exercise any of P's functions as patron of a benefice.

### **34 Qualifications of and general provisions concerning delegates**

- (1) Any person may be appointed by the Court as a delegate under this Part, but an individual person must for this purpose be aged 18 years or over.

- (2) A delegate must give consent to being appointed as such.
- (3) The Court may appoint an individual by appointing the holder for the time being of a specified office or position (including, for the avoidance of doubt, the Viscount, in his or her capacity as such).
- (4) The Court may appoint 2 or more delegates to act –
  - (a) jointly;
  - (b) jointly and severally; or
  - (c) jointly in respect of some matters and jointly and severally in respect of other matters.
- (5) The Court may, at the same time as appointing any delegate, appoint one or more other persons to succeed a delegate in such circumstances, or on the happening of such events, and for such period, as the Court may specify.
- (6) A delegate is to be treated as P's agent in relation to anything done within the scope of the delegate's appointment and in accordance with this Part, but the powers and duties imposed by the Court on the appointment of a delegate may include (without derogation from the generality of the Court's powers in this respect) the imposition of a financial limit on the delegate's authority.
- (7) A delegate is entitled to be reimbursed out of P's property for reasonable expenses in the discharge of functions when acting as delegate, and the Court may direct, when appointing a delegate, that the delegate should be entitled to remuneration out of P's property for so acting (subject to such limit as may be prescribed, whether by reference to a proportion of P's property or to an amount or otherwise).
- (8) The Court may require a delegate –
  - (a) to give to the Attorney General or (as the Court may specify) the Judicial Greffier such security as the Court thinks fit for the due discharge of the delegate's functions; and
  - (b) to provide to the Court, or to such other persons as the Court may specify, such reports at such times or intervals as the Court may direct.
- (9) In the exercise of its powers under paragraph (8)(b), the Court shall have regard to any further provision which may be made by the States by Regulations with respect to the supervision of delegates, under Article 36.
- (10) The appointment of a delegate shall cease upon the death of the delegate or of P, or upon the delegate's resignation, but P's death shall not affect the legality of anything done by the delegate in good faith and without knowing of P's death.

### **35 Powers of delegates**

- (1) Subject to paragraphs (2) to (4) and to any restriction or condition imposed by the Court on the appointment of a delegate, a delegate may do, or secure the doing of, anything which appears to the delegate to be necessary or expedient to be done in P's best interests.
- (2) In a case where a delegate is appointed to deal with P's property and affairs, the power conferred by paragraph (1) includes power to do or secure the doing of anything necessary or expedient –
  - (a) for the maintenance or other benefit of P, P's family or dependants; and
  - (b) for the payment of P's debts, whether legally enforceable or not.<sup>3</sup>

- (3) A delegate may not make a decision on behalf of P which is inconsistent with a decision made –
  - (a) within the scope of authority conferred by a lasting power of attorney granted by P and in accordance with this Law;
  - (b) by the person (“A” for the purposes of Part 2) on whom such authority is conferred.
- (4) A delegate must make all decisions on behalf of P in P’s best interests and without undue delay.

### **36 Supervision of persons acting on P’s behalf under Parts 2 and 4**

- (1) The States may by Regulations designate a person or office as having responsibility for –
  - (a) supervision of the conduct of delegates and of persons exercising authority under lasting powers of attorney;
  - (b) monitoring compliance of delegates with the provisions of this Law and with any specific authority conferred upon particular delegates by the Court or upon particular persons by any lasting power of attorney; and
  - (c) investigating complaints against delegates and persons exercising authority under lasting powers of attorney, and, where necessary, drawing such complaints to the attention of the Court.
- (2) Such Regulations may, further and in particular, make provision –
  - (a) as to the payment, to the person or office designated under paragraph (1), of fees for or in relation to the matters listed in paragraph (1)(a) to (c);
  - (b) enabling the Minister by Order to prescribe the amount of such fees as mentioned in sub-paragraph (a); and
  - (c) as to the payment of fees, including the amount of such fees, in a case where a report is provided to the Court under Article 34(8)(b).<sup>4</sup>
- (3) The States may further by such Regulations make provision –
  - (a) as to the investigatory and reporting powers of any person or office designated under paragraph (1);
  - (b) for –
    - (i) the creation of criminal offences, punishable by a fine of level 3 on the standard scale, and
    - (ii) the imposition of liability towards P or P’s estate,  
where a delegate or a person exercising authority under a lasting power of attorney fails to comply with relevant provisions of the Regulations or of this Law; and
  - (c) concerning disclosure of, and access to, information held by –
    - (i) a delegate,
    - (ii) a person exercising authority under a lasting power of attorney, or
    - (iii) a person or office designated by Regulations under paragraph (1),  
including provision for the inspection of such information at such times and places and by such persons as may be specified.

## PART 5

### CAPACITY AND LIBERTY

#### 37 Interpretation and application of Part 5

- (1) In this Part –
- “affirmative”, in relation to a report, has the meaning given by Article 46(3);
  - “approved care home” means an establishment to which Article 6 of the [Long-Term Care \(Jersey\) Law 2012](#) applies;
  - “assessor” means a person designated under Article 40;
  - “capacity and liberty matters” has the meaning given by Article 44(6);
  - “Commission” means the Health and Social Care Commission established under Article 35 of the [Regulation of Care \(Jersey\) Law 2014](#);
  - “independent capacity advocate” means a person appointed as such under Part 6;
  - “M” means the manager of a relevant place;
  - “negative”, in relation to a report or assessment, has the meaning given by Article 46(2);
  - “P” means a person in respect of whom this Part applies as further provided by paragraph (2);
  - “registered person” has the same meaning as is given to that expression by Article 1 of the [Long-Term Care \(Jersey\) Law 2012](#);
  - “relevant place” has the meaning given by paragraph (3);
  - “significant restriction on liberty” has the meaning given by Article 39;
  - “standard authorization” has the meaning given by Article 48;
  - “Tribunal” means the Mental Health Review Tribunal established under Part 7 of the Mental Health Law; and
  - “urgent authorization” has the meaning given by Article 42.
- (2) This Part –
- (a) does not apply where P is a person liable to be detained under Part 3 of the Mental Health Law; and
  - (b) except for Article 59, does not apply where P is a person undergoing life-sustaining treatment in any place (and for this purpose “place” includes an ambulance or other vehicle used by the emergency services).
- (3) For the purposes of this Part a “relevant place” means a hospital (except any accident or emergency department of a hospital), an approved care home or any establishment regulated under the [Regulation of Care \(Jersey\) Law 2014](#), or designated by the Minister, for the purpose of providing health or social care.

#### 38 Circumstances permitting significant restriction on liberty

- (1) If, and only if, one of the criteria in paragraph (2) is fulfilled in respect of P, the manager (“M”) of a relevant place in which P is residing may lawfully impose on P a significant restriction which would otherwise amount to a deprivation of P’s liberty.

- (2) The criteria mentioned in paragraph (1) are that, in respect of P –
  - (a) an urgent authorization has been granted by the Minister under Article 42;
  - (b) a standard authorization has been granted by the Minister under Article 48;
  - (c) an order of the Court has been made under Article 57; or
  - (d) the restriction is necessary to enable life-sustaining treatment to be given, as further provided by Article 59.
- (3) Where one of the criteria in paragraph (2) is fulfilled, a person doing any act for the purpose of maintaining a significant restriction on P's liberty does not incur any liability, in relation to the act, which would not have been incurred if P had capacity to consent, and had consented, to the act being done.
- (4) Paragraphs (1) and (3) –
  - (a) do not exclude the civil liability of any person for loss or damage, or the criminal liability of any person, resulting from negligence in doing an act; and
  - (b) do not authorize a person to do anything except for the purpose of, and in accordance with any conditions of, the authorization or order of the Court (as the case may be) applying in respect of P.

