



Jersey

MENTAL HEALTH (JERSEY) LAW 2016

Arrangement

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Jersey

MENTAL HEALTH (JERSEY) LAW 2016

A LAW to make provision as to the care and treatment of persons suffering mental disorder; and as to the treatment, under the criminal justice system, of offenders and other persons who may suffer mental disorder; and for connected purposes

Adopted by the States

13th September 2016

Sanctioned by Order of Her Majesty in Council

14th December 2016

Registered by the Royal Court

23rd December 2016

THE STATES, subject to the sanction of Her Most Excellent Majesty in Council, have adopted the following Law –

PART 1

INTERPRETATION, APPLICATION AND OTHER GENERAL PROVISIONS

1 Interpretation

(1) In this Law –

“admission application” means an application under Article 18;

“approved establishment” means an establishment or premises approved by the Minister under Article 5;

“approved practitioner” means a person approved by the Minister under Article 16;

“assessment authorization” has the meaning given by Article 21;

“authorized officer” means a person authorized by the Minister under Article 6;

“Capacity Law” means the Capacity and Self-Determination (Jersey) Law 2016¹;

“child” means a person under the age of 18 years;

“code of practice” means a code of practice issued under Article 90;

“Court”, except in Parts 8 and 9, means the Royal Court;

“function” includes, unless the context does not so permit, both a power and a duty;

“learning disability” means a state of arrested or incomplete development of the mind which includes significant impairment of intelligence and social functioning;

“mental disorder” means, subject to paragraphs (2) and (3), any disorder or disability of the mind;

“MHA” means an independent mental health advocate appointed under Article 79;

“Minister” means the Minister for Health and Social Services;

“nearest relative” –

(a) in relation to certain patients aged under 18, has the meaning given by Article 9;

(b) in relation to all other patients, has the meaning given by Article 8;

“nearest person”, in relation to a patient, means the person determined, nominated or appointed as such under Part 2;

“patient”, unless otherwise specifically provided, means a person suffering or appearing to be suffering mental disorder, whether or not that person is undergoing treatment at the time of the application of a particular provision of this Law;

“prescribed” means prescribed by an Order made by the Minister under Article 95;

“registered medical practitioner” means a person registered as a medical practitioner under the Medical Practitioners (Registration) (Jersey) Law 1960²;

“responsible medical officer” means a registered medical practitioner with specialist training in psychiatry who is –

(a) in relation to a patient liable to be detained under Part 3, the registered medical practitioner with overall responsibility for the treatment of that patient;

(b) in relation to a patient subject to guardianship under Part 4, any registered medical practitioner authorized by the Minister to act, either generally or in any particular case, as the responsible medical officer;

“SOAD” has the meaning given by Article 38(3);

“treatment”, unless otherwise specifically provided, means any treatment for mental disorder, and includes (but without limitation) –

(a) psychiatric or physical treatment or nursing;

(b) medication;

(c) cognitive, behavioural or other therapy;

(d) counselling or other psychological intervention;

(e) training or other rehabilitation;

whether or not provided on a regular basis, or by or in an approved establishment;

“treatment authorization” has the meaning given by Article 22(2);

“Tribunal” means the Mental Health Review Tribunal constituted under Part 7.

- (2) A person with learning disability shall not be considered by reason of that disability to be suffering from mental disorder for the purposes of Part 3, unless the learning disability is associated with abnormally aggressive or seriously irresponsible conduct on the part of that person.
- (3) Dependence on alcohol or drugs is not to be considered mental disorder or any other disability of the mind for the purposes of this Law.
- (4) In this Law, except in Part 8, a reference to a person’s capacity or lack of capacity is, unless otherwise indicated, to be interpreted in accordance with the Capacity Law.
- (5) The States may by Regulations amend this Article.

2 Minister’s primary duty

- (1) The Minister’s primary duty under this Law is to make provision in Jersey for the care and treatment of persons suffering mental disorder.
- (2) In carrying out the duty imposed by paragraph (1), the Minister must in particular –
 - (a) appoint an administrator in accordance with Article 4;
 - (b) approve establishments or premises in accordance with Article 5;
 - (c) appoint, approve or, as the case may be, authorize all such medical and other officers and persons as may from time to time be necessary for the purpose of giving effect to this Law, and in particular such officers and persons as are required to be appointed, approved or authorized under Articles 6, 16 and 38;
 - (d) keep, and publish, a register of such appointments, approvals and authorizations, in whatever manner the Minister considers appropriate; and
 - (e) issue a code of practice in accordance with Article 90.

3 Ancillary functions of the Minister

- (1) The Minister may do anything which appears to the Minister to be necessary, conducive or expedient to the proper discharge of the duty imposed by Article 2.
- (2) In particular, and without derogation to the generality of paragraph (1), the Minister may –
 - (a) upon appointing or authorizing any person, impose such terms and conditions as the Minister may think fit;

- (b) provide, or secure the provision of, establishments and facilities for care and treatment, and management and general supervision of such establishments and facilities;
- (c) arrange, or make arrangements for –
 - (i) the admission and reception of persons into such establishments,
 - (ii) the treatment, care and detention of patients in such establishments, and
 - (iii) the treatment and care of patients who are not admitted to nor liable to be detained in approved establishments;
- (d) provide, or secure the provision of, centres or other facilities for training, occupation and employment of patients, and the equipment and maintenance of such centres or facilities;
- (e) provide, or secure the provision of, ancillary or supplementary services designed for –
 - (i) the promotion of better mental health,
 - (ii) the prevention of mental disorder,
 - (iii) promoting better care and treatment of patients, and
 - (iv) the welfare of patients.

4 Appointment of administrator

- (1) The Minister must appoint a person to be the administrator in relation to such matters under this Law, and under Part 5 of the Capacity Law, as the Minister may (by code of practice or otherwise) direct.
- (2) The administrator must publish an annual report containing such information as the Minister may direct, including (but not limited to) details as to approved establishments and practitioners, and as to applications to the Mental Health Review Tribunal.

5 Approved establishments

- (1) The Minister must approve establishments or premises for the purpose of the care and treatment of patients, upon such terms and conditions as (subject to paragraph (2)) the Minister may think fit.
- (2) The Minister may not exercise the function conferred by paragraph (1) unless the Minister is satisfied that, having regard to the best available treatment, the standard of treatment provided by the establishment or premises in question is appropriate and adequate.

6 Authorized officers

- (1) The Minister may authorize as officers for the purposes of this Law (including, where appropriate, for the purpose of carrying out functions conferred on the Minister under this Law) such persons –
 - (a) as are registered pursuant to the Health Care (Registration) (Jersey) Law 1995³; and

- (b) have such training and experience in the field of mental health and in the application of mental health legislation and practice as may be prescribed,
- upon such terms and conditions as the Minister may think fit.
- (2) An authorized officer must perform his or her functions under this Law –
 - (a) with fairness and impartiality; and
 - (b) in the best interests of any patient with whose care or treatment he or she is involved.
- (3) The Minister may revoke an authorization under this Article, and may vary any terms and conditions upon which such an authorization is granted.

PART 2

THE 'NEAREST PERSON'

7 Nearest person in relation to a patient

- (1) In relation to every patient there shall be a natural person who fulfils the role of the patient's nearest person for the purposes of this Law.
- (2) A patient's nearest relative (as determined in accordance with Article 8 or 9) shall be that patient's nearest person, unless a nomination is made under Article 10 or an appointment is made under Article 11.
- (3) The nearest person shall have all such functions as are conferred by this Law and in particular the right to act on behalf of the patient as further provided by Article 13.
- (4) The role of a nearest person as defined by this Article is additional to, and does not derogate from, the role of an independent mental health advocate under Article 79.

8 Definition of 'nearest relative'

- (1) This Article applies to determine the nearest relative of –
 - (a) a patient aged 18 or over;
 - (b) a patient under 18 years of age to whom Article 8 does not apply.
- (2) Where the patient (when not admitted for treatment) ordinarily resides with or is cared for by a relative, that relative is the patient's nearest relative.
- (3) A relative for the purposes of this Part is a person who, at the time the question falls to be determined (the "relevant time"), is the patient's –
 - (a) spouse or civil partner;
 - (b) son or daughter;
 - (c) father or mother;

- (d) brother or sister;
 - (e) grandparent;
 - (f) grandchild;
 - (g) uncle or aunt; or
 - (h) nephew or niece.
- (4) In any case where paragraph (2) does not apply, the patient's nearest relative is the living person who at the relevant time is first (according to the rules given by paragraphs (5) and (6)) in the list in paragraph (3).
- (5) In determining priority of relationships for the purposes of paragraph (3) –
- (a) in respect of sub-paragraphs (1)(b) to (h) –
 - (i) a relative of the whole blood shall be preferred to a relative of the same description of the half-blood, but otherwise a relative of the half-blood shall be treated as a relative of the whole blood, and
 - (ii) the elder or eldest of 2 or more relatives in any of those sub-paragraphs shall be preferred to any other of those relatives, regardless of sex;
 - (b) an adopted person shall be treated as the child of the person or persons by whom he or she was adopted;
 - (c) a child of persons who are not married to, or in a civil partnership with, each other shall be treated –
 - (i) as the child of his or her mother, or
 - (ii) where the child's father has parental responsibility for the child, as the child of his or her father.
- (6) A person who would, apart from this paragraph, be the patient's nearest relative but who, at the relevant time –
- (a) in the case of a patient ordinarily resident in Jersey, is not so resident;
 - (b) being the patient's spouse or civil partner –
 - (i) is permanently separated from the patient, either by agreement or under an order of court, or
 - (ii) has deserted, or been deserted by, the patient for a period which has not come to an end; or
 - (c) not being the spouse, civil partner, father or mother of the patient, is under 20 years of age,
- shall be disregarded for the purposes of paragraph (3).

9 'Nearest relative' of certain patients aged under 18

- (1) This Article applies to determine the person deemed to be the nearest relative of a patient who is –
- (a) under 18 years of age; and
 - (b) within one of the cases described in paragraphs (2) to (4).

- (2) In a case where the rights and powers of a parent of the patient are vested in the Minister or in any other person by order of a court, that person is the patient's nearest relative, in preference to any other person except a spouse or civil partner of the patient.
- (3) In a case where –
- (a) the patient is a minor under *tutelle*; and
 - (b) his or her guardian is a person other than –
 - (i) the patient's nearest relative as determined by Article 8, or
 - (ii) a nearest person appointed under Article 11,
- the guardian shall be the patient's nearest relative, in preference to any other person.
- (4) In a case where the patient is in the custody of any person –
- (a) by virtue of an order made by a court –
 - (i) in the exercise of its jurisdiction whether customary or conferred by enactment,
 - (ii) in matrimonial proceedings or proceedings for the annulment or dissolution of a civil partnership; or
 - (b) by virtue of a separation agreement made between the patient's father and mother,
- the person having custody shall be the patient's nearest relative, in preference to any other person.

10 Nomination of nearest person

- (1) A patient who is aged 18 or over may nominate a person as his or her nearest person, in the prescribed form or in writing substantially to the same effect and sent to –
- (a) the person nominated; and
 - (b) the Minister.
- (2) The Minister may nominate a person as the patient's nearest person by giving notice in writing to that person, where –
- (a) a patient –
 - (i) is under 18 years of age, or
 - (ii) lacks the necessary capacity to make such an appointment; and
 - (b) the patient's nearest relative –
 - (i) cannot be identified, or
 - (ii) has confirmed in writing to the Minister that he or she is unable or unwilling to act as the patient's nearest person.
- (3) A nomination under paragraph (1) or (2) –
- (a) shall not take effect unless the person nominated ("R") has given his or her consent, in the prescribed form or in writing substantially

- to the same effect, to acting as the patient's nominated nearest person; and
- (b) may be revoked or varied by further written notice given by the patient or, as the case may be, by the Minister.
- (4) A patient may nominate more than one person under paragraph (1), but in doing so must indicate by that nomination the priority in which the appointees are to act.
- (5) R must cease to act as the patient's nearest person in any respect under this Law, upon the occurrence of any of the following events –
- (a) the revocation by the patient of R's nomination;
 - (b) the revocation by the Minister of R's appointment;
 - (c) the death of either the patient or R;
 - (d) the withdrawal by R, by notice in writing, of R's consent;
 - (e) an order of the court under Article 11 appointing a person other than R as the patient's nearest person.

11 Appointment of nearest person by the Court

- (1) On an application made to the Court –
- (a) by one of the persons listed in paragraph (2) (the “applicant”); and
 - (b) stating one of the grounds listed in paragraph (4),
- the Court may by order appoint the applicant to be the patient's nearest person, if the applicant consents to do so and in the opinion of the Court the applicant is a proper person to carry out the functions of a nearest person.
- (2) The applicant may be –
- (a) the patient;
 - (b) an authorized officer;
 - (c) any relative of the patient;
 - (d) any other person with whom the patient ordinarily resides (when not admitted for treatment).
- (3) In the case of an application made by an authorized officer, paragraph (1) shall apply as if for the word “applicant”, in each place except sub-paragraph (a), there were substituted the word “Minister”.
- (4) An application for an order may be made –
- (a) where no nearest person has been nominated under Article 10, on any of the following grounds –
 - (i) that the patient has no nearest relative or that it is not reasonably practicable to determine whether or not the patient has a nearest relative, or the identity of such a relative,
 - (ii) that the patient's nearest relative is incapable of acting as such by reason of mental disorder or other illness, or

- (iii) that the patient's nearest relative is otherwise not a suitable person to act as such, by reason of matters which shall be stated in the application;
- (b) where a nearest person has been nominated under Article 10, on either of the following grounds –
 - (i) that the nominated nearest person is incapable of acting as such by reason of mental disorder or other illness, or
 - (ii) that the nominated nearest person is otherwise not a suitable person to act as such, by reason of matters which shall be stated in the application.

12 Discharge, variation and cessation of orders under Article 11

- (1) An order under Article 11 may be discharged by the Court on an application made –
 - (a) in any case, by –
 - (i) the patient, or
 - (ii) the patient's nearest person appointed by the order; or
 - (b) where –
 - (i) the order was made on a ground specified in paragraph (4)(a)(i) or (ii) of that Article, or
 - (ii) a person who was the patient's nearest relative when the order was made has ceased to be the patient's nearest relative,
by a person who claims to be the patient's nearest relative, under Article 8 or 9.
- (2) An order under Article 11 may be varied by the Court on the application of –
 - (a) the patient's nearest person appointed by the order; or
 - (b) a duly authorized officer,
by substituting for that nearest person the Minister or any other person who, in the opinion of the Court, is a proper person and is capable of, and consents to, carrying out the functions of the patient's nearest person.
- (3) If the nearest person appointed by an order under Article 11 dies, the provisions of this Article shall apply as if for any reference to that person there were substituted a reference to any relative of the patient, and until the order is discharged or varied under this Article, no person shall exercise the functions of the patient's nearest person.
- (4) An order under Article 11 shall cease to have effect in accordance with either paragraph (5) or paragraph (6), unless it is first discharged under paragraph (1).
- (5) If –
 - (a) on the date of the order, the patient was liable to be detained or was subject to guardianship under Part 4; or

- (b) within the period of 3 months beginning with the date of the order, the patient became liable to be detained or subject to guardianship, the order shall cease to have effect when the patient ceases to be so liable or so subject, other than by being transferred under Article 26.
- (6) If, on the date of the order, the patient was not liable to be detained or subject to guardianship under Part 4 and has not become so liable or so subject within the period of 3 months beginning with the date of the order, the order shall cease at the expiration of that period.
- (7) Discharge, variation or cessation of an order under this Article shall not affect the validity of anything done under the order prior to such discharge or variation.