### **39 Significant restrictions on liberty**

- (1) A measure listed in paragraph (2) amounts to a significant restriction on P's liberty if it applies to P on a regular basis.
- (2) The measures mentioned in paragraph (1) are that –
  - (a) P is not allowed, unaccompanied, to leave the relevant place;
  - (b) P is unable to leave the relevant place unassisted, by reason of P's physical impairment or mental disorder, and such assistance as it may be reasonably practicable to provide to P for this purpose is not provided;
  - (c) P's actions are so controlled in the relevant place as to limit P's access to part only of that place;
  - (d) P's actions are controlled, whether or not in the relevant place, by the application of physical force or of restraint as defined in Article 9(2);
  - (e) P is subject, whether or not in the relevant place, to continuous supervision;
  - (f) P's social contact, whether or not in the relevant place, with persons other than those caring for him or her in the relevant place, is restricted.
- (3) A measure applicable to all residents at a relevant place (other than staff employed at the place) which –
  - (a) is intended to facilitate the proper management of that place; and
  - (b) does not excessively or unreasonably disadvantage P in particular,shall not be regarded as a significant restriction on P's liberty.
- (4) For the purposes of paragraph (2)(b), and for the avoidance of doubt –
  - (a) P is not to be regarded as subject to a significant restriction on liberty where P is wholly incapable of leaving the relevant place because of physical impairment; and

- (b) any limit as to the time or duration of any assistance provided to P, which does not excessively or unreasonably disadvantage P, shall not be taken to mean that assistance is not provided.
- (5) The States may by Regulations amend this Article.

#### **40 Arrangements to be made by Minister: designation of assessors**

- (1) For the purposes of assessments to be carried out in accordance with this Part and in fulfilment of the duty imposed by Article 41(2), the Minister must –
  - (a) designate registered persons to act as assessors under this Part, and maintain a register of persons so designated; and
  - (b) determine the appropriate level of training or professional qualification to be required of persons who may be so designated.
- (2) The Minister may for the purposes stated in paragraph (1) –
  - (a) make all such provision by Order as is necessary to enable fees to be charged by, and payments to be made to, assessors, including provision in relation to the amount or level of such fees; and
  - (b) do all other things which may be reasonably necessary for those purposes.
- (3) The States may by Regulations make further provision as to arrangements to be made for the purposes stated in paragraph (1), and such provision may include amendment of this Article and the time limit in Article 45(1)(b).

#### **41 Arrangements to be made by Minister: requirement for authorization**

- (1) The Minister must not authorize the imposition of a significant deprivation of liberty unless –
  - (a) the authorization is urgent within the meaning of Article 42; or
  - (b) the necessity for such a deprivation has been confirmed by the report of an assessor, following an assessment carried out in accordance with Articles 43 to 46.
- (2) Where –
  - (a) the Minister receives a request from M under Article 43; or
  - (b) the Minister otherwise becomes aware that Article 43(1)(a) applies and the conditions in Article 43(2) are fulfilled in respect of P,the Minister must as soon as practicable and without undue delay appoint a person to carry out an assessment as mentioned in paragraph (1).

#### **42 Urgent authorizations**

- (1) An application may be made to the Minister for an urgent authorization by an assessor or by M, if the applicant reasonably believes that –
  - (a) the duty imposed by Article 43(3) applies to M;
  - (b) it is necessary, in the interests of P's health or safety, that M should have authority to impose a significant restriction on P's liberty before a standard authorization could reasonably be expected to be granted; and

- (c) it is in P's best interests to be provided with care or treatment in circumstances which would amount to a significant restriction on P's liberty.
- (2) An application under paragraph (1) must be in writing and in such form as may be required under a code of practice under Article 68, but in any event must contain the following matters –
  - (a) P's name;
  - (b) M's name and the name of any other registered person concerned;
  - (c) the name and address of the relevant place;
  - (d) the grounds for the application; and
  - (e) the nature and extent of the proposed restriction on P's liberty.
- (3) Upon receipt of an application duly made under this Article, the Minister must immediately –
  - (a) give notice in writing to M that an urgent authorization is granted; and
  - (b) record in writing the grant of the authorization, the terms and conditions (if any) upon which it is granted, and the reasons for the grant and for any terms and conditions.
- (4) An urgent authorization shall continue in effect until M receives notification –
  - (a) of the grant of a standard authorization in respect of P; or
  - (b) that an assessment of P under this Part is negative,whichever first occurs, but in no case for longer than 28 days following the date of the authorization.
- (5) An urgent authorization may not be renewed, but a further urgent authorization may be granted where, following notification to M of a negative assessment, M considers that –
  - (a) a material change in P's circumstances; or
  - (b) a material mistake in the initial assessment of P,justifies a fresh application, and M applies to the Minister under paragraph (1) stating, as a ground for the application, a matter described in this paragraph.
- (6) Nothing in this Article shall be taken to permit the imposition of a significant restriction on P's liberty which conflicts with a valid advance decision to refuse treatment –
  - (a) made by P under Part 3; and
  - (b) of which M is aware.

#### **43 Request for assessment**

- (1) This Article applies where –
  - (a) P is resident, or is likely in the next 28 days to be resident, in a relevant place for the purpose of receiving care or treatment; and
  - (b) it appears to M that the conditions in paragraph (2) are fulfilled in respect of P.
- (2) The conditions mentioned in paragraph (1) are that it is likely –
  - (a) that P lacks capacity in relation to giving consent to the arrangements for his or her care or treatment in the relevant place; and

- (b) that for the purposes of such care or treatment, P is or will be subject to a significant restriction on his or her liberty.
- (3) Where this Article applies, M must –
  - (a) unless paragraph (4) applies, notify the Minister of the matters in paragraphs (1) and (2); and
  - (b) in any event, make a request (in such form and manner, if any, as may be prescribed) for an assessment to be carried out in accordance with Article 44.
- (4) M is not obliged to notify the Minister of the matters in paragraph (1) and (2) if M reasonably believes that the Minister is already aware of those matters, but for the avoidance of doubt the admission of a person into guardianship does not prevent this Article applying.

#### **44 Manner of assessment**

- (1) The assessor appointed by the Minister under Article 41(2) must carry out an assessment in accordance with this Article and in a timely manner so as to enable a report to be provided within the time limit in Article 45(1)(b).
- (2) The assessment must be carried out by means of one or more interviews –
  - (a) with P; and
  - (b) in any case where –
    - (i) the assessor is not a registered medical practitioner, or
    - (ii) there is no medical evidence of P's lack of capacity at the date of the assessment,with a registered medical practitioner, in accordance with paragraph (3), who has seen P immediately before the assessment.
- (3) For the purposes of paragraph (2)(b), the registered medical practitioner must be –
  - (a) the registered medical practitioner who is responsible for P's care and treatment; or
  - (b) if there is no such practitioner as described in sub-paragraph (a), a registered medical practitioner designated by the Minister for the purpose.
- (4) The assessment may include interviews with or representations from such other persons, if any, as are listed in paragraph (5) and as may in the assessor's view be appropriate.
- (5) The other persons mentioned in paragraph (4) are –
  - (a) P's guardian, if any;
  - (b) any person on whom authority has been conferred by a health and welfare LPA;
  - (c) any delegate appointed by the Court with responsibility for matters relating to P's health and welfare;
  - (d) any person otherwise nominated by P, if P has capacity to make such a nomination; and
  - (e) any other person who is P's nearest relative.
- (6) The assessment must be such as will enable the assessor to form a view in respect of each of the following matters (the "capacity and liberty matters"), namely –

- (a) whether P lacks capacity in relation to giving consent to the arrangements for his or her care or treatment in the relevant place;
  - (b) whether it is necessary to impose, as a component of that care or treatment, a significant restriction on P's liberty in the interests of P's health or safety;
  - (c) if so, whether it is in P's best interests to be provided with care or treatment in circumstances where such a restriction will be imposed.
- (7) For the purpose of carrying out an assessment, the assessor –
  - (a) shall be permitted at all reasonable times –
    - (i) to visit P in the relevant place,
    - (ii) to interview P either privately or, where there is in relation to P a person listed in paragraph (5), in the presence of that person, and
    - (iii) to inspect and take copies of all medical or other records relating to P and kept by the Minister, the Commission, M, or any other provider of care or treatment to P; and
  - (b) may interview or otherwise receive representations from M or any person listed in paragraph (5).
- (8) The States may by Regulations make further provision as to the conduct of assessments under this Part, including (without derogation from the generality of this power) provision as to –
  - (a) the information which may be sought by assessors or to which they must have regard in carrying out assessments;
  - (b) persons who may be consulted by assessors for the purpose of carrying out assessments; and
  - (c) the content to be included by assessors in their reports.

#### **45 Report of assessment**

- (1) A report of an assessment must be provided to the Minister –
  - (a) in accordance with paragraphs (2) to (6); and
  - (b) no later than 21 days from the date of the appointment of an assessor under Article 41(2).
- (2) The report must be in writing and must –
  - (a) set out the assessor's view as to the capacity and liberty matters;
  - (b) state whether to the assessor's knowledge –
    - (i) a lasting power of attorney has been conferred on any person by P under Part 2, or
    - (ii) the Court has appointed any delegate to act for P under Part 4, in relation to decisions as to P's health and welfare, and if so identify the person or delegate concerned;
  - (c) state whether to the assessor's knowledge P has made an advance decision to refuse treatment under Part 3, and if so set out the terms of that decision;
  - (d) identify any persons such as are listed in Article 44(5) who have been consulted or interviewed by the assessor, and summarize the views of such persons as to the capacity and liberty matters; and

- (e) subject to paragraphs (3) and (4), set out recommendations as to the nature and extent of any significant restrictions on P's liberty which, in all the circumstances, the assessor considers should be imposed.
- (3) In forming a view as to the capacity and liberty matters and in making recommendations under paragraph (2)(e), the assessor must consider whether any proposed restrictions on P's liberty are a proportionate response to –
  - (a) the likelihood of P's suffering any harm; and
  - (b) the seriousness of that harm, should it occur.
- (4) In addition to the matters to be included in the report under paragraph (2), a report may make such other recommendations in relation to P's care as appear to the assessor to be appropriate.
- (5) Where P has made an advance decision to refuse treatment, an assessor may not recommend the imposition of any significant restriction on P's liberty which would be incompatible with the terms of that decision.
- (6) Where –
  - (a) P is subject to guardianship under the Mental Health Law; and
  - (b) the assessor forms the view, in considering the matter under Article 44(6)(b), that it is necessary to impose a significant restriction on P's liberty,the report must also state whether it is considered that the restriction is one which may lawfully be imposed by P's guardian.
- (7) Where to the assessor's knowledge there are, in relation to P, no such persons as are listed in Article 44(5), the report must contain a statement to this effect.
- (8) Where the assessor has consulted or interviewed, in relation to P, any person listed in Article 44(5) –
  - (a) the assessor must inform that person of any recommendations made in relation to P; and
  - (b) if the assessor recommends that a significant restriction be imposed on P's liberty which is incompatible with a view expressed by that person, the assessor must explain in the report the specific reasons for that recommendation.
- (9) A copy of the report must be provided to M, and may be provided to P, at the same time as any authorization based on the report, or, if no authorization is given, as soon as reasonably practicable.

#### **46 Effect of report**

- (1) If the report of an assessment is negative, no standard authorization may be granted under this Part, and no further assessment may be carried out unless –
  - (a) M considers that a material change in P's circumstances justifies a fresh application for assessment, and M makes a request to the Minister accordingly;
  - (b) M considers that an assessment of P was mistaken in a material respect and M informs the Minister of the mistake; or
  - (c) in the absence of a request under paragraph (a), the Minister otherwise becomes aware of a material change in P's circumstances and considers that the change justifies a further assessment.

- (2) A report which is not affirmative as to each of the capacity and liberty matters is described in this Part as negative, and a report is also negative if –
  - (a) the assessment to which it relates did not enable the assessor to form a view as to the capacity and liberty matters; or
  - (b) where P is a person subject to guardianship under the Mental Health Law, all of the significant restrictions on P's liberty which are recommended by the report may, in the assessor's view, lawfully be imposed by P's guardian.
- (3) For the purposes of this Part a report is affirmative if in the assessor's view –
  - (a) P lacks capacity in relation to giving consent to the arrangements for his or her care or treatment in the relevant place;
  - (b) it is necessary to impose, as a component of that care or treatment, a significant restriction on P's liberty in the interests of P's health or safety; and
  - (c) it is in P's best interests to be provided with care or treatment in circumstances where such a restriction will be imposed.

#### **47 Record of assessments etc.**

The Minister must keep, in such manner and for such period as may appear to the Minister to be necessary, a record of –

- (a) all assessments carried out; and
- (b) all authorizations granted,

under this Part, together with copies of reports of all such assessments.

#### **48 Standard authorizations**

- (1) This Article applies where the Minister is satisfied that –
  - (a) an assessment of P has been duly completed in accordance with Articles 44 and 45; and
  - (b) the report of the assessment is affirmative.
- (2) Where this Article applies, the Minister may authorize the imposition of significant restrictions on P's liberty for a period of no longer than 12 months beginning with the authorization.
- (3) As soon as practicable following an authorization under paragraph (2) (a "standard authorization"), the Minister must give notice in writing of the authorization to the assessor and to M, and a code of practice under Article 68 may make further provision as to the form and content of the authorization to be given under paragraph (2), but such authorization must at least specify –
  - (a) P's name;
  - (b) M's name and the name of any other registered person concerned;
  - (c) the date (or if applicable, the occurrence of such event) on which, and the period during which, the authorization is to take effect;
  - (d) having regard to Article 45(2)(e), the nature and extent of the significant restrictions on P's liberty which are permitted to be imposed by the authorization; and
  - (e) any conditions or directions relating to the imposition of such restrictions.

- (4) Despite paragraph (3)(d) the Minister may authorize significant restrictions to be imposed on P's liberty which are different (whether in specific respects or by their nature) to any such restrictions as may have been recommended by the assessor.
- (5) Where the Minister considers it is in P's best interests to do so, the Minister may authorize a significant restriction which conflicts with a decision of –
  - (a) a person on whom P has conferred a lasting power of attorney under Part 2; or
  - (b) a delegate appointed by the Court under Part 4,but nothing in this Article shall be taken to permit the Minister to authorize a significant restriction on P's liberty which conflicts or would conflict with a valid advance decision made by P under Part 3.