13 Rights of nearest person to receive information as to patient's care or treatment

- (1) Unless one of the conditions in paragraph (3) is satisfied –
 - (a) the responsible medical officer must provide the nearest person with details (in writing, where reasonably practicable) of any care or treatment proposed in respect of the patient;
 - (b) the nearest person is entitled to make representations to the responsible medical officer about such proposals; and
 - (c) the responsible medical officer must, in prescribing or administering care or treatment to the patient, have regard to any representations made under sub-paragraph (b).
- (2) In particular and without derogation from the general requirement in paragraph (1)(a), the responsible medical officer must inform the nearest person –
 - (a) where a treatment authorization is renewed under Article 22, of the reasons for renewal mentioned in Article 22(4)(a);
 - (b) of any leave of absence granted under Article 24, and of any conditions (including treatment conditions) attaching to such leave of absence;
 - (c) where a plan of treatment is formulated for the purposes of Part 6, of the contents of the plan and of any significant changes which may be made to the plan from time to time;
 - (d) of any proposed treatment for which a certificate would be required from a SOAD under Article 40 or 41; and
 - (e) of such other details of a kind which may be specified in a code of practice.
- (3) The conditions mentioned in paragraph (1) are that –
 - (a) where the patient has capacity to do so, the patient has refused to give consent to the disclosure to the nearest person of the details of proposed care or treatment (whether generally or in a particular instance);

- (b) where the patient lacks capacity to give or refuse consent, the responsible medical officer considers that it is not in the patient's best interests to disclose such details; or
 - (c) in any other case, the responsible medical officer considers that disclosure of such details would be likely to cause serious harm to the patient or to any other person.
- (4) Where one of the conditions in paragraph (3) is satisfied, the responsible medical officer shall inform the nearest person (in writing, where reasonably practicable) that details under paragraph (1) are not provided for that reason, identifying the particular condition which is satisfied in the case.
 - (5) A nearest person is entitled to be informed of any proposed transfer of a patient under Article 26, and of the date of such transfer.
 - (6) This Article applies in addition to, and not in derogation from, any rights otherwise conferred on a nearest person by this Law or any other enactment.

PART 3

APPROVED ESTABLISHMENTS: ADMISSIONS FOR ASSESSMENT, TREATMENT, ETC.

14 Voluntary admissions

- (1) If a patient requires or wishes to receive treatment, nothing in this Law shall prevent the patient –
 - (a) from being admitted to any approved establishment for treatment in pursuance of arrangements made for that purpose, without an admission application being made under Article 18; or
 - (b) from remaining in the establishment, with the consent of the responsible medical officer, after ceasing to be liable to be detained.
- (2) Where a patient aged 16 years or over, who has capacity to do so, consents to the making of arrangements such as are mentioned in paragraph (1), those arrangements may be made, carried out and determined on the basis of that consent, even though there are one or more persons having parental responsibility for that patient.
- (3) Where a patient aged 16 years or over, who has capacity to give consent, does not consent to the making of arrangements such as are mentioned in paragraph (1), those arrangements may not be made, carried out or determined on the basis of consent given by a person who has parental responsibility for that patient.

15 Emergency admissions

- (1) This Article applies in a case where a patient –

- (a) is brought to, or presents himself or herself at, an approved establishment; or
 - (b) has been admitted to an approved establishment under arrangements such as are mentioned in Article 14(1)(a), but no longer consents to remain.
- (2) Where this Article applies and, in the opinion of an approved practitioner, there is an urgent necessity for the patient to be admitted for assessment on the grounds that –
- (a) it is likely that the patient is suffering from mental disorder; and
 - (b) allowing the patient to remain at liberty would endanger either the patient's safety or that of other persons,
- the approved practitioner may authorize immediate admission of the patient, and the patient may be detained for a period not exceeding the time limits in paragraph (4).
- (3) For the purposes of paragraph (2), there is no urgent necessity where an application for assessment or treatment authorization under Article 21 or 22 could be made without undue delay.
- (4) Authorization of detention under this Article shall expire –
- (a) at the end of the period of 72 hours beginning with the time when the opinion mentioned in paragraph (2) is formed;
 - (b) when, in the opinion of an approved practitioner, the grounds in paragraph (2) no longer apply in respect of the patient; or
 - (c) when the patient is admitted for assessment or treatment under Article 21 or 22,
- whichever is the first to occur.
- (5) Authorization under paragraph (2) and the approved practitioner's opinion under paragraph (4)(b) shall be recorded in writing, and a copy of the authorization shall be sent to the Minister, as soon as practicable.

16 Approved practitioners

- (1) A registered medical practitioner may be approved by the Minister under this Article where the Minister is satisfied, on the production of such evidence as may be prescribed, that the practitioner has sufficient experience and training in the field of mental health and in the operation of legislation relating to mental health.
- (2) Approval of a person under this Article may be granted upon such terms and conditions as the Minister thinks fit, and the approval may be revoked and any terms or conditions upon which it is granted may be varied by the Minister.

17 Detention by nurse

- (1) This Article applies where –

-
- (a) a patient (other than a patient already liable to be detained under this Part) is receiving treatment for mental disorder as an in-patient in an approved establishment; and
 - (b) it appears to a registered nurse that –
 - (i) the patient is suffering from a mental disorder,
 - (ii) to allow the patient to be at liberty would endanger the patient’s safety or the safety of other persons, and
 - (iii) it is not practicable to secure the immediate attendance of an approved practitioner.
- (2) Where this Article applies –
- (a) the nurse must make a record in writing of the matters in paragraph (1)(b); and
 - (b) subject to paragraph (3), the patient may be detained in the approved establishment for a period of no longer than 6 hours beginning at the time the record is made.
- (3) If an approved practitioner attends the patient during the final hour of the period mentioned in paragraph (2)(b), the patient may be detained for a further period of no longer than one hour beginning at the time of that attendance.
- (4) A nurse who makes a record under paragraph (2) must deliver that record as soon as possible after making it to the managers of the approved establishment.
- (5) For the purposes of this Article, “registered nurse” means a person registered as a nurse under the Health Care (Registration) (Jersey) Law 1995⁴.

18 Applications for admission of patient: general requirements

- (1) An application for the admission of a patient on the grounds set out in Article 21 or 22 must be made in writing to the Minister and in accordance with this Article and Article 19.
- (2) An application under this Article (an “admission application”) must –
 - (a) be made by an authorized officer –
 - (i) who has personally seen the patient within the period of 7 days ending with the date of the application, and
 - (ii) following consultation with the patient’s nearest person, unless such consultation is not reasonably practicable or would involve unreasonable delay;
 - (b) contain a statement that, in the opinion of each of the practitioners making recommendations as required by paragraph (3), the grounds for admission stated in Article 21(1) or 22(1) (as the case may be) are met; and
 - (c) be sent by the authorized officer to the Minister as soon as practicable after the application has been completed in accordance with this Article and Article 19.

- (3) All such applications must include, or be accompanied by, recommendations of 2 registered medical practitioners (the “medical recommendations”, as to which further provision is made by Article 19), one of whom must be an approved practitioner.
- (4) Subject to paragraph (5), the medical recommendations may be given either –
 - (a) as separate documents, each signed by the practitioner by which it is made; or
 - (b) as a joint document signed by both practitioners.
- (5) Where a form of application is prescribed, an application must be made using that form.
- (6) For the avoidance of doubt, an admission application may be made in respect of the further detention of a patient already admitted to an approved establishment –
 - (a) on a voluntary basis, under Article 14; or
 - (b) on an emergency basis, under Article 15.

19 Medical recommendations: further requirements

- (1) Medical recommendations must –
 - (a) be given by practitioners who have personally examined the patient either jointly or, if separately, at an interval of not more than 5 days; and
 - (b) be signed, by those giving them, on or before the date of the application to which they relate.
- (2) An approved practitioner giving medical recommendations should, where practicable, have previous acquaintance with the patient in relation to whom the recommendations are made (but where both practitioners giving the recommendations are approved practitioners, this requirement shall apply only to one of them).
- (3) Subject to paragraph (4), medical recommendations may not be given by –
 - (a) the authorized officer making the application under Article 18;
 - (b) a partner of, or person employed by, the applicant or a practitioner by whom medical recommendations are given for the purposes of the same application;
 - (c) a person who receives or has an interest in the receipt of any payments made for maintenance of the patient;
 - (d) a relative of the patient or of any person mentioned in subparagraphs (a) to (c) (and relationship for this purpose includes relationship of the half-blood).

20 Effect of admission application

- (1) An admission application which is made in accordance with Articles 18 and 19 shall be sufficient authority, at any time within the period of 72 hours beginning with the time at which the application is made –
 - (a) for the applicant, or any person authorized by the applicant, to take the patient and convey him or her to an approved establishment; and
 - (b) provided that the requirements of paragraph (2) are fulfilled, for the managers of the approved establishment (“M” in this Part) to admit the patient and detain him or her in the approved establishment for a period of no longer than one week beginning with the date of admission (the “initial period”).
- (2) A copy of the admission application must be provided to M at the time when the patient is admitted under paragraph (1)(b), and if M is satisfied that –
 - (a) the admission application appears to have been duly made in accordance with Articles 18 and 19; and
 - (b) the admission is within the period of 72 hours mentioned in paragraph (1),

M must, as soon as reasonably practicable and in any event no later than 24 hours before the end of the initial period, give notice in writing to the Minister that the patient to whom the admission application relates has been admitted to the approved establishment.
- (3) An admission application may be acted upon under paragraphs (1) and (2) without further proof of the signature or qualification of the applicant or of any person making medical recommendations, or of any matter of fact or opinion stated in the application.
- (4) Following receipt of notice under paragraph (2) and within the initial period, the Minister must –
 - (a) confirm in writing to M that the admission application has been duly made; and
 - (b) authorize the admission and further detention of the patient –
 - (i) for assessment under Article 21, or
 - (ii) for treatment under Article 22,as the case may be.
- (5) Admission and detention under this Article is subject to the rights conferred on a patient by Article 50(1).
- (6) For the avoidance of doubt –
 - (a) if M is not satisfied as provided by paragraph (2); or
 - (b) the Minister’s authorization under paragraph (4) is not received by M within the initial period,

M must release the patient from detention.

21 Assessment authorization

- (1) An application for admission of a patient for assessment may be made on the grounds that –
 - (a) the patient appears to be suffering from mental disorder of a nature or degree which warrants the detention of the patient in an approved establishment, with or without treatment, for at least a limited period; and
 - (b) it is necessary –
 - (i) in the interests of the patient’s health or safety, or
 - (ii) for the protection of other persons, that the patient should be so detained.
- (2) Where the Minister gives an authorization under Article 20(4)(b)(i) (an “assessment authorization”) –
 - (a) subject to paragraph (4), the patient may be detained in the approved establishment for a specified period of no longer than 28 days beginning with the date on which the patient is admitted; and
 - (b) during such detention the patient may be provided with any appropriate and lawful treatment.
- (3) An assessment authorization may not be renewed.
- (4) Where the admission application relates to a patient who was first admitted under Article 14 or 15, the period mentioned in subparagraph (2)(a) shall begin with the day on which the admission application is received by M.
- (5) Paragraph (2) is subject to the rights conferred on a patient by Article 50(1).

22 Treatment authorization

- (1) An application for admission of a patient for treatment may be made on the grounds that –
 - (a) the patient appears to be suffering from mental disorder of a nature or degree which warrants the detention of the patient in an approved establishment for treatment; and
 - (b) it is necessary –
 - (i) in the interests of the patient’s health or safety, or
 - (ii) for the protection of other persons, that the patient should be so detained.
- (2) Where the Minister gives an authorization under Article 20(4)(b)(ii) (a “treatment authorization”) –
 - (a) the patient may be detained in the approved establishment for a period of no longer than 6 months beginning with the date on which the patient is admitted; and

- (b) during such detention the patient may be provided with any appropriate and lawful treatment.
- (3) A treatment authorization may be renewed for one additional period of 6 months, and thereafter for further periods of 12 months, in accordance with paragraph (4).
- (4) Within the period of 2 months immediately preceding the day on which the patient's liability to detention ceases, the responsible medical officer must examine the patient and make a report to the Minister recommending –
 - (a) the renewal of the treatment authorization, if it appears to the responsible medical officer that it is necessary –
 - (i) in the interests of the patient's health or safety, or
 - (ii) for the protection of other persons,that the patient should continue to be liable to be detained; or
 - (b) that the treatment authorization should not be renewed.
- (5) Where a report under paragraph (4) is provided in respect of a patient, the Minister must –
 - (a) inform the patient and the patient's nearest person of the recommendations and the action proposed to be taken; and
 - (b) where the report contains a recommendation under paragraph (4)(a), renew the treatment authorization for the appropriate period as provided by paragraph (3).
- (6) Where the report contains a recommendation under paragraph (4)(b), the responsible medical officer must discharge the patient.
- (7) Where the admission application relates to a patient who was first admitted under Article 14 or 15, the period mentioned in subparagraph (2)(a) shall begin with the day on which the admission application is received by M.
- (8) Where a treatment authorization is renewed under paragraph (3), any additional or further period of detention for which the renewal is granted (the "new period") shall begin immediately following the expiration of the previous period of detention, and paragraphs (4) and (5) shall apply in respect of the new period.
- (9) Paragraphs (2), (3) and (4)(a) are subject to the rights conferred on a patient by Article 50(1).

23 Rectification of applications and medical recommendations

- (1) Paragraph (2) applies in a case where it appears to the Minister or to the managers of an approved establishment that the admission application or any related medical recommendation is incorrect or defective.
- (2) Where this paragraph applies –

- (a) the error or defect in question may, with the consent of the Minister, be rectified by the applicant or (as the case may be) the person who signed the recommendation; and
 - (b) the application or recommendation shall have effect (and be deemed to have had effect) as though duly completed without the error or defect.
- (3) Without prejudice to paragraph (1), if within the initial period mentioned in Article 20(1) it appears to the managers of an approved establishment that a medical recommendation related to any application is insufficient to warrant the detention of the patient, the managers may within the same period give notice in writing of the insufficiency to the applicant and of the fact that the recommendation shall be disregarded.
- (4) Where notice is given under paragraph (3), the application to which the recommendation relates shall nevertheless be (and be deemed always to have been) sufficient if –
- (a) a fresh recommendation which complies with Article 19(1) to (3) and is not defective in any respect is provided to the managers; and
 - (b) that recommendation, taken together with any other recommendation relating to the same application, is sufficient to warrant the detention of the patient.