#### **49 Rectification etc. of reports and recommendations**

- (1) Where it appears to the Minister or to M that the report of an assessment is incorrect or defective –
  - (a) the error or defect in question may be rectified –
    - (i) by the Minister, or
    - (ii) with the consent of the Minister, by the assessor who made the report; and
  - (b) the report shall have effect (and be deemed to have had effect) as though made originally without the error or defect.
- (2) Without prejudice to paragraph (1), if it appears to the Minister that a recommendation in any report of an assessment is insufficient to warrant the imposition of a significant restriction on P's liberty, the Minister must as soon as reasonably practicable give notice in writing –
  - (a) to the assessor, of the insufficiency; and
  - (b) to M, of the fact that the recommendation is to be disregarded.
- (3) Where notice is given under paragraph (2), the report which contained the recommendation shall nevertheless be deemed to be (and always to have been) sufficient if –
  - (a) a fresh recommendation made in accordance with Article 45(2)(e) and which is not defective in any respect is provided to the Minister within the period of 14 days beginning with the date on which the notice was given; and
  - (b) that recommendation, taken together with any other recommendation relating to the same assessment, is sufficient to warrant the imposition of the significant restriction.

#### **50 P to be notified of authorization etc.**

- (1) As soon as practicable following the grant of any authorization, M must take all such steps as are reasonable to ensure that P understands –
  - (a) the effect of the authorization in relation to P, and in particular the nature and extent of the significant restriction on P's liberty which is authorized by it; and
  - (b) the rights of advocacy, support, representation and review which are available to P under this Law in respect of the authorization.

- (2) As soon as practicable following a negative assessment or the termination of any authorization, M must take all such steps as are reasonable to ensure that P understands the effect of that assessment or (as the case may be) termination in relation to P.
- (3) The steps to be taken under paragraphs (1) and (2) include giving the information required by that paragraph both in writing (and where appropriate, this may include giving to P a copy of the report of the relevant assessment) and orally, having regard to P's ability to understand that information, however given.
- (4) Subject to paragraph (5), at the same time as or within a reasonable time of giving information to P under paragraph (1) or (2), M must also take all such steps as are reasonable to provide the same information to any person known to M who is, in relation to P, a person such as listed in Article 44(5).
- (5) Where, at the time information is given to P under paragraph (1) or (2), no independent capacity advocate has been appointed in respect of P by the Minister under Article 51, the information must be given to any advocate so appointed as soon as practicable following his or her appointment.

## **51 Advocates to be appointed**

- (1) This Article applies where, in respect of P –
  - (a) the report on an assessment contains a statement such as mentioned in Article 45(7); and
  - (b) a standard authorization has been granted.
- (2) Where this Article applies the Minister must, as soon as practicable after granting the authorization, nominate an independent capacity advocate to represent P.
- (3) The Minister must satisfy him or herself that any person to be nominated as an independent capacity advocate under this Article is a fit and proper person to be so nominated, in accordance with Part 6 and with any further provision made by Regulations under that Part as to such nominations.
- (4) The nomination of an independent capacity advocate under this Article –
  - (a) shall be without prejudice to the continuing authority of any person on whom such authority has been conferred by P under a lasting power of attorney or of any delegate appointed by the Court; and
  - (b) shall continue for the duration of the authorization, and if any vacancy arises the Minister must immediately appoint another person in accordance with this Article and any Regulations such as mentioned in paragraph (3).

## **52 Renewal of standard authorization**

- (1) A standard authorization may not be renewed except in accordance with this Article.
- (2) This Article applies where, within the period of 28 days ending with the date on which, unless it were renewed, a standard authorization would expire, M considers that it is necessary to continue to impose a significant restriction on liberty authorized by the standard authorization.
- (3) Where this Article applies M must give notice requesting a renewal –
  - (a) to the Minister, in such form as may be prescribed for the purpose; and

- (b) no later than the end of the period mentioned in paragraph (2).
- (4) Where the Minister receives a request duly made under paragraph (3), the Minister must as soon as practicable appoint an assessor to carry out a further assessment of P (a “renewal assessment”).
- (5) Articles 44 to 51 shall apply to a renewal assessment as though references in those Articles to an assessment were to a renewal assessment, except that Article 44(6)(a) shall apply as though for the words “whether P lacks capacity” in that sub-paragraph there were substituted the words “whether P continues to lack capacity”.
- (6) If the report of a renewal assessment is affirmative, the Minister –
  - (a) may, if satisfied that it is appropriate to continue the significant restriction on liberty, renew the standard authorization; and
  - (b) may do so with or without variation, in accordance with any fresh recommendation made by the assessor under Article 45(2)(e).

### **53 Standard authorization: review by manager**

- (1) Where a standard authorization is in effect, M must keep under review the necessity for the significant restriction on P’s liberty which it authorizes.
- (2) Paragraph (3) applies if, at any time during the period for which a standard authorization is in effect, it appears to M that –
  - (a) P has regained capacity in relation to the question of how his or her care should be provided, and does not consent to a restriction authorized by the standard authorization; or
  - (b) it is no longer –
    - (i) necessary in the interests of P’s health or safety, or
    - (ii) in P’s best interests,to continue to impose a restriction so authorized.
- (3) Where this paragraph applies, M must cease to impose the significant restriction, and shall inform the Minister of that fact and of the date on which the restriction ceased to be imposed.

### **54 Continuity of authorization: changes of place and in management**

- (1) Where P is to be moved from the relevant place to which an authorization (including an order of the Court) under this Part relates (the “first relevant place”), to another relevant place (the “new place”), the manager of the first relevant place must notify the Minister of the proposed change.
- (2) Following notification under paragraph (1), unless the Minister otherwise directs the authorization in question shall continue in effect as though for the first relevant place there were substituted the new place.
- (3) Where one person ceases to be the manager (the “original manager”) of a relevant place in relation to which an authorization has effect, and a different person (the “new manager”) has that function, the change shall take effect as described in paragraph (4).
- (4) For the purposes of the authorization and of this Part –

- (a) anything done by or in relation to the original manager in connection with the authorization has effect as if done by or in relation to the new manager;
  - (b) anything which is in the process of being done by or in relation to the original manager may be continued by or in relation to the new manager.
- (5) But solely by virtue of this Article the original manager does not cease to be, and the new manager does not become, liable for anything done in relation to the authorization by the original manager prior to the substitution.

## **55 Review of authorizations by Tribunal**

- (1) A request for a review of an authorization may be made to the Tribunal –
  - (a) in accordance with paragraph (2);
  - (b) by an application for the purpose made by –
    - (i) P, or a person who is listed in Article 44(5) on behalf of P,
    - (ii) an independent capacity advocate nominated to represent P under Article 51,
    - (iii) the Minister, or
    - (iv) the Attorney General.
- (2) During the period for which an authorization is in effect, no more than one application may be made under paragraph (1), whether by or on behalf of P.
- (3) The Minister may by Order –
  - (a) make further provision as to the form and manner of application to be made under paragraph (1);
  - (b) make provision as to the conduct of proceedings before the Tribunal following receipt by the Tribunal of such an application; and
  - (c) without prejudice to paragraph (4) or (5), make further provision as to the powers of the Tribunal in dealing with the application and carrying out its review.
- (4) Following receipt of a request under paragraph (1) the Tribunal must review –
  - (a) the standard authorization;
  - (b) the reports of relevant assessments; and
  - (c) such other information as the Tribunal may consider relevant (including but not limited to, any matters as to which the Minister may make provision under paragraph (3)).
- (5) Following its review of the matters specified in paragraph (4) the Tribunal must –
  - (a) make a fresh determination as to the capacity and liberty matters; and
  - (b) determine –
    - (i) whether the significant restrictions on P's liberty authorized by the standard authorization should remain in effect, and
    - (ii) if so, for what period.
- (6) For the purposes of this Article the Tribunal may make orders –
  - (a) amending or revoking an authorization; and

- (b) whether or not it considers that an authorization should continue to have effect, directing the Minister to carry out such further assessments as the Tribunal considers necessary.