24 Leave of absence from approved establishment

- (1) The responsible medical officer may in accordance with this Article grant, to any patient who is liable to be detained in an approved establishment under this Part, leave to be absent from that establishment.
- (2) The grant of leave under paragraph (1) may be made unconditionally, or subject to conditions –
- (a) of a kind which may be prescribed; and
 - (b) in any particular case, such as the responsible medical officer may consider necessary –
 - (i) in the interests of the patient's health or safety, or
 - (ii) for the protection of other persons.
- (3) Leave of absence may be granted –
- (a) on specified occasions;
 - (b) for any specified period; or
 - (c) (subject to Article 25) indefinitely.
- (4) Where leave of absence is granted –
- (a) for a specified period exceeding 7 days; or
 - (b) for an indefinite period,
- the responsible medical officer must give notice in writing to the Minister of the grant of leave, the period for which, and the conditions (if any) upon which leave is granted.

- (5) Subject to paragraphs (7) and (8), where leave of absence is granted for any specified period, that period may be extended by further leave granted in the absence of the patient.
- (6) Where it appears to the responsible medical officer that it is necessary to do so –
- (a) in the interests of the patient's health or safety; or
 - (b) for the protection of other persons,
- that officer may, on granting leave of absence, direct that the patient shall remain in custody during the absence; and in such a case the patient may be kept in the custody of any member of staff of the approved establishment or of any other person authorized for that purpose by the responsible medical officer.
- (7) Where a patient is absent on leave granted under this Article, and it appears to the responsible medical officer that it is necessary to do so –
- (a) in the interests of the patient's health or safety; or
 - (b) for the protection of other persons,
- that officer may (subject to paragraph (9) and to the rights conferred on a patient by Article 50(1)), by notice in writing to the patient or to the person having custody of the patient under paragraph (6), revoke the leave of absence and recall the patient to the approved establishment.
- (8) The responsible medical officer may from time to time vary or suspend, by notice in writing to the patient or to the person having custody of the patient under paragraph (6), the period for which and any conditions (other than conditions prescribed under paragraph (2)(a)) upon which leave of absence is granted.
- (9) A patient to whom leave of absence is granted for an indefinite period shall not be recalled under paragraph (7) after the patient has ceased to be liable to be detained under this Part.
- (10) For the avoidance of doubt and without derogation from the generality of the power conferred by paragraph (2)(a), conditions to be prescribed under that sub-paragraph may include conditions as to the examination of a patient or the review of a patient's treatment, at such times or intervals as may be prescribed, by the responsible medical officer (or, where the patient's treatment is of a kind requiring consent under Part 6, by the responsible medical officer and a SOAD).

25 Return of patients absent without leave

- (1) This Article applies where a patient who is for the time being liable to be detained in an approved establishment –
- (a) absents himself or herself from the establishment without leave granted under Article 24; or
 - (b) fails to return to the establishment –
 - (i) on any occasion, or at the expiration of any period, for which leave was granted to the patient under that Article, or

- (ii) upon being recalled under paragraph (7) of that Article.
- (2) Where this Article applies the patient may be taken into custody and returned to the establishment by –
 - (a) the managers of that establishment or any member of staff of the establishment authorized for that purpose by the managers; or
 - (b) a police officer.
- (3) Detention of the patient in custody or following return to an approved establishment under paragraph (2) is subject to the rights conferred on a patient under Article 50(1).
- (4) A patient shall not be taken into custody under this Article after the expiration of the period of 6 months beginning with the first day of the patient's absence without leave, and a patient who has not returned to the establishment nor been taken into custody within that period shall, at the expiration of that period, cease to be liable to be detained.

26 Transfer of patients

- (1) The Minister may arrange for the transfer of a patient liable to be detained under this Part from one approved establishment to another.
- (2) Where a patient is transferred pursuant to arrangements made under paragraph (1), this Part shall apply to the patient as if –
 - (a) the admission application by virtue of which the patient was liable to be detained were an application for admission to the approved establishment to which the patient is transferred; and
 - (b) the patient had been admitted to that establishment at the time when the patient was originally admitted under the admission application.

27 Discharge of patients

- (1) A responsible medical officer may, in accordance with this Article and having regard to the care and supervision which would be available to the patient if discharged, direct the discharge of a patient from the approved establishment in which the patient is liable to be detained.
- (2) The responsible medical officer must direct the discharge of the patient unless –
 - (a) the exception in paragraph (6) applies; or
 - (b) having regard to the care or supervision which would be available to the patient if discharged, the responsible medical officer is satisfied that –
 - (i) the patient is suffering from a mental disorder of a nature or degree which warrants continued detention and treatment, and
 - (ii) it is necessary for the patient to be detained in the interests of the patient's health or safety, or for the protection of other persons.

-
- (3) Where a direction for discharge is duly made under this Article, any assessment authorization or treatment authorization relating to the patient in question shall cease to have effect.
 - (4) Notice in writing of the discharge must be given by the responsible medical officer to –
 - (a) the patient;
 - (b) the patient's nearest person;
 - (c) the Minister; and
 - (d) the managers of the approved establishment,and where a form is prescribed for the purpose, must be given in that form.
 - (5) A patient's nearest person may give notice in writing to the responsible medical officer requesting the exercise of the power to discharge the patient, and where such notice is given –
 - (a) the responsible medical officer shall consider the request, unless another such request from the same nearest person has been received by that officer within the period of 30 days ending on the date of receipt of the notice; and
 - (b) if the responsible medical officer decides not to discharge the patient, reasons for that decision must be given in writing to the nearest person.
 - (6) A direction for discharge of a patient detained pursuant to the provisions of Part 9 may be made under this Article, except that no such direction shall be made for discharge of a defendant in respect of whom a treatment order under Article 65 is made subject to special restrictions under Article 68.

28 Special provisions: patient absent without leave

- (1) Paragraph (2) applies where a patient is absent without leave –
 - (a) on the day on which (apart from this Article) the patient would cease to be liable to be detained under this Part or to be subject to guardianship under Part 4; or
 - (b) within the period of one week ending on that day.
- (2) Where this paragraph applies, the patient shall continue to be liable to be detained, or (as the case may be) subject to guardianship under Part 4, until the expiration of the period of one week beginning with the day on which the patient is returned under Article 25 or 31, or returns to the approved establishment or to the place where (under the terms of his or her guardianship) the patient ought to be.
- (3) Where the period for which a patient is liable to be detained or is subject to guardianship is extended by the application of paragraph (2), any examination or report under Article 22(4) or 33(4) may be made within that period as so extended.
- (4) Paragraph (5) applies where –

- (a) later than the end of the period of 28 days beginning with the first day on which a patient is absent without leave; but
 - (b) before the end of the period of 6 months beginning with that day, the patient is returned under Article 25 or 31, or returns to the approved establishment or to the place where (under the terms of his or her guardianship) the patient ought to be.
- (5) Where this paragraph applies, an approved practitioner must, within the period of one week beginning with the day of the patient's return –
- (a) examine the patient and, if the patient is a patient liable to be detained, consult such other persons concerned with the patient's care or treatment as may be appropriate; and
 - (b) if it appears to the responsible medical officer that the conditions in paragraph (6) are fulfilled, make a report in writing to that effect to M and to the Minister.
- (6) The conditions mentioned in paragraph (5)(b) are that –
- (a) the patient appears to be suffering from mental disorder of a nature or degree which warrants –
 - (i) the detention of the patient in an approved establishment for treatment, or
 - (ii) the reception of the patient into guardianship; and
 - (b) it is necessary –
 - (i) in the interests of the patient's health or safety, or
 - (ii) for the protection of other persons,that the patient should be so detained or received.
- (7) Where the patient would (apart from paragraphs (1) to (3)) have ceased to be liable to be detained or subject to guardianship on, before, or within the period of 2 months beginning with, the day on which the report is provided under paragraph (5)(b) –
- (a) the report shall renew any existing authorization under Article 21, 22 or 30, as the case may be; and
 - (b) that renewal shall take effect from the day on which the existing authorization would (but for this paragraph) have expired,
- for a period of no longer than 6 months beginning with that day (and in the case of an authorization under Article 22, the provisions of Article 22(3) to (9) shall apply afresh as though the report were a treatment authorization under that Article).

PART 4

GUARDIANSHIP

29 Application for guardianship

- (1) An application for the reception of a patient into guardianship (a “guardianship application”) must be made in writing to the Minister and in accordance with this Article.
- (2) All such applications must –
 - (a) be made by an authorized officer –
 - (i) who has personally seen the patient within the period of 7 days ending with the date of the application, and
 - (ii) following consultation with the patient’s nearest person, unless such consultation is not reasonably practicable or would involve unreasonable delay;
 - and
 - (b) contain a statement that, in the opinion of each of the persons required by paragraph (4), the grounds stated in paragraph (3) are met.
- (3) The grounds mentioned in paragraph (2)(b) are that –
 - (a) the patient appears to be suffering from mental disorder of a nature or degree which warrants the reception of the patient into guardianship; and
 - (b) it is necessary for the patient to be received into guardianship –
 - (i) in the interests of the patient’s welfare, or
 - (ii) for the protection of other persons.
- (4) All such applications must include, or be accompanied by, recommendations of 2 registered medical practitioners (the “medical recommendations”, as to which Article 19 shall apply as if the application were an application under Part 3), one of whom must be an approved practitioner.
- (5) The medical recommendations may be given either –
 - (a) as separate documents, each signed by the practitioner by which it is made; or
 - (b) as a joint recommendation signed by both practitioners.
- (6) A guardianship application shall be of no effect unless –
 - (a) it is received by the Minister within the period of 7 days beginning with the date on which the patient was last examined by a registered medical practitioner with a view to making a medical recommendation; and
 - (b) it appears to the Minister to be duly made under this Article.
- (7) Where the guardianship application names a person other than the Minister as guardian, it must also include or be accompanied by a

statement that the person so named consents to act as guardian in relation to the patient.

- (8) Where a form of application under this Article is prescribed, an application must be made using that form.

30 Effect of application for guardianship

- (1) A guardianship application authorized by the Minister (a “guardianship authorization”) shall be sufficient authority for the reception of the patient into the guardianship of the person named as guardian in the application.
- (2) A guardianship authorization shall confer on the person named as guardian, to the exclusion of any other person, the power –
- (a) subject to paragraph (3), to require the patient to reside at a place specified by the guardian;
 - (b) to require the patient to attend at times and places so specified for the purpose of treatment, occupation, education or training;
 - (c) to require access to the patient to be given, at any place where the patient is residing, to any registered medical practitioner, authorized officer or other person so specified.
- (3) Paragraphs (1) and (2) are subject to the rights conferred on a patient by Article 50(1).
- (4) For the avoidance of doubt the words “the exclusion of any other person” in paragraph (2) shall not have effect, where the Minister is the person named as guardian, to exclude the exercise of powers under this Article by a person to whom the Minister has lawfully delegated those powers.
- (5) Where the person named as guardian is the Minister, the Minister may (if considering that it is justifiable in the circumstances to do so) require that the patient –
- (a) must reside –
 - (i) in an approved establishment, or
 - (ii) with such person as the Minister may think fit;
 - (b) must attend training specified by the Minister at such place and times or for such periods as may be so specified.
- (6) The States may by Regulations make provision for –
- (a) imposing on guardians, in cases where the person named as guardian is not the Minister, such duties as may be considered necessary or expedient in the interests of patients subject to guardianship; and
 - (b) the creation of offences, punishable by fines of up to level 3 on the standard scale, for breach of such provision.
- (7) Where, at any time after a patient is received into guardianship, the application or any related medical recommendation is found to be in any respect incorrect or defective –

- (a) the error or defect in question may, with the consent of the Minister, be rectified by the applicant or (as the case may be) the person who signed the recommendation; and
 - (b) the application or recommendation shall have effect (and be deemed to have had effect) as though made originally without the error or defect.
- (8) Where a patient is received into guardianship, any previous application under Part 3 or any previous guardianship application in respect of the same patient shall cease to have effect.

31 Powers of re-taking into custody

- (1) Where a patient who is subject to guardianship and to a residence requirement under Article 30(2)(a) or (5)(a)(i) absents himself or herself without the leave of the guardian from the place at which he or she is required to reside, the patient may be taken into custody and returned to that place by –
- (a) the guardian;
 - (b) a person authorized in writing by the guardian to do so;
 - (c) a police officer;
 - (d) an authorized officer; or
 - (e) where the place is an approved establishment, the managers of that establishment or any member of staff of the establishment authorized by the managers for that purpose.
- (2) A patient shall not be taken into custody under this Article after the expiration of the period of 6 months beginning with the first day of the patient's absence without leave, and a patient who has not returned nor been taken into custody within that period shall, at the expiration of that period, cease to be subject to guardianship.

32 Transfer of guardianship and substitution of guardian

- (1) The Minister may arrange for the transfer of a patient received into guardianship under this Part from the guardianship of any person ("G1") into the guardianship of any other person ("G2"), including the Minister.
- (2) The Minister must arrange for the transfer of a patient under paragraph (1) where it appears to the Minister that any person appointed as a guardian under this Part has performed that function negligently or in a manner contrary to the interests of the patient.
- (3) Where the power in paragraph (1) is exercised, G2 shall be treated at all times and for all the purposes of this Part as if G2 (and not G1) had been the person named in the guardianship application as a result of which the patient was received into guardianship.
- (4) If a person appointed as a guardian under this Part becomes incapacitated by illness or any other cause from so acting –

- (a) the Minister or any other person approved for the purpose may act as guardian of the patient concerned during the guardian's incapacity; and
 - (b) paragraph (3) shall apply as if the person acting as guardian under this paragraph were G2.
- (5) The States may by Regulations make further provision as to the transfer of patients –
- (a) between guardianship and liability to detention in an approved establishment; and
 - (b) between liability to detention in an approved establishment and guardianship.
- (6) Without derogation from the general power conferred by paragraph (5), Regulations under that paragraph may in particular –
- (a) prescribe the circumstances in which, and the conditions subject to which, transfers under those Regulations may take place;
 - (b) make provision as to the application of this Part, and of Part 3, in respect of patients transferred under those Regulations; and
 - (c) make provision regulating the conveyance of patients transferred under those Regulations.

33 Duration of guardianship

- (1) A guardianship authorization has effect for a period of 6 months beginning with the date on which the application for guardianship is authorized under Article 30(1).
- (2) A guardianship authorization may be renewed in the manner provided by paragraphs (4) and (5) –
 - (a) for one further period of 6 months beginning immediately after the last day of the period mentioned in paragraph (1); and
 - (b) thereafter in the same manner for successive periods of 12 months.
- (3) A patient who is received into guardianship may apply to the Tribunal, once within each of the periods mentioned in paragraphs (1) and (2), for a direction that the guardianship authorization be terminated.
- (4) Within the period of 2 months ending on the day on which, were it not for any renewal under this Article, the guardianship authorization would cease to have effect, the responsible medical officer must examine the patient and make a report to the Minister, recommending –
 - (a) where it appears to the responsible medical officer that in the interests of the patient's welfare or for the protection of other persons, the patient should remain under guardianship, the renewal of the guardianship authorization; or
 - (b) the discharge of the patient from guardianship.
- (5) Where a report under paragraph (4) is provided in respect of a patient, the Minister must inform the patient and the patient's nearest person of the recommendations and the action proposed to be taken and –

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- (a) where the report contains a recommendation under paragraph (4)(a), the Minister must renew the guardianship authorization for the appropriate period as provided by paragraph (2); or
 - (b) where the report contains a recommendation under paragraph (4)(b), the Minister must discharge the patient.

PART 5

OTHER FORMS OF LEGAL CUSTODY: PLACE OF SAFETY, ETC.