## **56 Monitoring of authorizations**

- (1) The Minister may do all such things as are reasonably necessary for the purposes of monitoring –
  - (a) the application and use of authorizations; and
  - (b) the operation of significant restrictions on liberty authorized by them.
- (2) In particular for the purpose mentioned in paragraph (1), and without derogation from the generality of that purpose, the Minister may by Order make provision requiring the Commission, M, or any registered person concerned to disclose to the Minister such information as may be prescribed.
- (3) The Minister may also make further provision by way of a code of practice under Article 68, as to the operation of the provisions of this Part and as to records which must be kept in relation to such operation.

## **57 Powers of Court in relation to grant etc. of authorizations**

- (1) Without derogation from any other power conferred on the Court by this Law or any other enactment, or by its inherent jurisdiction, the Court may, if the conditions stated in paragraph (2) are fulfilled, make an order authorizing the imposition of a significant restriction on P's liberty.
- (2) The conditions mentioned in paragraph (1) are –
  - (a) that P lacks capacity in relation to giving consent to the arrangements for his or her care or treatment; and
  - (b) that it is both necessary in the interests of P's health or safety, and in P's best interests, to impose significant restrictions on P's liberty.
- (3) An order of the Court under paragraph (1) must state –
  - (a) P's name;
  - (b) M's name, and the name of any registered person concerned;
  - (c) the name of any registered provider within the meaning of the [Regulation of Care \(Jersey\) Law 2014](#);
  - (d) the period (of no more than 12 months) during which the order is to have effect;
  - (e) the nature, extent and duration of the significant restrictions on P's liberty which are permitted to be imposed by the order, and by whom they may be imposed;
  - (f) any conditions or directions in relation to the imposition of any such significant restriction (in particular, but not limited to, directions as to the frequency of review); and
  - (g) the full grounds for the Court's decision, with regard in particular to paragraph (2) and sub-paragraphs (d) to (f) of this paragraph.<sup>5</sup>
- (4) In its determinations as to the matters described in paragraph (3)(d) to (f), the Court must have particular regard to the medical evidence available before it.

- (5) The Court may authorize significant restrictions on P's liberty which differ from any such restrictions as may have been recommended under any other provision of this Part.
- (6) Nothing in this Article shall be taken to permit the Court to authorize a significant restriction on P's liberty which conflicts or would conflict with a valid advance decision made by P under Part 3.
- (7) Where the Court considers it is in P's best interests to do so, the Court may authorize a significant restriction which conflicts with a decision of –
  - (a) a person on whom P has conferred a lasting power of attorney under Part 2; or
  - (b) a delegate appointed by the Court under Part 4.
- (8) Articles 50, 51, 54, 56 and 60 shall apply with all necessary modifications to an order of the Court under this Article as they apply in relation to a standard authorization.

## **58 Appeals**

- (1) A person aggrieved by a decision of the Tribunal may appeal to the Court against that decision on a point of law.
- (2) The power to make rules of Court under the [Royal Court \(Jersey\) Law 1948](#) shall extend to making rules for the purpose of the conduct of, and proceedings in, appeals under paragraph (1).
- (3) On an appeal under paragraph (1) the Court may –
  - (a) quash the decision against which the appeal is made;
  - (b) affirm the decision;
  - (c) give any direction which the Tribunal has power to give; or
  - (d) refer the matter back to the Tribunal for reconsideration.
- (4) No decision of the Tribunal shall be invalidated solely by reason of procedural irregularity, unless that irregularity was such as to prevent a party to the proceedings from presenting his or her case fairly before the Tribunal.

## **59 Temporary restriction of liberty for purpose of life-sustaining treatment**

- (1) Notwithstanding the preceding provisions of this Part, a person ("D") may impose a significant restriction on P's liberty where the restriction is necessary in the interests of P's health or safety as described in paragraph (2), for the duration of any treatment or act mentioned in that paragraph.
- (2) For the purposes of paragraph (1), a restriction shall be considered to be necessary in the interests of P's health and safety if –
  - (a) the restriction is wholly or partly for the purpose of, and consists wholly or partly of –
    - (i) giving P life-sustaining treatment, or
    - (ii) doing any act which D reasonably believes to be necessary to prevent a serious deterioration in P's condition;and
  - (b) the restriction is necessary in order to give that treatment or do that act.

**60 Authorization as authority to take and convey P**

An authorization (including an order of the Court) under this Part shall be sufficient authority, at any time within the period of 72 hours beginning with the time at which the authorization is given –

- (a) for M or any other person authorized by M for the purpose to take P and convey him or her to the relevant place; and
- (b) for M to admit P and detain him in the relevant place for such period as may be specified in the authorization.

**60A** <sup>6</sup>**60B** <sup>7</sup>**60C** <sup>8</sup>**60D** <sup>9</sup>**60E** <sup>10</sup>**60F** <sup>11</sup>**60G** <sup>12</sup>**60H** <sup>13</sup>**PART 6****INDEPENDENT CAPACITY ADVOCATES****61 Application of this Part, and interpretation**

- (1) This Part applies to make provision for the appointment of independent capacity advocates –
  - (a) to represent and support any person lacking capacity in respect of certain decisions (“P”), as further provided by Articles 64 and 65;
  - (b) to carry out such other functions as are described in Article 63 and as provided by Regulations made under that Article; and
  - (c) for the purposes of Part 5 as provided by Article 51.
- (2) In this Part –

“advocate” means an independent capacity advocate appointed under Article 62; and

“M” means the Minister and any other person having responsibility for P’s care or treatment.

## **62 Appointment of independent capacity advocates**

- (1) The States may by Regulations require the Minister to make such arrangements for the appointment of advocates –
  - (a) as are in accordance with provision made by the Regulations and further described in paragraphs (2) and (3); and
  - (b) as the Minister, having regard to paragraph (4), may consider reasonable.
- (2) Regulations under paragraph (1) may in particular make provision including (but not limited to) provision –
  - (a) as to the qualifications to be required of persons who may be appointed;
  - (b) as to the procedure for appointment and terms and conditions of appointment;
  - (c) requiring M to report to the Commission on any concerns arising from the dealings between P and P’s independent capacity advocate;
  - (d) as to the circumstances in which the appointment may end or be terminated and the formalities for doing so; and
  - (e) as to the nature and level of payments (whether by way of fees, or reimbursement of expenses) which may be made to advocates.
- (3) For the purpose of enabling advocates to carry out their functions, Regulations may further make provision as to the powers of advocates –
  - (a) to interview P and any other of P’s representatives; and
  - (b) to examine and take copies of any documents, records or other information kept by the Minister, the Commission or the manager of a relevant place, which may be relevant to the exercise of a function by an advocate.
- (4) In making arrangements under paragraph (1), the Minister must have regard to the principle that P should, so far as practicable, be represented and supported by a person who is independent of any person who is responsible for a proposed act or decision relating to P.

## **63 Functions of independent capacity advocates**

- (1) The functions to be carried out by advocates include (but are not limited to) –
  - (a) providing support to P so that P may participate as fully as possible in any decision concerning P or P’s best interests;
  - (b) obtaining and evaluating information in relation to representing and supporting P and P’s best interests;
  - (c) ascertaining what, if P had capacity, would be P’s wishes and feelings in relation to particular matters, or would be the beliefs and values likely to influence P;
  - (d) obtaining further medical opinion about proposed medical treatment of P; and

- (e) ascertaining what courses of action may be available in relation to P, in addition or in the alternative to any such proposed treatment.
- (2) The States may by Regulations –
  - (a) further make provision as to circumstances in which advocates may challenge, or provide assistance for the purpose of challenging, any decision under this Law affecting P or P's best interests; and
  - (b) amend paragraph (1).

#### **64 Support where serious medical treatment is proposed**

- (1) This Article applies where –
  - (a) M proposes to provide, or secure the provision of, serious medical treatment for P;
  - (b) P lacks capacity to consent to the proposed treatment; and
  - (c) M is satisfied that there is no person, other than one engaged in a professional capacity or for remuneration in providing care or treatment for P, whom it would be appropriate to consult in determining whether the proposed treatment would be in P's best interests.
- (2) Where this Article applies, M must, subject to paragraph (3), instruct an advocate to represent P before the proposed treatment may be provided.
- (3) If, in the opinion of M, the proposed treatment needs to be provided as a matter of urgency, it may be provided even though the requirement in paragraph (2) has not been fulfilled.
- (4) In providing or securing the provision of treatment for P, M must take into account any information given or submissions made on behalf of P by the advocate instructed under paragraph (2).
- (5) For the purposes of this Article “serious medical treatment” means treatment of a kind which involves providing, withholding or withdrawing treatment in circumstances where –
  - (a) in a case where a single treatment is proposed, there is a fine balance between the potential benefit to P of such treatment and the burdens and risks it is likely to entail;
  - (b) in a case where there is a choice of treatments, a decision as to which treatment to use is finely balanced; or
  - (c) the proposed treatment would be likely to involve serious consequences for P.
- (6) The States may by Regulations amend the definition in paragraph (5).

#### **65 Support where provision of or change in accommodation is proposed**

- (1) This Article applies where M proposes to make arrangements –
  - (a) for the provision of accommodation for P in a hospital, or in an approved care home as defined by Article 1 of the [Long-Term Care \(Jersey\) Law 2012](#) (including a change to any existing provision of accommodation for P);
  - (b) P lacks capacity to consent to such arrangements; and

- (c) M is satisfied that there is no person, other than one engaged in a professional capacity or for remuneration in providing care or treatment for P, whom it would be appropriate to consult in determining whether the proposed arrangements would be in P's best interests.
- (2) This Article does not apply –
  - (a) where P is accommodated as a result of an obligation imposed under the Mental Health Law; or
  - (b) where P is a person in respect of whom Article 51 applies.
- (3) Where this Article applies, M must instruct an advocate to represent P before making the proposed arrangements, unless –
  - (a) the accommodation is likely to be provided for a continuous period which is less than the applicable period; or
  - (b) the proposed arrangements need to be made as a matter of urgency.
- (4) If either of the grounds in paragraph (3)(a) or (b) apply, but M subsequently has reason to believe that the accommodation is likely to be provided for a continuous period –
  - (a) beginning with the day on which accommodation is first provided in accordance with the proposed arrangements; and
  - (b) ending on or after the expiry of the applicable period,
 M must instruct an advocate to represent P.
- (5) In making arrangements for P's accommodation or a change in P's accommodation, M must take into account any information given or submissions made on behalf of P by the advocate instructed under paragraph (3) or (4).
- (6) For the purposes of this Article the "applicable period" means –
  - (a) in relation to accommodation in a hospital, 28 days; and
  - (b) in relation to accommodation in an approved care home, 8 weeks.

## PART 7

### MISCELLANEOUS AND GENERAL PROVISIONS

#### **66 Research involving persons lacking capacity**

- (1) The States may by Regulations make provision as to the extent to which, and the circumstances in which, it may be lawful to conduct intrusive research involving, or in relation to, a person ("P") who lacks capacity to consent to such research.
- (2) Except as provided by Regulations under paragraph (1), it shall not be lawful to conduct such research.
- (3) In making Regulations under paragraph (1) the States must have regard to the principles that no research shall be lawful unless –
  - (a) it is safe and produces or may produce a benefit to P which outweighs any risk to, or burden upon, P; or
  - (b) where the purpose of the research is to improve medical or scientific knowledge, it is of minimal risk to P and can be carried out with minimal intrusion to P's physical and mental well-being and legal rights.

- (4) Regulations under paragraph (1) must in particular (but without limitation) make provision as to –
- (a) the establishment or appointment of a body for the purpose of approving and monitoring intrusive research;
  - (b) the nature or types of research which are considered intrusive for the purposes of this Article;
  - (c) the circumstances which may make any research intrusive within the meaning given by Regulations or for the purposes of this Article;
  - (d) the requirements which must be met for approval of any intrusive research;
  - (e) the consultation of carers for, or representatives of, persons who may be subject to intrusive or potentially intrusive research, including the circumstances in which such consultation must take place and the matters or information which must be disclosed or to which such consultation must relate;
  - (f) the termination of any approved research, including (but not limited to) the circumstances in which, and steps which must be taken where, a person is to be withdrawn from that research;
  - (g) the safeguards which must apply to, and in the course of, any intrusive research;
  - (h) the circumstances, if any, in which research to which a person has consented may continue to be conducted where that person subsequently loses capacity so to consent.

## **67 Offence of wilful neglect**

- (1) It is an offence for any person who –
- (a) has the care of another person (“P”); or
  - (b) is appointed –
    - (i) by P, under a lasting power of attorney under Part 3, or
    - (ii) as P’s delegate under Part 4,
- to ill-treat or wilfully neglect P.
- (2) For the purposes of paragraph (1)(a), a person has the care of P if the person is responsible for giving P any health or social care as part of an activity which is a regulated activity under Article 2 of the [Regulation of Care \(Jersey\) Law 2014](#).
- (3) A person guilty of an offence under this Article shall be liable to imprisonment for a term of 5 years and a fine.

## **68 Codes of practice**

- (1) The Minister must issue a code of practice for the purposes of this Law and in particular (but without limitation) –
- (a) for the guidance of –
    - (i) assessors under Part 5 or any other persons having a similar duty under this Law or the Mental Health Law to assess whether or not a person has, or (as the case may be) lacks capacity in relation to any matter,

- (ii) any person acting under this Law in connection with the care or treatment of any other person,
    - (iii) any person on whom authority is conferred by lasting power of attorney under Part 2,
    - (iv) delegates appointed by the Court under Part 4,
    - (v) independent capacity advocates in the exercise of functions conferred on them under Part 6,
    - (vi) any person carrying out research authorized by any provision made under Article 66;
  - (b) with respect to such other matters, arising out of this Law, as the Minister may think fit.
- (2) A person must have regard to any relevant code of practice under paragraph (1) where that person is acting, in relation to another person who lacks capacity –
- (a) under authority conferred by a lasting power of attorney;
  - (b) as a delegate appointed by the Court;
  - (c) in reliance on any provision made under Article 66;
  - (d) as an independent capacity advocate;
  - (e) in the exercise of functions under Part 5 relating to significant restrictions on liberty;
  - (f) in a professional capacity; or
  - (g) for remuneration.
- (3) Paragraph (4) applies where it appears to the Court or to the Tribunal, when conducting any civil or criminal proceedings, that –
- (a) a provision of a code issued under this Article; or
  - (b) a failure to comply with a requirement of any such code,
- is relevant to a question arising in those proceedings.
- (4) Where this paragraph applies, the relevant provision or failure must be taken into account in determining the question, but a failure to comply with a code shall not of itself make a person liable to any civil or criminal proceedings.
- (5) The Minister may amend a code from time to time as the Minister may see fit, and a code may make, as respects any matter in relation to which it makes provision –
- (a) the same provision for all cases, or different provision for different cases or classes of case, or different provision for the same case or class of case for different purposes; and
  - (b) any such provision either unconditionally or subject to any specified conditions.
- (6) Before issuing or amending a code, the Minister must consult such bodies as appear to the Minister to be concerned.
- (7) The Minister must publish any code which is for the time being in force in such manner as may appear to the Minister to be appropriate for bringing it to the attention of persons likely to be concerned with or affected by its provisions.