34 Interpretation and application of Part 5

- (1) In this Part –
 - “convey” includes any other expression denoting removal from one place to another;
 - “place of safety” means –
 - (a) an approved establishment;
 - (b) in a case where, for the purpose of preventing harm to the person in question or to any other person, a police station is the most secure or suitable place, a police station; and
 - (c) any other place –
 - (i) which may be designated as such for the purpose by the Minister, or
 - (ii) the occupier of which consents to receive a person for a specified temporary period;
 - “premises” includes any vessel, vehicle, aircraft or hovercraft.
- (2) Any person required or authorized by virtue of this Law to be conveyed to any place or to be kept in custody or detained in a place of safety, is deemed to be in legal custody while being so conveyed, kept or detained.
- (3) Nothing in this Part shall prevent a person detained under Article 35 or 36 from being conveyed from one place of safety to another.

35 Powers of search, entry and removal of persons to place of safety

- (1) Paragraph (2) applies where it appears to the Bailiff, on information given on oath by an authorized officer, that there is reasonable cause to suspect that a person believed to be suffering from mental disorder –
 - (a) has been, or is being, ill-treated, neglected or kept otherwise than under detention or custody as provided by this Law, in any place; or
 - (b) being unable to care for himself or herself, is living alone in any place.

- (2) Where this paragraph applies, and for the purpose stated in paragraph (3), the Bailiff may issue a warrant authorizing –
 - (a) an authorized officer; or
 - (b) a person of any other category specified in the warrant,to enter, if necessary by force, any premises specified in the warrant and to search for and if necessary remove the person mentioned in paragraph (1) to a place of safety.
- (3) A person may be removed to a place of safety in pursuance of a warrant issued under paragraph (2) for the purpose of –
 - (a) making an admission application in respect of the person under Part 3; or
 - (b) making other arrangements for that person's care or treatment.
- (4) The exercise of the power conferred by paragraph (3) may include, where appropriate, assessment of the person for the purpose of an admission application, in the place of safety or in any other premises, including the person's home.
- (5) Paragraph (6) applies where it appears to the Bailiff, on information given on oath by an authorized officer, that –
 - (a) there is reasonable cause to believe that a patient who is liable to be detained or taken or retaken into custody under this Law is to be found on certain specified premises; and
 - (b) admission to the premises has been or is likely to be refused.
- (6) Where this paragraph applies, the Bailiff may issue a warrant authorizing –
 - (a) the authorized officer; and
 - (b) any other person named in the warrant,to enter, if necessary by force, any premises specified in the warrant and to search for and if necessary remove the patient to a place of safety.
- (7) In the execution of a warrant issued under this Article, the persons authorized by the warrant –
 - (a) must be accompanied by a registered medical practitioner; and
 - (b) may be accompanied by a police officer.
- (8) A person who is removed to a place of safety under this Article may be detained there for a period not exceeding 72 hours beginning with the admission of the person to that place.
- (9) It shall not be necessary, in any information given or warrant issued under this Article, to name or otherwise identify the person in respect of whom the information is given or the warrant is issued, as the case may be.

36 Urgent removal of persons found in public places

- (1) Paragraph (2) applies where a police officer finds, in any place other than a private dwelling, a person who appears to the police officer –

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- (a) to be suffering from mental disorder; and
 - (b) to be in immediate need of care or control.
- (2) Where this paragraph applies, and the police officer thinks it necessary to do so in the interests of that person or for the protection of other persons, the police officer may remove the person to a place of safety.
- (3) A person who is removed to a place of safety under this Article may be detained there for a period not exceeding 72 hours beginning with the admission of the person to that place, for the purpose of making an admission application in respect of the person under Part 3, or of making any other arrangements for the person's care or treatment.

37 Re-taking of persons into custody

- (1) This Article applies in respect of persons who escape from legal custody.
- (2) A person to whom this Article applies ("A") may be re-taken into custody, in accordance with this Article –
- (a) by the person ("C") who had custody of A immediately before A's escape;
 - (b) by a police officer;
 - (c) by an authorized officer;
 - (d) in a case where, at the time of the escape A is a patient liable to be detained in an approved establishment, by the managers of the establishment or a member of staff of the establishment authorized for that purpose by the managers, as if A were absent without leave in the terms of Article 25; or
 - (e) in a case where at the time of the escape A is subject to guardianship and the time limit imposed by Article 31(2) on re-taking such a person has not expired, by any other person who would be entitled to take A into custody under Article 31(1), as if A were absent without leave in the terms of that Article.
- (3) Where A escapes while being removed to or detained in a place of safety under Article 35 or 36, A may not be re-taken after the expiry of the period –
- (a) of 72 hours beginning with the time of the escape; or
 - (b) during which the person is liable to be detained,
- whichever expires first.
- (4) Where A escapes from custody while –
- (a) being conveyed to or from an approved establishment under Article 20(1); or
 - (b) in custody or being conveyed to another place under Part 12,
- this Article and Article 25 shall apply as though A were liable to be detained in that establishment or place and, if A had not previously been received into that establishment or place, as though A had been so received.

PART 6**TREATMENT REQUIRING CONSENT****38 Interpretation and application of Part 6**

- (1) Subject to paragraph (2), this Part applies in relation to a patient liable to be detained under this Law, except a patient liable to be detained under Article 15 or 17 or Part 4 or 5.
- (2) Articles 40, 42 and 44 apply in relation to any patient, whether or not liable to be detained under this Law.
- (3) A “second opinion approved doctor or “SOAD” means a person who –
 - (a) is a registered medical practitioner;
 - (b) has such training and expertise in the field of psychiatry and in the application of mental health legislation as may be prescribed; and
 - (c) is approved by the Minister for the purpose of carrying out the functions of a SOAD.
- (4) In this Part, a reference to treatment includes reference to a plan of treatment under which a patient is to be given (whether within a specified period or otherwise) one or more of the types of treatment listed in Article 40(2) or 41(2), as the case may be.

39 Treatment not requiring consent

The consent of a patient to whom this Part applies is not required for any treatment given to the patient for the mental disorder from which the patient is suffering, where the treatment –

- (a) is not of a type listed in Article 40(2) or 41(2); and
- (b) is given by or under the direction of the patient’s responsible medical officer.

40 Treatment requiring both consent and a second opinion

- (1) A treatment of a type listed in paragraph (2) must not be given to a patient unless –
 - (a) the patient has consented to the treatment; and
 - (b) a SOAD has given a certificate in writing in accordance with paragraphs (3) and (4).
- (2) The types of treatment mentioned in paragraph (1) are –
 - (a) any surgical operation for destroying brain tissue or the functioning of brain tissue;
 - (b) the surgical implantation of hormones for reducing male sex drive;
 - (c) electro-convulsive therapy; and
 - (d) such other types of treatment as may be prescribed.

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- (3) A SOAD must not give a certificate in writing as required by paragraph (1)(b) unless the SOAD has consulted –
- (a) the patient’s responsible medical officer; and
 - (b) one other person who must be an authorized officer or mental health professional who, in either case, is or has been professionally concerned with the treatment of the patient,
- in accordance with any further provision made by a code of practice as to such consultation.
- (4) The certificate given by the SOAD must state that, in the SOAD’s opinion and having consulted as required by paragraph (3) –
- (a) the patient is capable of understanding the nature, purpose and likely effects of the proposed treatment and has consented to receive it; and
 - (b) it is appropriate for the treatment to be given to that patient.

41 Treatment requiring either consent or a second opinion

- (1) A treatment of a type listed in paragraph (2) must not be given to a patient unless either –
- (a) the patient has consented to the treatment, and –
 - (i) the patient’s responsible medical officer, or
 - (ii) any other approved practitioner,has certified in writing that the patient is capable of understanding the nature, purpose and likely effects of the proposed treatment and has consented to receive it;
 - or
 - (b) a SOAD has given a certificate in writing in accordance with paragraphs (4) and (5).
- (2) The types of treatment mentioned in paragraph (1) are –
- (a) such types as may be prescribed; and
 - (b) the administration of medicine to a patient –
 - (i) by any means (other than one set out in Article 40(2) or prescribed under sub-paragraph (a)),
 - (ii) at any time during a period for which the patient is liable to be detained, if 3 months or more have elapsed since the first occasion in that period when medicine was administered to the patient by any means,for the purpose of treating the patient’s mental disorder.
- (3) The number of months in paragraph (2)(b)(ii) may be amended by Order of the Minister.
- (4) A SOAD must not give a certificate in writing as required by paragraph (1)(b) unless the SOAD has consulted –
- (a) the patient’s responsible medical officer; and

- (b) one other person who must be an authorized officer or mental health professional who, in either case, is or has been responsible for the treatment of the patient,

in accordance with any further provision made by a code of practice as to such consultation.

- (5) The certificate given by the SOAD must state that, in the SOAD's opinion and having consulted as required by paragraph (4) –
 - (a) the patient –
 - (i) is not capable of understanding the nature, purpose and likely effects of the proposed treatment, or
 - (ii) has not consented to receive it; but
 - (b) having regard to the likelihood of the treatment alleviating or preventing a deterioration of the patient's condition, the treatment should be given to that patient.

42 Withdrawal of consent

- (1) A patient who has consented to treatment under Article 40 or 41 may withdraw that consent at any time, whether or not the treatment has been completed.
- (2) Following withdrawal of consent, Articles 40 and 41 shall apply afresh to any treatment remaining to be given, as if that treatment were a separate treatment.

43 Duration of certificates

- (1) A certificate given as required by Article 40(1)(b) or 41(1) shall cease to have effect at the end of the period of 6 months beginning with the date of the certificate, or such shorter period as may be specified by the SOAD in the certificate.
- (2) Once a certificate has so ceased to have effect, Articles 40 and 41 shall apply afresh in relation to any treatment of a type listed in those Articles, as if no certificate had previously been given.

44 Emergency treatment

- (1) A requirement for consent imposed by Article 40 or 41 shall not apply in relation to any treatment which –
 - (a) is immediately necessary to save a patient's life;
 - (b) is not irreversible and is immediately necessary to prevent a serious deterioration of a patient's condition;
 - (c) is not irreversible or hazardous and is immediately necessary to alleviate serious suffering by the patient; or
 - (d) is not irreversible or hazardous, is immediately necessary and represents the minimum interference necessary to prevent a patient behaving violently or being a danger to himself or herself or to others.

- (2) Articles 41 and 43(2) shall not apply to preclude continuation of any treatment, pending compliance with Article 40 or 41, if the responsible medical officer considers that discontinuity of treatment would cause serious suffering to a patient.
- (3) For the purposes of this Article, treatment is “irreversible” if it has unfavourable and permanent physical or psychological consequences, and “hazardous” if it entails significant physical hazard.

45 Examinations, records etc. for the purposes of this Part

- (1) An approved practitioner or SOAD may, for the purpose of exercising functions under this Part, at any reasonable time –
 - (a) visit, interview or examine a patient in private; and
 - (b) require the production of, and inspect, records relating to the treatment of that patient.
- (2) A certificate given for the purposes of this Part shall be in such form as may be prescribed, and an approved practitioner or SOAD giving such a certificate must –
 - (a) keep a record of the certificate, including the date of its issue; and
 - (b) provide a copy of the certificate to the patient’s responsible medical officer.

46 Regulations as to consent to treatment

- (1) The States may by Regulations make further provision as to the application of this Part.
- (2) In particular and without derogation from the generality of the power conferred by paragraph (1) –
 - (a) provision may be made by such Regulations as to –
 - (i) the administration of electro-convulsive therapy or of such other types of treatment as may be specified, and
 - (ii) the circumstances in which any treatment may be administered to a child or to a person incapable of giving consent;
 - and
 - (b) such Regulations may disapply Article 6(3) of the Capacity Law.

PART 7

MENTAL HEALTH REVIEW TRIBUNAL

47 Establishment of Panel and appointment of qualified persons

- (1) The Bailiff shall appoint (in accordance with this Article) and maintain (in accordance with Article 48) a Mental Health Review Tribunal Panel

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- (the “Panel”) from which the members of a Mental Health Review Tribunal convened to carry out any of the Tribunal’s functions shall be drawn (in accordance with Article 49 and the Schedule).
- (2) The Panel shall consist of such number of qualified persons as in the Bailiff’s opinion is necessary for the purpose of carrying out the Tribunal’s functions under this Part and the Schedule.
 - (3) For the purposes of paragraph (2), a qualified person is one who fulfils the requirements of paragraph (4) and –
 - (a) is legally qualified by virtue of being an advocate or solicitor of the Royal Court of not less than 5 years’ standing (a “legal member”);
 - (b) is medically qualified by virtue of being an approved practitioner or a practitioner of equivalent experience and qualification registered as such in a jurisdiction other than Jersey (a “medical member”); or
 - (c) is otherwise qualified by virtue of his or her experience in administration or application of mental health legislation, or his or her knowledge of social services, or of such other qualification as the Bailiff considers suitable (a “lay member”).
 - (4) Qualified persons shall be persons –
 - (a) who, in the Bailiff’s opinion, have sufficient experience and knowledge to enable them to determine matters falling to be determined by the Tribunal in the exercise of its functions; and
 - (b) who are not disqualified –
 - (i) in the case of a person otherwise legally qualified, by falling within any of the descriptions listed in paragraph (5), or
 - (ii) in the case of a person otherwise medically qualified or qualified as a lay member, by virtue of being an advocate or solicitor of the Royal Court, or by falling within the description in paragraph (5)(a) or (b).
 - (5) The following are the descriptions of persons disqualified as mentioned in paragraph (4) –
 - (a) the Bailiff, the Deputy Bailiff or a Jurat;
 - (b) any other member of the States of Jersey;
 - (c) any person holding a paid office under the Crown or the States, any employee of the Crown or any States’ employee (as defined by Article 2 of the Employment of States of Jersey Employees (Jersey) Law 2005⁵);
 - (d) any person providing services, whether directly or indirectly, to the Minister or the States in relation to the exercise of any function of the Minister or the States under this Law.
 - (6) The Minister shall establish and pay rates of remuneration of persons appointed under this Article and may defray such expenses of those persons as the Minister may determine.
 - (7) The Minister may provide, from any administration of the States for which he or she is assigned responsibility, such officers, servants, and accommodation, as the Tribunal may reasonably require.
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48 Term of office etc. of qualified persons

- (1) The Bailiff may review the constitution of the Panel and may –
 - (a) appoint additional persons;
 - (b) re-appoint existing qualified persons; or
 - (c) remove qualified persons from office on the grounds set out in paragraph (2),
as the Bailiff thinks fit.
- (2) The Bailiff may remove from the Panel any qualified person –
 - (a) on the ground of misconduct by that person; or
 - (b) where that person is incapable of fulfilling the functions of a member of the Tribunal by reason of mental disorder or physical incapability.
- (3) Subject to paragraph (2), the appointment of a qualified person shall cease on whichever of the following occasions is the first to occur –
 - (a) the appointment or election of that person to a position which would disqualify him or her under Article 47(5)(a) or (b);
 - (b) at midnight on 31st December in the fifth year following the year of appointment;
 - (c) at midnight on 31st December immediately following the member's 72nd birthday;
 - (d) if the person tenders his or her resignation in writing to the Bailiff;
 - (e) if the person becomes bankrupt;
 - (f) if, without reasonable excuse, the person absents himself or herself from a sitting of the Tribunal at which the member is appointed to attend in accordance with Part 1 of the Schedule.
- (4) Where there is or is discovered to have been any defect with regard to the qualifications of a person, nothing in this Article or Article 47 shall be taken to invalidate a decision or any proceedings of a Tribunal of which that person is or was a member.

49 Establishment and constitution of Tribunal

- (1) From among the legal members the Bailiff shall appoint a Chairman, Vice Chairman and such number of members as the Bailiff considers necessary properly to discharge the functions of the Tribunal.
- (2) Part 1 of the Schedule has effect with respect to the constitution and procedures of the Tribunal.
- (3) The States may by Regulations amend Part 1 of the Schedule.

50 Principal functions of the Tribunal

- (1) A patient, a patient's nearest person, or other applicant may apply to the Tribunal for the review of a decision directly affecting the patient and of a kind described in the table in Part 2 of the Schedule.
- (2) The principal functions of the Tribunal shall be to determine –
 - (a) applications made under this Article and in accordance with Part 2 of the Schedule; and
 - (b) references made by the Minister or the Attorney General under Article 51.
- (3) The Tribunal shall also discharge such other functions as are conferred upon it by or under this Law or by any other enactment.
- (4) In paragraph (1) “applicant” includes any person (not being a patient or the patient's nearest person) mentioned in the second column of the table in Part 2 of the Schedule.

51 Reference to Tribunal by Minister or Attorney General

Where a patient is liable to be detained under Part 3 or is subject to guardianship under Part 4, the Minister or the Attorney General may, if he or she thinks fit, refer that patient's case to the Tribunal and the Tribunal shall deal with any such reference as if it were an application by the patient made under Article 50.

52 Directions which may be given by the Tribunal

- (1) Where the application before the Tribunal concerns a patient admitted for assessment, the Tribunal may in any case direct that the patient be discharged, and shall so direct unless the Tribunal is satisfied that –
 - (a) the patient is then suffering from mental disorder of a nature or degree which warrants the patient's detention in an approved establishment for assessment (or for assessment followed by treatment) for at least a limited period; and
 - (b) it is necessary that the patient should continue to be detained –
 - (i) in the interests of the patient's health or safety, or
 - (ii) for the protection of other persons.
- (2) Where the application before the Tribunal concerns a patient admitted for treatment, the Tribunal may in any case direct that the patient be discharged, and shall so direct unless the Tribunal is satisfied that –
 - (a) the patient is then suffering from mental disorder of a nature or degree which warrants the patient's detention in an approved establishment for treatment; and
 - (b) it is necessary that the patient should continue to be detained –
 - (i) in the interests of the patient's health or safety, or
 - (ii) for the protection of other persons.

- (3) Where the application before the Tribunal concerns a patient subject to guardianship, the Tribunal may in any case direct that the patient be discharged, and shall so direct unless the Tribunal is satisfied that –
 - (a) the patient is then suffering from mental disorder of a nature or degree which warrants the reception of the patient into guardianship; and
 - (b) it is necessary for the patient to continue to be subject to guardianship –
 - (i) for the patient's welfare, or
 - (ii) for the protection of other persons.
- (4) In the exercise of its powers under paragraphs (1) to (3) the Tribunal may direct the discharge of a patient on a future date specified in the direction.

53 Visiting and examination of patients

- (1) A person entitled under Article 50 or 51 to apply to the Tribunal may authorize a registered medical practitioner to visit the patient at any reasonable time and examine the patient in private, for the purpose of –
 - (a) advising whether an application to the Tribunal should be made by or in respect of the patient; or
 - (b) providing information as to the patient's condition for the purposes of such an application.
- (2) A registered medical practitioner authorized under paragraph (1) may require the production of and inspect any documents constituting, or alleged to constitute, the authorization for detention of the patient under Part 2, and any records or other documents relating to the patient's treatment.

54 Appeals from Tribunal

- (1) A person aggrieved by a decision of the Tribunal may appeal to the Court on a point of law.
- (2) The power to make rules of court under the Royal Court (Jersey) Law 1948⁶ 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 of the Tribunal;
 - (b) affirm the decision of the Tribunal;
 - (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 appeal from presenting his or her case fairly before the Tribunal.

PART 8**CRIMINAL JUSTICE: INCAPACITY OF DEFENDANT****55 Application and interpretation of Part 8**

- (1) This Part applies where in any proceedings, whether on accusation or trial, it appears to the court that a person charged with any act (the “defendant”) is, because of –
 - (a) mental disorder; or
 - (b) inability to communicate,incapable of participating effectively in the proceedings, and any reference in this Part to incapacity shall be construed accordingly.
- (2) For the purposes of this Part –
 - (a) a reference to the “court” is to whichever court has jurisdiction, in a particular case, to try the proceedings in question, and includes (for the avoidance of doubt) the Magistrate’s Court, the Youth Court, or the Royal Court, as the case may be;
 - (b) a reference to “medical evidence” is to the evidence, in relation to a particular matter, of at least 2 registered medical practitioners who, in the opinion of the court, have appropriate experience in the diagnosis or treatment of such a matter;
 - (c) “participating effectively” includes, but is not limited to –
 - (i) entering a plea, and
 - (ii) understanding the nature and significance of the proceedings or any stage of the proceedings; and
 - (d) “special measures” may include, but are not limited to, the provision of translators or interpreters or of mechanical or electronic aids to hearing or understanding.

56 Power to adjourn proceedings where defendant apparently incapable

- (1) Where it appears to the court that a defendant is incapable of participating effectively in proceedings, the court may adjourn the proceedings to enable determination of the issue of the defendant’s incapacity.
- (2) Subject to paragraph (3), the determination of that issue –
 - (a) shall be held as soon as possible and at such time and place as the court may direct; and
 - (b) may be held in the absence of the defendant if, having regard to the medical evidence, it is impracticable or inappropriate to bring the defendant before the court.
- (3) Where the court considers that it is expedient and in the interests of the defendant to do so, the court may postpone consideration of the issue of incapacity until any time up to the opening of the case for the defence (and if, before the issue falls to be determined, the defendant is acquitted, the issue need not be determined).

57 Determining issue of incapacity

- (1) The court determining an issue as to the defendant's incapacity shall have regard (so far as each of the following factors is relevant in the particular case) to the ability of the defendant –
 - (a) to understand the nature of the proceedings so as to be able to instruct his or her lawyer and to make a proper defence;
 - (b) to understand the nature and substance of the evidence;
 - (c) to give evidence on his or her own behalf;
 - (d) to make rational decisions in relation to his or her participation in the proceedings (including entering any plea) which reflect true and informed choices on his or her part.
- (2) The issue as to the defendant's incapacity shall be determined on the balance of probabilities.
- (3) For the purpose of determining the issue of incapacity –
 - (a) the court must obtain, and have regard to, medical evidence on that issue; and
 - (b) the court shall have all such powers to make orders in respect of the defendant under this Part as it has in respect of a defendant under Articles 61(1) and 62(1).
- (4) Where the court determines that the defendant is incapable but considers that the defendant's incapacity might be alleviated by special measures to enable the defendant to participate effectively in the proceedings –
 - (a) the court shall have regard to whether it is practicable to put in place such special measures; and
 - (b) if the court considers it is practicable to do so, shall direct that such special measures are put in place.

58 Result of finding of incapacity

- (1) This Article applies where, on the hearing of an issue as to a defendant's incapacity, the court determines that the defendant is incapable (even if special measures were to be put in place) of participating effectively in proceedings.
- (2) Where this Article applies, the court –
 - (a) may adjourn the proceedings for a further specified period of no more than 6 months, for the purpose of enabling the defendant to receive treatment; and
 - (b) if it does so, may do anything which it has power to do under Article 63.
- (3) Where this Article applies and –
 - (a) the court does not adjourn the proceedings under paragraph (2); but
 - (b) the court is satisfied, having regard to the medical evidence, that the defendant is and will remain (so far as reasonably foreseeable) incapable of participating effectively in proceedings,

the proceedings adjourned under Article 56(1) shall not proceed further and the court may deal with the defendant only –

- (i) by releasing him or her unconditionally; or
 - (ii) as provided by Article 59.
- (4) The States may by Regulations amend the maximum period, in paragraph (2)(a), for which proceedings may be adjourned under that paragraph.

59 Final orders where defendant incapable

- (1) This Article applies where Article 58 applies and where, having regard to the interests of justice and to –
- (a) the evidence already given, and such further evidence as may be given, for the purpose of determining whether the defendant did the act with which he or she is charged; and
 - (b) any further matters as to which provision is made by Regulations under paragraph (3),

the court finds that the defendant did in fact do the act with which he or she is charged.

- (2) Where this Article applies, the court may make in respect of the defendant –
- (a) a treatment order (with or without restriction) under Article 65;
 - (b) a guardianship order under Article 66; and
 - (c) such further orders as the States may by Regulations provide or specify.
- (3) The States may by Regulations make further provision as to the scope and exercise of the court’s discretion under this Article, and in particular (but without derogation) may make provision as to –
- (a) facts or matters which must be proved to the court, and the standard of proof;
 - (b) the nature of evidence to be given, the persons who may give evidence, and the procedures which must be followed, for the purpose mentioned in paragraph (1)(a); and
 - (c) such other matters as the court must take into account.

PART 9

CRIMINAL JUSTICE: POWERS OF COURT IN RELATION TO ACCUSED PERSONS SUFFERING MENTAL DISORDER

60 Interpretation and application of Part 9

- (1) In this Part –
- (a) a reference to the “court” –
 - (i) in Articles 61 to 63, has the same meaning as in Part 8,

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- (ii) in Articles 64 to 66, is to the Magistrates' Court or the Royal Court,
 - (iii) in Articles 67 to 69, is to the Royal Court only;
 - (b) a reference to an offence punishable with imprisonment includes reference to an offence for which a person under 21 years of age may be sentenced to youth detention under the Criminal Justice (Young Offenders) (Jersey) Law 1994⁷ or the Criminal Justice (Young Offenders) (Jersey) Law 2014⁸, as the case may be; and
 - (c) "place of safety" has the meaning given to that expression by Part 5, but also includes (without qualification) a prison;
"prison" has the meaning given by Article 1(1) of the Prison (Jersey) Law 1957⁹.
- (2) The powers conferred by Articles 61 to 63 may be exercised in relation to a defendant who –
 - (a) is not subject to any order made by any court requiring the person's detention in custody, but is awaiting proceedings before a court for an offence punishable by that court with imprisonment; or
 - (b) has been convicted by the court of any offence punishable with imprisonment.
 - (3) The powers conferred by Articles 64 to 66 may be exercised in relation to a defendant who is convicted by the court of an offence punishable with imprisonment, the sentence for which is not fixed by law.
 - (4) The powers conferred by Article 67 may be exercised in relation to a defendant who is convicted by the court of an offence punishable with imprisonment, the sentence for which is fixed by law.
 - (5) Article 72 may apply in relation to any defendant.
 - (6) Where a court makes an order in exercise of its functions under Articles 62 to 65 or 71(3) –
 - (a) the court may further and additionally order that the defendant be conveyed to the approved establishment in question within a period of 7 days beginning with the making of the order;
 - (b) the managers of that establishment shall admit the defendant within that period and detain the defendant in accordance with the relevant provisions of this Part; and
 - (c) unless the court orders otherwise, the provisions of Article 25 shall apply in relation to a person detained under this Part as they apply in relation to a person liable to be detained under Part 3.

61 Remand on bail for report

- (1) A court may remand the defendant on bail for the purpose of obtaining a report on the defendant's mental condition and in doing so may order that the person attend at an approved establishment, at such times and upon such conditions as the court may specify, to enable the preparation of such a report.

- (2) If a defendant remanded under paragraph (1) fails to comply with the order, the defendant may be arrested without warrant by any police officer and after being arrested shall be brought as soon as possible before the court which remanded the defendant.
- (3) The court may deal with a defendant brought before it under paragraph (2) in any way in which a court could have dealt with him or her if that defendant had not been remanded under this Article.

62 Remand to approved establishment for report

- (1) Where the court is satisfied of the matters specified in paragraph (2) and is of the opinion –
 - (a) that the defendant would not comply with an order under Article 61; or
 - (b) that if the defendant were remanded on bail under that Article, it would otherwise be impracticable for a report to be prepared on the defendant's mental condition,

the court may remand a defendant to a specified approved establishment for the purpose of obtaining such a report.

- (2) The power conferred by paragraph (1) may not be exercised unless the court is satisfied –
 - (a) on the written or oral evidence of 2 registered medical practitioners, at least one of whom is an approved practitioner, that there is reason to suspect that the defendant is suffering from mental disorder; and
 - (b) on the written or oral evidence of the approved practitioner who would be responsible for making the report, or some other person representing the managers of the approved establishment in question, that arrangements have been made for the admission of the defendant to that establishment within 7 days of the date of the order,

and if the court is so satisfied it may give directions for the conveyance and admission of the defendant to the establishment, and for his or her detention in the establishment or in a place of safety pending the admission.

- (3) If it appears to the court which remanded a defendant under this Article that, on the written or oral evidence of the approved practitioner responsible for making the report, a further remand is necessary for completing the assessment of the defendant's mental condition, the court may further remand the defendant –
 - (a) having regard to the limits on such further remand in paragraph (4); and
 - (b) without the defendant's being brought before the court, if the defendant is represented by an MHA who is given an opportunity to be heard.

- (4) A defendant shall not be remanded or further remanded under this Article for more than 28 days at a time or for more than 26 weeks in all, and the

court may at any time terminate the remand if it appears appropriate to the court to do so.

- (5) A defendant remanded under this Article is entitled –
 - (a) to obtain, at his or her own expense, an independent report from a medical practitioner chosen by the defendant; and
 - (b) on the basis of any such report, to apply to the court for the remand to be terminated.
- (6) If a defendant remanded under this Article absconds from the approved establishment or while being conveyed to or from that establishment or any place of safety, the defendant may be arrested without warrant by any police officer and after being arrested shall be brought as soon as possible before the court which remanded the defendant.
- (7) The court may deal with a defendant brought before it under paragraph (6) in any way in which a court could have dealt with him or her if that defendant had not been remanded under this Article.

63 Remand to approved establishment for treatment

- (1) A court may remand a defendant to a specified approved establishment for the purpose of treatment.
- (2) The power conferred by paragraph (1) may not be exercised unless the court is satisfied –
 - (a) on the written or oral evidence of 2 registered medical practitioners, at least one of whom is an approved practitioner, that there is reason to suspect that the defendant is suffering from mental disorder of a nature or degree which makes it appropriate for the defendant to be detained in an approved establishment for treatment; and
 - (b) on the written or oral evidence of the responsible medical officer, or some other person representing the managers of the approved establishment in question, that arrangements have been made for the admission of the defendant to that establishment within 7 days of the date of the order,

and if the court is so satisfied it may give directions for the conveyance and admission of the defendant to the establishment, and for his or her detention in the establishment or in a place of safety pending the admission.

- (3) If it appears to the court which remanded a defendant under this Article that, on the written or oral evidence of the approved practitioner responsible for making the report, a further remand is necessary for completing the defendant's treatment, the court may further remand that person –
 - (a) having regard to the limits on such further remand in Article 62(4) as applied by paragraph (4); and

- (b) without the defendant's being brought before the court, if the defendant is represented by an MHA who is given an opportunity to be heard.
- (4) Paragraphs (4) to (7) of Article 62 shall have effect as though a remand under this Article were a remand under Article 62.