## 69 Regulations

- (1) The States may by Regulations make provision for the purpose of giving full effect to this Law and, in particular but without derogation from the generality of this power, such Regulations –
  - (a) may make provision for or in respect of any matter that by this Law is required or permitted to be done by Regulations;
  - (b) may consequentially amend any enactment; and
  - (c) may make provision for the purpose of giving full effect in Jersey to any international agreement concerning the protection of adults.
- (2) Regulations made under this Law may make all such transitional, saving, incidental, consequential or supplementary provision as may appear to the States to be necessary or expedient for the purposes of the Regulations.

## 70 Orders

- (1) The Minister may make Orders –
  - (a) for prescribing anything which is required or authorized to be prescribed under this Law; and
  - (b) making transitional provision in relation to the commencement of this Law.
- (2) Orders made by the Minister under paragraph (1) may, in particular but without derogation from the generality of that power –
  - (a) prescribe the form of any application, recommendation, report, notice or other document to be made, given or provided under this Law;
  - (b) prescribe the manner in which any such document as mentioned in paragraph (a) may be served, and proved in evidence;
  - (c) make provision for the amount of any fees or the level of any charges required to be paid under this Law; and
  - (d) make all such transitional, saving, supplementary and consequential provision as may appear to the Minister to be necessary or appropriate.
- (3) <sup>14</sup>

## 71 Rules of Court

The power to make rules of court under the [Royal Court \(Jersey\) Law 1948](#) includes power to make rules regulating practice and procedure in or in connection with proceedings before the Court under this Law, and in particular (but without derogation from the generality of this power) to make rules as to –

- (a) applications under Parts 2, 3, 4 or 5 (including as to the hearing and determination of applications otherwise than in open court);
- (b) the admission of any matters in evidence, and evidential presumptions; and
- (c) the joinder of any persons as parties.

## 72 Repeal

Any customary law of Jersey concerning *curatelles* shall cease to have effect.

**73 Citation**

This Law may be cited as the Capacity and Self-Determination (Jersey) Law 2016.

**SCHEDULE<sup>15</sup>**

(Article 13)

**PART 1****EXECUTION OF LASTING POWER OF ATTORNEY****1 Form and execution of LPA**

- (1) An instrument conferring a lasting power of attorney must be in such form as may be prescribed, and must include –
  - (a) a statement made and signed by the person conferring authority (“P”), attesting that –
    - (i) P has read and understood such information, about the effect of the LPA, as may be prescribed, and
    - (ii) P intends the authority conferred by the LPA to include authority to make decisions on P’s behalf in circumstances where P no longer has capacity to make them;
  - (b) a statement made and signed by each person on whom authority is conferred (“A”), attesting that –
    - (i) A has read and understood such information, about the effect of the LPA, as may be prescribed, and
    - (ii) A understands that the duties imposed by the LPA must be carried out in the light of Articles 3 (principles to be applied) and 6 (best interests); and
  - (c) in relation to each of the statements mentioned in clauses (a) and (b), a statement made and signed by a person of a prescribed description (“W”) who is neither P nor A, attesting –
    - (i) that W has witnessed the execution of the instrument by P and A or by either P or A, as the case may be, and
    - (ii) where W has witnessed the execution of the instrument by P, to the matters in sub-paragraph (2).
- (2) The matters to which W must attest as mentioned in clause (1)(c) are that in W’s opinion –
  - (a) at the time of P’s execution of the instrument, P understands the purpose of the LPA and the scope of the authority it confers;
  - (b) no fraud or undue pressure is being used to induce P to confer such authority or execute the LPA; and
  - (c) there is nothing else which would prevent a valid power from being conferred in the case.
- (3) In clauses (1)(a) and (b), a reference to reading information includes receiving information by any means (such as, but without limitation, aurally or by the use of Braille) by which that information may be communicated effectively.
- (4) Despite sub-paragraph (1), a LPA shall be valid when it has not been signed by P if –

- (a) P declared in the presence of a witness of a prescribed description that, being physically incapacitated to sign the LPA himself or herself, P wished the LPA to be signed by another person on P's behalf;
- (b) the declaration by P and the date it was made are recorded on the face of the LPA;
- (c) the LPA was read aloud to P (or, in the case where P is deaf, the whole contents of the LPA were made known to P by some other means) in the presence of the person signing the LPA on behalf of P and the witness; and
- (d) after the LPA was read to P (or in the case where P is deaf, after the whole contents of the LPA were made known to him or her by some other means), it was signed by some other person on P's behalf, in the presence of the witness and the witness put his or her signature to the LPA in the presence of P and that other person.

## **2 Power of Minister to prescribe information and guidance**

Where a form is prescribed under paragraph 1, the Minister –

- (a) must prescribe the information mentioned in sub-paragraphs (1)(a) and (b) of that paragraph; and
- (b) may prescribe guidance to assist those executing an instrument creating a lasting power of attorney.

## **PART 2**

### **REGISTRATION OF LASTING POWER OF ATTORNEY**

#### **1 Application for registration**

- (1) A lasting power of attorney is not created, and no such power may be validly exercised, until the instrument purporting to create it is registered in accordance with this Part of this Schedule.
- (2) An application for registration must be made to the Judicial Greffe –
  - (a) in the prescribed form, and including the instrument and all such other information as may be prescribed;
  - (b) by P or by A; and
  - (c) accompanied by the prescribed fee.
- (3) Where the instrument confers authority on more than one person to act jointly and severally, "A" in sub-paragraph (2)(b) means any one of the persons on whom authority is so conferred.
- (4) A person who, in an application under this paragraph, makes a statement which the person knows to be false in a material particular, is guilty of an offence and liable upon conviction to imprisonment for a term of 2 years and a fine.

#### **2 Notification of application**

As soon as practicable after receiving an application under paragraph 1 of this Part, the Judicial Greffe must give notice of the application, in the prescribed form, to each of the

persons who made and signed a statement as described in paragraph 1(1)(a) and (b) of Part 1 of this Schedule.

### **3 Registration**

- (1) Subject to this paragraph and paragraphs 4 to 6 of this Part of this Schedule, the Judicial Greffe must register the lasting power of attorney no later than the end of the period prescribed for this purpose.
- (2) If it appears to the Judicial Greffe that –
  - (a) the instrument is not made in accordance with paragraph 1 of Part 1 of this Schedule; or
  - (b) the instrument contains a provision which would be ineffective or would otherwise prevent the creation or operation of a valid lasting power of attorney,the Judicial Greffe must not register a lasting power of attorney and must as soon as practicable return the form to the applicant together with a statement of reasons why no lasting power of attorney has been registered.
- (3) In a case to which sub-paragraph (2) applies, an application may be made to the Court under Article 19 or 20 for its determination of the matter, and sub-paragraph (4) shall apply where the Court determines that the instrument contains a provision which –
  - (a) would be ineffective as part of a lasting power of attorney; or
  - (b) would otherwise prevent the creation or operation of a valid lasting power of attorney.
- (4) Where this sub-paragraph applies, the Court must –
  - (a) sever the provision, and notify the Judicial Greffe that it has done so; or
  - (b) direct the Judicial Greffe not to register the instrument as creating a lasting power of attorney.
- (5) Where the Judicial Greffe is notified by the Court that a provision has been severed, the Judicial Greffe must register the instrument with a note to that effect attached to it.