64 Interim orders

- (1) A court may order a defendant to be admitted to and detained in a specified approved establishment for the purpose of assessment of –
 - (a) the nature and degree of any mental disorder suffered by the defendant; and
 - (b) the advisability, having regard to such assessment, of making a treatment order in respect of the defendant under Article 65.
- (2) The power conferred by paragraph (1) may not be exercised unless the court is satisfied –
 - (a) on the written or oral evidence of 2 registered medical practitioners, at least one of whom is an approved practitioner, that there is reason to suspect that the defendant is suffering from mental disorder such as may warrant the making of a treatment order under Article 65 in respect of the person;
 - (b) on the written or oral evidence of the responsible medical officer, or some other person representing the managers of the approved establishment in question, that arrangements have been made for the admission of the defendant to that establishment within 7 days of the date of the order,

and if the court is so satisfied it may give directions for the conveyance and admission of the defendant to the establishment, and for his or her detention in the establishment or in a place of safety pending the admission.

- (3) The court making or renewing an order under this Article shall specify the period of detention which shall be –
 - (a) on the order being first made, no more than 12 weeks;
 - (b) on any subsequent renewal of the order, no more than 28 days at a time; and
 - (c) for no more than 26 weeks in all,and the court may at any time revoke an order under this Article if it appears appropriate to the court to do so.
- (4) Where it appears to the court which ordered the detention of a defendant under this Article that, on the written or oral evidence of the responsible medical officer, a period of further detention is warranted, the court may –
 - (a) renew the order, having regard to the limits on such renewal in paragraph (3); or
 - (b) make a treatment order under Article 65 in respect of the defendant,

and in either case may do so without the defendant's being brought before the court, if the defendant is represented by an MHA who is given an opportunity to be heard.

- (5) An order made or renewed under this Article shall cease to have effect if –
- (a) the court makes a treatment order under Article 65 in respect of the accused person; or
 - (b) the court decides, on the written or oral evidence of the responsible medical officer, to deal with the defendant in some other way.
- (6) Where –
- (a) the court gives a direction for the conveyance of the defendant such as mentioned in paragraph (2); and
 - (b) the defendant absconds while being conveyed to or from an approved establishment or any place of safety,
- the defendant may be arrested without warrant by any police officer and after being arrested shall be brought as soon as possible before the court which ordered the detention of that person.
- (7) The court may deal with a defendant brought before it under paragraph (6) in any way in which a court could have dealt with that defendant if that defendant had not been detained under this Article.

65 Treatment orders

- (1) A court may order that the defendant be admitted to and detained in a specified approved establishment for treatment, where –
- (a) the court is satisfied, on the evidence of 2 medical practitioners, at least one of whom is an approved practitioner, that –
 - (i) the defendant is suffering mental disorder of a nature or degree that warrants admission to and detention in an approved establishment for treatment, and
 - (ii) the treatment cannot be given to the defendant without such admission and detention;
 - (b) the court is of the opinion, having regard to all the circumstances including (but without limitation) the nature of the offence and the defendant's character and antecedents, and to other methods of dealing with the defendant, that an order under this Article (a "treatment order") is the most suitable method of disposing of the case; and
 - (c) the court is satisfied, on the written or oral evidence of the approved practitioner or some other person representing the managers of the approved establishment in question, that arrangements have been made for the admission of the defendant to that establishment within 7 days of the date of the order.
- (2) Evidence under paragraph (1)(a) –

- (a) must be given in writing signed by the practitioners who have personally examined the defendant either jointly or, if separately, at an interval of not more than 5 days; and
 - (b) must specify the form of mental disorder from which the defendant is found to be suffering.
- (3) Where a treatment order is made in respect of a defendant –
- (a) the defendant shall be conveyed to the specified approved establishment within the period of 7 days beginning with the date of the order, and in accordance with any directions which may be given by the court for that purpose;
 - (b) the managers of the establishment shall admit the defendant and thereafter detain and deal with the defendant as a patient in respect of whom a treatment authorization had been made under Part 3; and
 - (c) the court may not pass sentence of imprisonment, impose a fine or make a probation order in respect of the offence for which the defendant is convicted, but may make any other order which the court has power to make apart from this provision.

66 Guardianship orders

- (1) A court may order that the defendant be received into guardianship, where –
- (a) the court is satisfied, on the evidence of 2 medical practitioners, at least one of whom is an approved practitioner, that the defendant is suffering mental disorder of a nature or degree that warrants reception into guardianship;
 - (b) the court is of the opinion, having regard to all the circumstances including (but without limitation) the nature of the offence and the defendant's character and antecedents, and to other methods of dealing with the defendant, that an order under this Article (a "guardianship order") is the most suitable method of disposing of the case; and
 - (c) the court is satisfied that the authority or person, who would be appointed as guardian by the order, consents to act as guardian in relation to the defendant.
- (2) Evidence under paragraph (1)(a) –
- (a) must be given in writing signed by the practitioners who have personally examined the defendant either jointly or, if separately, at an interval of not more than 5 days; and
 - (b) must specify the form of mental disorder from which the defendant is found to be suffering.
- (3) Where a guardianship order is made in respect of a defendant –
- (a) Part 4 shall apply as though a guardianship authorization had been made in respect of the defendant under that Part; and
 - (b) the court may not pass sentence of imprisonment, impose a fine or make a probation order in respect of the offence for which the

defendant is convicted, but may make any other order which the court has power to make apart from this provision.

67 Directions where sentence of imprisonment to be served in approved establishment

- (1) A court may impose any sentence of imprisonment which it has power to impose in respect of the offence in question, and in addition to that sentence may give one or more directions such as are specified in paragraph (3), where the court is satisfied –
 - (a) on the evidence of 2 medical practitioners, at least one of whom is an approved practitioner, that –
 - (i) the defendant is suffering mental disorder of a nature or degree that warrants admission to and detention in an approved establishment for treatment, and
 - (ii) appropriate treatment is available for that defendant in that establishment; and
 - (b) on the written or oral evidence of the responsible medical officer or some other person representing the managers of the approved establishment in question, that arrangements have been made for the admission of the defendant to that establishment within 28 days of the date of the directions.
- (2) If the court is satisfied as described in paragraph (1)(b), the court may give such further directions as it thinks fit for the conveyance of the defendant to, and the detention of the defendant in, the establishment or a place of safety pending admission to the establishment.
- (3) The directions mentioned in paragraph (1) are that –
 - (a) the defendant may, instead of being removed to and detained in a prison, be removed to and detained in a specified approved establishment; and
 - (b) discharge of the defendant from the approved establishment shall be subject to such restrictions as may be specified.
- (4) If, within the period of 28 days mentioned in paragraph (1)(b), it appears to the Minister that by reason of an emergency or other special circumstances it is not practicable for the defendant to be admitted to the specified approved establishment, the Minister may direct the admission of the defendant to such other approved establishment as appears to the Minister to be appropriate.
- (5) Where the Minister gives a direction under paragraph (4), the Minister must provide a copy of the direction to the court and any person having custody for the time being of the defendant.
- (6) Directions given by the court under paragraph (2) or by the Minister under paragraph (4) shall be sufficient authority for –
 - (a) a police officer or any other person directed to do so to convey the defendant to the approved establishment in question; and

- (b) the managers of the establishment to admit the defendant and subsequently deal with the defendant in accordance with this Law.
- (7) A prisoner whose sentence of imprisonment has not expired may be discharged from the approved establishment to which he or she has been transferred under this Article –
 - (a) on an application made to the court by –
 - (i) the prisoner, or
 - (ii) the Attorney General;
 - (b) on the grounds that, in the opinion of the responsible medical officer, it is no longer necessary for the prisoner to be detained in such an establishment by reason of mental disorder.
- (8) Where paragraph (7) applies, the prisoner shall be conveyed to prison in accordance with any further directions given by the court for that purpose, and the Governor of the prison shall admit the prisoner and deal with him or her as if paragraphs (1) to (6) of this Article had not applied.

68 Special restrictions on treatment orders

- (1) Where a treatment order is made in respect of a defendant and it appears to the court, having regard to the matters in paragraph (2), that it is necessary to do so to protect the public from serious harm, the court may further order that the treatment order shall take effect only with special restrictions, either without limit of time or during such period as the court may specify.
- (2) The matters mentioned in paragraph (1) as those to which the court must have regard are –
 - (a) the nature and gravity of the offence;
 - (b) the antecedents of the defendant;
 - (c) the risk of the defendant committing further offences if the defendant remains at liberty.
- (3) A further order under paragraph (1) (a “restriction order”) shall not be made unless at least one of the practitioners giving evidence for the purposes of Article 65(1)(a) has given evidence orally before the court.
- (4) Where a restriction order is made in respect of a defendant –
 - (a) the defendant shall be conveyed to the specified approved establishment within the period of 7 days beginning with the date of the order and in accordance with any directions given by the court for that purpose;
 - (b) the managers of the establishment shall admit the defendant and thereafter detain and deal with the defendant as a patient in respect of whom a treatment authorization had been made under Part 3, except that –
 - (i) leave of absence under Article 24 shall not be granted nor the defendant be transferred under Article 26 without leave of the court, and

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- (ii) Article 27(1) to (5) shall not apply unless and until the restriction order ceases to have effect in accordance with paragraph (5).
- (5) A restriction order shall not cease to have effect unless the court is satisfied, on an application made for the purpose by –
 - (a) the defendant, or the defendant’s nearest person appointed or nominated under Part 2; or
 - (b) pursuant to a report under paragraph (6), the Attorney General, that restrictions in respect of the defendant are no longer required to protect the public from serious harm.
 - (6) During the period for which a restriction order remains in effect, the responsible medical officer must –
 - (a) examine the defendant at such intervals (not exceeding 12 months) as the court may direct; and
 - (b) make a report of each such examination to the Attorney General, containing –
 - (i) the responsible medical officer’s opinion as to whether the restriction order should continue in effect, and
 - (ii) such further particulars as the court may require.

69 Transfer orders

- (1) This Article applies in respect of a person detained in a prison (the “prisoner”).
- (2) The court may order the transfer of a prisoner from a prison to an approved establishment and the detention of the prisoner in that establishment in accordance with paragraph (5), where the court is satisfied –
 - (a) on the evidence of 2 registered medical practitioners, at least one of whom must be an approved practitioner, that the prisoner is suffering from mental disorder of a nature or degree that makes it appropriate for the prisoner to be detained in an approved establishment for treatment;
 - (b) that the prisoner should be so transferred and detained in the public interest; and
 - (c) on the written or oral evidence of the approved practitioner who would be responsible for making the report, or some other person representing the managers of the approved establishment in question, that arrangements have been made for the admission of the accused person to that establishment within 7 days of the date of the order.
- (3) Subject to paragraph (4), evidence under paragraph (2)(a) –
 - (a) must be given in writing signed by the practitioners who have personally examined the defendant either jointly or, if separately, at an interval of not more than 5 days; and

- (b) must specify the form of mental disorder from which the defendant is found to be suffering.
- (4) In a case of emergency the court may waive the requirement for written evidence imposed by paragraph (3)(a) and the evidence of a medical practitioner may be given orally.
- (5) Where an order under this Article (a “transfer order”) is made in respect of a prisoner –
 - (a) the prisoner shall be conveyed to the specified approved establishment within the period of 7 days beginning with the date of the order and in accordance with any directions given by the court for that purpose; and
 - (b) the managers of the approved establishment shall admit the defendant and detain the defendant in accordance with this Article.
- (6) Unless –
 - (a) the prisoner is discharged under paragraph (8); or
 - (b) the prisoner’s sentence of imprisonment expires,a prisoner who is subject to a transfer order may be detained for a period of 6 months beginning with the date of the order.
- (7) A period of detention imposed by a transfer order may be renewed for one further period of 6 months and thereafter for successive periods of 12 months –
 - (a) on an application made by the Attorney General;
 - (b) on the grounds that, in the opinion of the responsible medical officer –
 - (i) the prisoner is suffering from mental disorder of a nature or degree that makes it appropriate for the prisoner to be detained in an approved establishment for treatment, and
 - (ii) the prisoner should continue to be so detained in the public interest.
- (8) A prisoner whose sentence of imprisonment has not expired may be discharged from the approved establishment to which he or she has been transferred under this Article –
 - (a) on an application made to the court by –
 - (i) the prisoner, or
 - (ii) the Attorney General;
 - (b) on the grounds that, in the opinion of the responsible medical officer, it is no longer necessary for the prisoner to be detained in such an establishment by reason of mental disorder.
- (9) Where paragraph (8) applies, the prisoner shall be conveyed to the prison in accordance with any directions given by the court for that purpose, and the Governor of the prison shall admit the prisoner and deal with the prisoner as if no transfer order in respect of him or her had been made.

70 Special provisions where patient sentenced to imprisonment

- (1) Paragraph (2) applies where a patient who –
 - (a) is liable to be detained by virtue of an assessment authorization or treatment authorization; or
 - (b) is subject to guardianship by virtue of a guardianship authorization, is detained in custody, pursuant to an order or sentence of any court in Jersey, for a period (or successive periods in the aggregate) exceeding 6 months.
- (2) Where this paragraph applies, the application mentioned in paragraph (1)(a) or (b) shall cease to have effect at the end of the period mentioned in that paragraph.
- (3) Where a patient to whom paragraph (1)(a) or (b) applies is detained in custody, but the application in question does not cease to have effect under paragraph (2) –
 - (a) if (apart from this paragraph) the patient would cease to be liable to be detained or to be subject to guardianship on or before the day on which the patient is discharged from custody, the patient shall not cease to be so liable or so subject until the end of that day; and
 - (b) in any case, Articles 25 and 28 shall apply to the patient upon his or her discharge from custody as if the patient were absent without leave on the day of the discharge.

71 Committal to Royal Court for making of orders

- (1) This Article applies in respect of a defendant who is convicted by a court other than the Royal Court of an offence punishable with imprisonment.
- (2) Where this Article applies, if –
 - (a) a court, other than the Royal Court, is satisfied as to the matters in Article 65(1)(a) and (c), as it would be required to be satisfied were the court to consider making a treatment order under that Article; and
 - (b) it appears to the court, having regard to the matters in Article 68(2), that if a treatment order were made in the case it should take effect with special restrictions,the court shall commit the defendant, in custody or as described in paragraph (3), to be dealt with by the Royal Court.
- (3) The court may by order direct the defendant to be admitted to an approved establishment and to be detained there until the case can be dealt with by the Royal Court, and may further give directions for the conveyance of the defendant from that establishment to attend the Royal Court.
- (4) Where a defendant is committed to the Royal Court under this Article, the Royal Court shall have all such powers to deal with the defendant under this Part as it would have if the defendant had been convicted before it, and –

- (a) in particular the Royal Court may, if it would have had power to do so upon conviction of the defendant before it under Article 65 –
 - (i) make a treatment order in respect of the defendant, and
 - (ii) if it thinks fit and having regard to the matters in Article 68(2), make a further order that the treatment order shall take effect with special restrictions; and
- (b) further, the Royal Court may deal with the defendant in any other manner in which the court committing the defendant could have dealt with him or her.

72 Special verdicts

- (1) Paragraph (2) applies in any proceedings, whether or not a determination of incapacity has been made under Part 8 in respect of the defendant.
- (2) Where the court finds that –
 - (a) the defendant carried out the act alleged; but
 - (b) at the time of carrying out the act, the defendant was suffering from mental disorder to such a substantial degree that he or she ought not to be held criminally responsible for doing so,

the court shall record a special verdict to that effect and may either acquit the defendant or make such an order as it has power to make under Article 59.

PART 10

SAFEGUARDING: OFFENCES AGAINST THOSE IN RECEIPT OF CARE ETC.

73 Offence of wilful neglect

- (1) It is an offence for the managers or any member of staff of an approved establishment to ill-treat or wilfully neglect –
 - (a) a patient for the time being detained or receiving treatment for mental disorder in the approved establishment;
 - (b) on the premises of which the establishment forms part, a patient receiving treatment for mental disorder as an out-patient; and
 - (c) any other person for the time being under this Law in the care or custody of the establishment or of the mental health professional.
- (2) It is an offence for any individual to ill-treat or wilfully neglect –
 - (a) a patient who is suffering from mental disorder and is for the time being subject to the individual's guardianship; and
 - (b) any person who is otherwise in the individual's care or custody whether by virtue of any legal or moral obligation or otherwise.
- (3) A person guilty of an offence under this Article shall be liable to imprisonment for a term of 5 years and a fine.

74 Sexual offences: prohibited acts

- (1) It is an offence for any person (“A”) to commit an act described in paragraph (2) (in this Article and in Articles 75 and 76, a “prohibited act”) with, towards, or in relation to, any other person (“B”) where A knows, or could reasonably be expected to know, that –
 - (a) B is suffering from any mental disorder (including any learning disability); and
 - (b) because of that disorder or for reasons related to it, B is unable to refuse involvement in the act.
- (2) For the purposes of paragraph (1), A commits a prohibited act if –
 - (a) A intentionally touches B, where the touching is sexual;
 - (b) A intentionally causes or incites B to engage in an act which is sexual;
 - (c) A intentionally engages in an act which is sexual, for the purpose of obtaining sexual gratification, and does so –
 - (i) when B is either present or in a place from which A can be observed by B,
 - (ii) knowing or believing that B is aware, or intending that B should be aware, that A is engaging in the act; or
 - (d) for the purpose of obtaining sexual gratification, A intentionally causes B to watch a third person engaging in an act which is sexual, or to look at an image of any person engaging in such an act.
- (3) For the purposes of paragraph (2) –
 - (a) touching includes touching –
 - (i) with any part of the body,
 - (ii) with anything else, and
 - (iii) through anything; and
 - (b) touching or any other act is sexual if a reasonable person would consider that –
 - (i) whatever the circumstances or any person’s purpose in relation to the act, it is because of its nature sexual, or
 - (ii) because of the nature of the act it may be sexual and because of its circumstances or the purpose of any person in relation to it (or both), it is sexual.
- (4) For the purposes of paragraph (1)(b), B shall be deemed to be unable to refuse involvement in an act if –
 - (a) B lacks the capacity to choose whether or not to agree to such involvement (whether because B does not understand the nature of the act, or for any other reason); or
 - (b) for any reason, B is unable freely to communicate such a choice to A.

75 Sexual offences: relationship of care

- (1) It is an offence for any person (“A”) –
 - (a) to commit a prohibited act with, towards or in relation to any other person suffering from a mental disorder (“B”); or
 - (b) to procure by inducement, threat, or deception, B’s participation in a prohibited act,where A is involved in B’s care in any way described in paragraphs (3) or (4).
- (2) Where A is involved in B’s care for the purposes of paragraph (1), in determining whether an offence has been committed under that paragraph it is to be presumed that, unless the contrary is shown, A knows, or could reasonably be expected to know, that B has a mental disorder.
- (3) A is involved in B’s care for the purposes of paragraph (1) if –
 - (a) B is accommodated and cared for in an approved establishment or any other residential or nursing home; or
 - (b) B is a patient for whom care services are provided by any public or private health care provider, whether in B’s home or elsewhere,and A performs functions, in the course of A’s employment or of services provided by A, which bring or are likely to bring A into regular face-to-face contact with B.
- (4) A is involved in B’s care for the purposes of paragraph (1) if –
 - (a) A is, whether or not in the course of employment, a provider of care, assistance or services to B in connection with B’s mental disorder; and
 - (b) A is likely to have regular face-to-face contact with B.
- (5) It is a defence for A, being charged with an offence under paragraph (1), to prove that, at the time of the prohibited act –
 - (a) B was aged 16 years or over; and
 - (b) A was lawfully married to, or in a civil partnership with, B.

76 Sexual offences: coercion

It is an offence for any person (“A”) to procure by inducement, threat, or deception the participation of any other person (“B”) in a prohibited act where A knows, or could reasonably be expected to know, that B is a person suffering from a mental disorder.

77 Sexual offences: penalties

- (1) A person guilty of an offence under Article 74(1) or Article 76 is liable –
 - (a) in the case of a prohibited act described in Article 74(2(a) or (b) –
 - (i) where the act involved penetration, to imprisonment for life, or
 - (ii) where the act did not involve penetration, to imprisonment for a term of 14 years;

- (b) in the case of a prohibited act described in Article 74(2)(c) or (d), to imprisonment for 10 years.
- (2) A person guilty of an offence under Article 75(1) is liable –
 - (a) in the case of a prohibited act described in Article 74(2)(a) or (b) –
 - (i) where the act involved penetration, to imprisonment for a term of 14 years, or
 - (ii) where the act did not involve penetration, to imprisonment for a term of 10 years;
 - (b) in the case of a prohibited act described in Article 74(2)(c) or (d), to imprisonment for a term of 7 years.
- (3) For the purposes of this Article, “penetration” means penetration –
 - (a) of the anus, mouth or vagina of one of the participants in the prohibited act;
 - (b) by a part of the body of the other participant, or by anything else.

PART 11

SAFEGUARDING: PATIENTS’ RIGHTS

78 Information to be given to patients

- (1) Where a patient is detained or taken into guardianship under this Law, the managers of the approved establishment in which the patient is detained or, as the case may be, the Minister must, as soon as practicable after the detention or guardianship commences, take all such steps as are reasonable to ensure that the patient understands –
 - (a) under which of the provisions of the Law the patient is detained or taken into guardianship, and the effect of those provisions;
 - (b) what rights of access to independent advocacy, representation and review are available to the patient under this Law;
 - (c) the effect, so far as relevant in that patient’s case, of Articles 7, 13, 27, Part 6, Articles 79, 81 to 84, 85 and 91; and
 - (d) such other matters as may be required by Regulations, or a code of practice, under this Law.
- (2) The managers or, as the case may be, the Minister must further (unless the patient requests otherwise) take such steps as are practicable to provide the patient’s nearest person, at the same time as or within a reasonable time of giving information to the patient under paragraph (1), with the same information or, if in writing, with a copy of that information.
- (3) The steps to be taken under paragraph (1) may include giving the information required either in writing or orally, or by both means, having regard in particular to the patient’s ability to understand the information, however given.

79 Independent mental health advocates: regulations

- (1) This Article applies to make provision for the appointment of independent mental health advocates (“MHAs”) to act in relation to and on behalf of qualifying patients.
- (2) The States may by Regulations require the Minister to make reasonable arrangements –
 - (a) for the appointment of independent mental health advocates (“MHAs”) in accordance with further provision to be made by the Regulations of the kind described in paragraph (3)(a) to (e); and
 - (b) as to the role and conduct of MHAs, in accordance with provision to be made by the Regulations of the kind described in paragraphs (3)(f) and (g), (4) and (5).
- (3) Regulations under this Article may in particular make provision including (but not limited to) provision as to –
 - (a) the qualifications required of a person to be appointed;
 - (b) the circumstances in which a person may so act;
 - (c) the procedure for appointment and terms and conditions of appointment;
 - (d) the circumstances in which the appointment may end or be terminated and the formalities for doing so;
 - (e) as to the nature and level of payment (whether by way of fees, or reimbursement of expenses) which may be made to MHAs;
 - (f) steps to be taken to ensure that qualifying patients and their nearest persons are aware of the availability of the services of MHAs; and
 - (g) matters in which MHAs may help qualifying patients, and the powers which MHAs may exercise for the purpose of giving such help.
- (4) Matters for the purpose of paragraph (3)(g) include in particular –
 - (a) help to be given to qualifying patients in obtaining information about, and understanding –
 - (i) applicable and relevant provisions of this Law, with particular regard to the rights of a patient under it, and
 - (ii) the nature, effects of, and basis (both legal and medical) for any treatment or proposed treatment; and
 - (b) help to be given to qualifying patients as to the proper exercise of those rights.
- (5) Powers for the purpose of paragraph (3)(g) include in particular –
 - (a) the power to visit and interview patients in private;
 - (b) the power to visit and interview any person professionally concerned with the treatment of any patient, and the manner of its exercise;
 - (c) the power to require disclosure and inspection of records relating to patients (whether held by approved establishments, by the Minister or authorized officers), and the circumstances and manner of the exercise of such power (including, for the avoidance of doubt,

provision as to circumstances in which a patient may object to disclosure).

- (6) In this Article –
- “qualifying patient” means –
- (a) a patient liable to be detained in an approved establishment under Part 3; and
 - (b) a patient subject to guardianship under Part 4; and
- “independent” means independent of any other persons professionally concerned with the care or treatment of a qualifying patient.

80 Forgery and false statements

- (1) A person who, with intent to deceive –
- (a) forges any document required or authorized to be made under or for the purposes of this Law; or
 - (b) uses, allows any other person to use, or makes or has in his or her possession any document which the person knows to be forged or to so closely resemble any document listed in paragraph (2) as to be calculated to deceive,
- is guilty of an offence.
- (2) The documents mentioned in paragraph (1)(b) include, in particular and without limitation –
- (a) an application under Part 3;
 - (b) any medical recommendation, report or information required to be made, given or provided under this Law; or
 - (c) any other document required or authorized to be made under or for any of the purposes of this Law.
- (3) A person who –
- (a) knowingly makes a false entry or statement in any document listed in paragraph (2); or
 - (b) with intent to deceive, makes use of such an entry or statement which the person knows to be false,
- is guilty of an offence.
- (4) A person guilty of an offence under this Article shall be liable to imprisonment for a term of 2 years and to a fine.

81 Provision of patients’ allowances

Where it appears to the Minister that a patient in an approved establishment (whether liable to be detained under Part 3 or not) would otherwise be without resources to meet occasional personal expenses, the Minister may pay to or on behalf of the patient such amount in respect of those expenses as the Minister may think fit.

82 Restrictions on access to electronic media and communications etc.

- (1) Access by a patient detained in an approved establishment to electronic media or communications, or to a telephone (including any form of personal mobile device) may be restricted if, in the opinion of the managers of the establishment, it is necessary to do so –
 - (a) in the interests of the health or safety of the patient; or
 - (b) for the protection of other persons.
- (2) Restrictions imposed under paragraph (1) may include –
 - (a) restriction of the ability of a patient to contact a specified person by any means mentioned in that paragraph, where the person has requested such a restriction by notice given in writing to the managers; and
 - (b) confiscation of any article or device which may be used for the purposes of electronic media or communications.
- (3) Where any restriction is imposed under paragraph (1) in respect of a patient's access –
 - (a) the managers shall, no later than 7 days after it is imposed, give notice in writing of the restriction and of the right to review under Article 84 –
 - (i) to the patient, and
 - (ii) where the restriction relates to contact with a specified person as provided by paragraph (2), to that person;and
 - (b) the managers shall record in writing the fact and nature of the restriction.
- (4) Paragraph (1) shall not apply so as to restrict communications by any means mentioned in that paragraph between a patient and –
 - (a) the Attorney General;
 - (b) a member of the States;
 - (c) a judicial officer of a court, including for this purpose the European Court of Human Rights;
 - (d) the patient's legal representative;
 - (e) the patient's guardian;
 - (f) the patient's nearest person;
 - (g) an independent mental health advocate;
 - (h) a police officer;
 - (i) the Mental Health Review Tribunal; or
 - (j) any other person such as may be prescribed by Regulations made by the States for this purpose.

83 Restrictions on postal correspondence

- (1) A postal packet addressed to a patient detained in an approved establishment may be withheld from the patient if, in the opinion of the managers of the establishment it is necessary to do so –
 - (a) in the interests of the health or safety of the patient; or
 - (b) for the protection of other persons.
- (2) A postal packet addressed by a patient detained in an approved establishment may be withheld from dispatch by the manager if –
 - (a) the addressee has given notice in writing to the managers or the responsible medical officer that any communications addressed to the addressee by the patient should be withheld; or
 - (b) if it appears to the managers that the communication –
 - (i) would be likely to cause distress to the addressee, or
 - (ii) might cause danger to any person.
- (3) Paragraphs (1) and (2) shall not apply so as to permit restriction of communications by post between a patient and –
 - (a) the Attorney General;
 - (b) a member of the States;
 - (c) a judicial officer of a court, including for this purpose the European Court of Human Rights;
 - (d) the patient's legal representative;
 - (e) the patient's guardian;
 - (f) the patient's nearest person;
 - (g) an independent mental health advocate;
 - (h) a police officer;
 - (i) the Mental Health Review Tribunal; or
 - (j) any other person such as may be prescribed by Regulations made by the States for this purpose.
- (4) The managers of an approved establishment may inspect and open a postal packet addressed to or by a patient for the purpose of determining whether or not paragraphs (1) or (2)(b) may apply, and for no other purpose.
- (5) Where a postal packet is withheld under this Article –
 - (a) the managers shall, no later than 7 days after the postal packet is withheld, give notice in writing of the fact and of the right to review under Article 84 –
 - (i) to the patient, and
 - (ii) where paragraph (2) applies, to the addressee;and
 - (b) the managers shall record in writing the fact of, and reason for, the withholding.

- (6) In this Article, “postal packet” has the same meaning as in section 27 of the Postal Services Act 2011 of the United Kingdom.

84 Review of restrictions, and offence where restriction unlawful

- (1) The patient or, where notice has been given to him or her under Article 83(5)(a), the addressee, may apply to the Mental Health Review Tribunal, in such form as may be prescribed or in writing substantially to the same effect, for a review of any decision –
- (a) under Article 82, to restrict access to communications; or
 - (b) under Article 83, to withhold a postal packet.
- (2) An application under paragraph (1) must be made within the period of 6 months beginning with the date of receipt of notice of the decision of which review is sought.
- (3) Upon determining the application the Tribunal may –
- (a) uphold the decision; or
 - (b) quash the decision and give such directions as to the restriction of communication by or with the patient, or as to the disposal of the postal packet (as the case may be) as the Tribunal may think fit.
- (4) Except as provided by Articles 82 or 83, it shall not be lawful to restrict –
- (a) a patient’s access to electronic communications; or
 - (b) receipt or dispatch of a postal packet by a patient,
- and a person who does so unlawfully shall be guilty of an offence and liable upon conviction to a fine of level 3 on the standard scale.