### **4 Delegate already appointed**

Where it appears to the Judicial Greffe that –

- (a) there is already a delegate appointed by the Court for P; and
  - (b) the authority to be conferred on A would, if the lasting power of attorney were registered, conflict with the powers conferred on the delegate,
- the Judicial Greffe must not register the instrument unless directed to do so by the Court.

### **5 Objections to registration**

- (1) A person may give notice of an objection to registration of an instrument –
  - (a) to the Judicial Greffe;
  - (b) before the end of the prescribed period,on any of the grounds listed in sub-paragraph (2).

- (2) The grounds mentioned in sub-paragraph (1) are that –
  - (a) a declaration of bankruptcy has revoked a property and affairs LPA, under Article 17(3);
  - (b) an event listed in Article 17(5) has occurred which has revoked the lasting power of attorney;
  - (c) fraud, or undue pressure, was used to induce P to execute the instrument; or
  - (d) the instrument was not made in accordance with Part 1 of this Schedule.
- (3) If the Judicial Greffe is satisfied that the ground for making the objection is established, the instrument is not to be registered unless the Court, on the application of the person applying for registration –
  - (a) is satisfied that the ground is not established; and
  - (b) directs the Judicial Greffe to register the instrument as creating a lasting power of attorney.

## **6 Notification of registration**

Where an instrument is registered under this Schedule, the Judicial Greffe must give notice of the fact in the prescribed form to P and to A.

## **7 Evidence of registration**

A document provided by the Judicial Greffe and purporting to be a copy of an instrument registered under this Schedule is, in Jersey, evidence of –

- (a) the contents of the instrument; and
- (b) the fact that it has been registered as creating a lasting power of attorney.

## **8 Cancellation of registration**

- (1) Where registration of an instrument as creating a lasting power of attorney has taken place, the registration may be cancelled only –
  - (a) by the Judicial Greffe, in accordance with sub-paragraph (2); or
  - (b) by the Court, in accordance with sub-paragraph (3),and by no other means.
- (2) Where, after an instrument has been registered, the Judicial Greffe is satisfied that –
  - (a) P, having capacity to do so, has revoked the lasting power of attorney; or
  - (b) any of the grounds listed in paragraph 5(2) of this Part has been established,the Judicial Greffe must cancel the registration and must notify P and A of the fact of the cancellation.
- (3) The Court must direct the Judicial Greffe to cancel a registration of an instrument as creating a lasting power of attorney where the Court –
  - (a) determines under Article 19(1)(a) that one or more of the requirements for the creation of a lasting power of attorney have not been met;
  - (b) determines under Article 19(1)(b) that a lasting power of attorney has been revoked or has otherwise come to an end; or

- (c) revokes a lasting power of attorney under Article 19(3).
- (4) Sub-paragraph (5) applies where the Court determines that the instrument contains a provision which –
  - (a) would be ineffective as part of a lasting power of attorney; or
  - (b) would otherwise prevent the creation or operation of a valid lasting power of attorney.
- (5) Where this sub-paragraph applies, the Court must –
  - (a) sever the provision, and notify the Judicial Greffe that it has done so; or
  - (b) direct the Judicial Greffe to cancel the registration of the instrument as creating a lasting power of attorney.
- (6) Where the Judicial Greffe is notified by the Court that a provision has been severed, the Judicial Greffe must attach a note to the instrument to that effect.

## **9 Records of alterations to registered LPAs**

- (1) Where, in the case of a registered instrument, it appears to the Judicial Greffe that –
  - (a) a lasting power of attorney is revoked, or suspended, in whole or in part in relation to P's property and affairs (but not in relation to other matters);
  - (b) an event has occurred which has terminated A's appointment, but has not revoked a lasting power of attorney; or
  - (c) A has been replaced by a substitute under the terms of the instrument,the Judicial Greffe must attach a note to the instrument to that effect.
- (2) In any case where the Judicial Greffe attaches a note to an instrument under the provisions of this Part, the Judicial Greffe must give notice of doing so to A (and in a case where more than one person is appointed as A, to each of them).

## ENDNOTES

### Table of Legislation History

Legislation	Year and No	Commencement	Project No (where applicable)
Capacity and Self-Determination (Jersey) Law 2016	<a href="#">L.30/2016</a>	1 October 2018 – except Article 67(1)(a) and (2)  1 January 2019 – Article 67(1)(a) and (2), previously omitted in error	<a href="#">P.79/2016</a>
Signing of Instruments (Miscellaneous Provisions) (Jersey) Law 2018	<a href="#">L.21/2018</a>	8 June 2018	<a href="#">P.10/2018</a>
Capacity and Self-Determination (Amendment) (Jersey) Law 2018	<a href="#">L.15/2018</a>	1 October 2018	<a href="#">P.42/2018</a>
Covid-19 (Capacity and Self-Determination) (Jersey) Regulations 2020	<a href="#">R&amp;O.63/2020</a>	14 May 2020	<a href="#">P.58/2020</a>
Covid-19 (Amendments – Extension, Suspension and Repeal) (Jersey) Regulations 2020	<a href="#">R&amp;O.115/2020</a>	30 September 2020	<a href="#">P.103/2020</a>
Legislation (Jersey) Law 2021	<a href="#">L.8/2021</a>	28 September 2021 ( <a href="#">R&amp;O.112/2021</a> )	<a href="#">P.26/2021</a>

°Projects available at [statesassembly.gov.je](http://statesassembly.gov.je)

### Table of Endnote References

<sup>1</sup> Article 11(2)	<i>editorial change, “(1)(a)ii” deleted, “(1)(a)(ii)” inserted instead</i>
<sup>2</sup> Article 15(1)	<i>editorial change, in sub-paragraph (b)(i), “dependents” deleted, “dependants” inserted instead</i>
<sup>3</sup> Article 35(2)	<i>editorial change, in sub-paragraph (a), “dependents” deleted, “dependants” inserted instead</i>
<sup>4</sup> Article 36(2)	<i>amended by L.15/2018</i>
<sup>5</sup> Article 57(3)	<i>editorial change, “Registration” deleted, “Regulation” inserted instead</i>
<sup>6</sup> Article 60A	<i>inserted by R&amp;O.63/2020, deleted by R&amp;O.115/2020</i>
<sup>7</sup> Article 60B	<i>inserted by R&amp;O.63/2020, deleted by R&amp;O.115/2020</i>
<sup>8</sup> Article 60C	<i>inserted by R&amp;O.63/2020, deleted by R&amp;O.115/2020</i>
<sup>9</sup> Article 60D	<i>inserted by R&amp;O.63/2020, deleted by R&amp;O.115/2020</i>
<sup>10</sup> Article 60E	<i>inserted by R&amp;O.63/2020, deleted by R&amp;O.115/2020</i>
<sup>11</sup> Article 60F	<i>inserted by R&amp;O.63/2020, deleted by R&amp;O.115/2020</i>
<sup>12</sup> Article 60G	<i>inserted by R&amp;O.63/2020, deleted by R&amp;O.115/2020</i>
<sup>13</sup> Article 60H	<i>inserted by R&amp;O.63/2020, deleted by R&amp;O.115/2020</i>
<sup>14</sup> Article 70(3)	<i>deleted by L.8/2021</i>

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<sup>15</sup> *Schedule*                      *amended by L.21/2018*