PART 12

TRANSFER OF PATIENTS BETWEEN JERSEY AND OTHER JURISDICTIONS

85 Removal from Jersey: role of Tribunal

- (1) A patient may not be removed from Jersey pursuant to Articles 86 to 88 except as authorized –
- (a) by order of the Court, in which case the Court shall have all such powers as are conferred on the Minister under Articles 86(2), 87(2), 88 and 89; or
 - (b) by the Minister, with the approval of the Tribunal.
- (2) Where the Minister authorizes removal under Article 86 or 87, the Minister must immediately notify the Tribunal and the Tribunal shall review the authorization within the period of 7 days beginning with the date of such notification.
- (3) In this Part, reference to a patient is to a patient liable to be detained under Part 3 or pursuant to an order under Part 9.

- (4) For the avoidance of doubt the Tribunal shall not have power under this Article or otherwise to review an authorization given under this Part by order of the Court.

86 Removal of patient to another place in the British Islands

- (1) The Minister may authorize the removal of a patient from Jersey to another place in the British Islands where it appears to the Minister that –
 - (a) such removal is in the best interests of the patient;
 - (b) there is provision in that place for the reception of the patient from Jersey corresponding to Article 89; and
 - (c) arrangements have been made for the patient's admission in that place.
- (2) When authorizing removal under paragraph (1) the Minister may give any directions necessary for the conveyance of the patient to the intended destination in the place mentioned in that paragraph.
- (3) Following removal of a patient from Jersey under this Article, the assessment or treatment authorization by virtue of which that patient is liable to be detained shall cease to have effect upon admission of the patient pursuant to the arrangements mentioned in paragraph (1)(c).

87 Removal of patient to another place where no reciprocal arrangements

- (1) The Minister may authorize the removal of a patient from Jersey to another place in the British Islands where it appears to the Minister that –
 - (a) such removal is in the interests of the patient;
 - (b) there is no provision in that place for the reception of the patient from Jersey corresponding to Article 89 but the patient is ordinarily resident in that place; and
 - (c) proper arrangements have been made for the removal of the patient to that place, and for the patient's care and treatment there.
- (2) When authorizing removal under paragraph (1) the Minister may give such directions as the Minister thinks fit for –
 - (a) the conveyance of the patient to the intended destination in the place mentioned in that paragraph; and
 - (b) the detention of the patient in any other place or on board any ship or aircraft until arrival at any specified port or other place in the British Islands.

88 Removal of alien patient

- (1) The Minister may authorize the removal of a patient who is an alien where it appears to the Minister that –
 - (a) such removal is in the interests of the patient; and

- (b) that proper arrangements have been made for the removal of the patient to a country or territory outside the British Islands and for the patient's care and treatment there.
- (2) When authorizing removal under paragraph (1) the Minister may give such directions as the Minister thinks fit for –
 - (a) the conveyance of the patient to the intended destination in the place mentioned in that paragraph; and
 - (b) the detention of the patient in any other place or on board any ship or aircraft until arrival at any specified port or other place in the country or territory concerned.

89 Reception of patient into Jersey

- (1) This Article applies where a patient is removed to Jersey from another place in the British Islands under an enactment corresponding to Article 86.
- (2) Where this Article applies and the patient is admitted to an approved establishment, this Law shall apply to the patient as if, on the date of admission, the patient had been so admitted pursuant to an application order or direction given under the provision of this Law corresponding to the enactment of the place from which the patient was removed and by virtue of which the patient was liable to be detained in that place.
- (3) While being conveyed in Jersey to the approved establishment mentioned in paragraph (1), the patient shall be deemed to be in legal custody.

PART 13

MISCELLANEOUS AND GENERAL PROVISIONS

90 Codes of practice

- (1) The Minister must issue a code of practice for the purposes of this Law and in particular (but without limitation) for the guidance of persons, on whom functions are conferred by or under this Law, in carrying out such functions.
- (2) A code must include a statement of such principles as the Minister may consider should inform decisions (whether generally or in particular) under this Law, and the statement must address each of the following matters and the weight to be accorded to them –
 - (a) respect for the wishes and feelings of patients so far as these can reasonably be ascertained;
 - (b) involvement of patients so far as reasonably possible in determining their own care and treatment;
 - (c) respect for diversity, including (but without limitation) issues of religion and sexual orientation;
 - (d) minimal restriction on liberty of patients;
 - (e) effectiveness of treatment;

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- (f) respect for the views of patients' carers;
 - (g) the wellbeing and safety of patients; and
 - (h) public safety.
- (3) In issuing a code the Minister must also have regard to the need to ensure –
- (a) the efficient use of resources; and
 - (b) the equitable distribution of services.
- (4) Paragraph (5) 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.
- (5) 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.
- (6) 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.
- (7) Before issuing or amending a code, the Minister must consult such bodies as appear to the Minister to be concerned.
- (8) The Minister must publish any code of practice 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.

91 Offence of assisting patient to abscond

- (1) A person who induces or knowingly assists a patient liable to be detained, or subject to guardianship, under this Law to absent himself or herself without leave from an approved establishment or the custody of his or her guardian (as the case may be) is guilty of an offence.
- (2) A person who –
- (a) knowingly harbours a patient who is absent without leave or is otherwise at large and liable to be retaken under the provisions of Part 5 or Part 9; or
 - (b) gives, with intent to prevent, hinder or interfere with the patient being retaken into custody or returned to an approved establishment, any assistance to such a patient,

is guilty of an offence.

- (3) A person guilty of an offence under this Article is liable to imprisonment for a term of 2 years and a fine.

92 Offence of obstruction

A person who –

- (a) refuses to allow the inspection of any premises;
- (b) without reasonable cause, refuses to allow the visiting, interviewing or examination of a patient by a person authorized in that behalf by or under this Law;
- (c) refuses to produce for the inspection of any such authorized person any document or record duly required by that person; or
- (d) otherwise obstructs any such authorized person in the exercise of his or her functions under this Law,

is guilty of an offence and liable to imprisonment for a term of 3 months and a fine of level 3 on the standard scale.

93 Protection for acts done in pursuance of this Law

- (1) No liability is incurred by any person in respect of any act done in the discharge or purported discharge of a function conferred on the person by or under this Law.
- (2) Paragraph (1) does not apply –
 - (a) if it is shown that the act in question was done in bad faith, or without due and reasonable care; or
 - (b) so as to prevent an award of damages made in respect of the act on the ground that the act was unlawful under Article 7(1) of the Human Rights (Jersey) Law 2000¹⁰.

94 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; and
 - (b) may amend any enactment.
- (2) Regulations under this Law may make 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.

95 Orders

- (1) The Minister may make Orders for prescribing anything which is required or authorized to be prescribed under this Law.
- (2) For the purpose of giving full effect to this Law, the Minister may by Order –
 - (a) prescribe the form of any application, recommendation, report, direction, notice or other document to be made, given or provided under this Law;
 - (b) prescribe the manner in which any such document as is mentioned in sub-paragraph (a) may be served, and proved in evidence;
 - (c) prescribe for a register or other records to be kept in respect of patients liable to be detained or subject to guardianship under this Law;
 - (d) make provision for providing or making available to such patients and their relatives and nearest persons written statements of patients' rights under this Law;
 - (e) make provision for the determination of the age of any person whose exact age cannot be ascertained by reference to registers kept under the Marriage and Civil Status (Jersey) Law 2001¹¹;
 - (f) make provision for enabling functions of a patient's nearest person or guardian to be performed, in such circumstances and subject to such conditions as may be prescribed, by any person authorized to do so by the relative or guardian; and
 - (g) make provision as to the conditions under which patients may be transferred under Part 12.
- (3) Orders under this Law may make such transitional, saving, supplementary and consequential provision as may appear to the Minister to be necessary or appropriate.
- (4) The Subordinate Legislation (Jersey) Law 1960¹² applies to Orders made under this Law.

96 Rules of Court

The power to make rules of court under the Royal Court (Jersey) Law 1948¹³ 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 Articles 11, 12, 67 and 69 (including the hearing and determination of applications otherwise than in open court); and
- (b) the visiting and interviewing of patients in private, by or under the direction of the Court.

97 Repeals and saving

- (1) The Criminal Justice (Insane Persons) (Jersey) Law 1964¹⁴ and (subject to paragraph (2)) the Mental Health (Jersey) Law 1969¹⁵ are repealed.
- (2) Article 43 of the Mental Health (Jersey) Law 1969 (and, so far as necessary for the purposes of that Article, Articles 1, 3, 4 and Part 2 of, and Schedule 2 to that Law) shall continue to have effect until the commencement, if occurring after the commencement of this Law, of Part 4 of the Capacity Law.

98 Citation and commencement

This Law may be cited as the Mental Health (Jersey) Law 2016 and shall come into force on such day or days as the States may by Act appoint.

L.-M. HART

Deputy Greffier of the States

SCHEDULE

(Articles 47, 49 and 50)

PART 1**CONSTITUTION AND PROCEEDINGS OF MENTAL HEALTH REVIEW TRIBUNAL****1 Selection of members**

The members who are to constitute the Tribunal for the purposes of any proceedings, or any class or group of proceedings, under this Law shall be selected –

- (a) from among the persons appointed to the Panel and in accordance with paragraphs 2 and 3;
- (b) by –
 - (i) the Chairman,
 - (ii) (if the Chairman is not available to act) the Vice Chairman, or
 - (iii) (if neither the Chairman nor the Vice Chairman is available to act) the Bailiff.

2 Constitution of Tribunal

Each Tribunal selected under paragraph 1 shall consist of at least 3 members comprising –

- (a) one legal member (who may be the Chairman, Vice-Chairman or the Bailiff);
- (b) one medical member; and
- (c) one lay member.

3 Notification of members

The Chairman, Vice-Chairman or (as the case may be) the Bailiff must notify a member selected under paragraph 1, in such manner as may be agreed between the Bailiff and the Chairman for that purpose, of the fact of the selection and of the details of the application or reference which the Tribunal in question is to consider.

4 Conflicts of interest

If a member has any interest in the patient to whom the application or reference relates, the member must as soon as practicable inform the Chairman, Vice Chairman or (as the case may be) the Bailiff of the existence of that interest and shall cease to be eligible to act as a member of the Tribunal hearing the application or reference in question.

5 Proceedings

The Minister may by Order make such rules of procedure as the Minister may think fit in relation to the constitution, proceedings and powers of the Tribunal, and in relation to matters incidental or consequential upon such proceedings, and such rules may (without limitation to the generality of the power conferred by this paragraph) include provision –

- (a) as to the manner in which, the means by which, and the period within which proceedings of the Tribunal may be instituted, adjourned, withdrawn or discontinued;
- (b) as to the further constitution of the Tribunal, in relation to the consideration of any particular application or class of application;
- (c) as to the maximum period which may elapse, following the receipt of an application or reference by the Tribunal, until the commencement of proceedings in relation to that application or reference;
- (d) for determining without a hearing, and on the basis of written representations, such matters as may be specified and in such circumstances as may be specified;
- (e) for enabling the Tribunal –
 - (i) to exclude members of the public or any specified class of members of the public from any of the Tribunal's proceedings, and
 - (ii) to prohibit the publication of reports of its proceedings or of the identity of any person concerned in those proceedings;
- (f) as to the regulation of representation before the Tribunal, including representation by persons who are not legally qualified, whether or not in addition to representation by an advocate or solicitor of the Royal Court;
- (g) as to the regulation of methods by which information relevant to an application may be obtained by, or provided to, the Tribunal and in particular for authorizing a member of the Tribunal to visit and interview in private any patient concerned in any proceedings;
- (h) as to the provision to any applicant or patient concerned in any proceedings of copies of statements, documents or information obtained by or provided to the Tribunal in connection with those proceedings;
- (i) restricting the availability of information to the patient or any other person concerned in any proceedings, where to do so is necessary in the interests of the patient or otherwise in the interests of justice;
- (j) as to the provision of statements of reasons for the Tribunal's decisions, including the form and content of such statements, and the grounds on which or cases in which such statements may be withheld, where to do so is necessary in the interests of the patient or otherwise in the interests of justice;
- (k) as to costs, fees, expenses and allowances (including expenses and allowances which may be provided by the Minister to the members of the Tribunal);
- (l) as to the powers of the Tribunal to review its own decisions and to correct omissions and clerical errors;

- (m) as to such ancillary powers of the Tribunal which the Minister considers necessary for the purposes of the proper discharge of functions of the Tribunal and of the just disposal of its proceedings; and
- (n) as to the Tribunal's obligations of confidentiality, including prescribing circumstances in which information may be disclosed by the Tribunal and the persons to whom it may be disclosed.

6 Offence of disclosure of information

- (1) Subject to sub-paragraph (2), a member of the Panel shall not disclose any document or other information –
 - (a) relating to the business or affairs of any person; and
 - (b) which is acquired by the member in the course of exercising functions of a member of the Panel.
- (2) A disclosure which is otherwise prohibited by paragraph (1) may be made –
 - (a) with the consent of (or consent lawfully given on behalf of) –
 - (i) the person to whom the disclosure relates, and
 - (ii) if different, the person from whom the document or information was acquired;
 - or
 - (b) to the extent that the disclosure is necessary –
 - (i) to enable the member to exercise functions as a member of the Panel,
 - (ii) in the interests of the investigation, detection, prevention or prosecution of crime, or
 - (iii) to comply with an order of a court.
- (3) A person who makes a disclosure in contravention of paragraph (1) is guilty of an offence and liable to a fine.

PART 2

APPLICATIONS TO THE TRIBUNAL

1 Types of applications and applicants

- (1) An application may be made to the Tribunal –
 - (a) following a decision or other exercise of a power as described in the first column of the following table;
 - (b) by the patient (including by the patient's nearest person) or another person as described in the second column (the "applicant"); and
 - (c) within the period described in the third column,

for a review of the decision or exercise of the power in question, and in particular, where the patient is for the time being liable to be detained, for the discharge of the patient.

- (2) An application under paragraph (1) shall be made in such form as may be prescribed, or in writing substantially to the same effect.

| DECISION OR EXERCISE OF POWER | APPLICANT | PERIOD |
|--|---|--|
| Detention under an assessment authorization | The patient to whom the authorization relates | 14 days beginning with the day on which notice is given under Article 20(2) that the patient is admitted to an approved establishment |
| First detention under a treatment authorization | The patient to whom the authorization relates | 6 months beginning with the day on which notice is given under Article 20(2) that the patient is admitted to an approved establishment |
| First renewal of detention under a treatment authorization | The patient to whom the authorization relates | 6 months beginning with the day on which the authorization is first renewed |
| Subsequent renewal of detention under a treatment authorization | The patient to whom the authorization relates | 12 months beginning with the day on which the authorization is renewed |
| Exercise of power to recall from absence | The patient in respect of whom the power is exercised | 14 days beginning with the day on which the power is exercised |
| Detention in custody following absence without leave | The patient who is taken into custody | 28 days beginning with the day on which the patient is detained |
| Reception into guardianship | The patient to whom the guardianship authorization relates | 6 months beginning with the day on which the guardianship authorization is made |
| The making or renewal of a treatment order | The patient to whom the order relates | 6 months beginning with the day on which the order is made or renewed |
| Decision by managers of an approved establishment to withhold a postal packet or the contents of such a packet | The patient A person (other than the patient) by whom a postal packet was sent | 6 months beginning with the day on which the applicant receives notice under Article 83(5) that the postal packet has been withheld |

| | | |
|--|--------------|------------------------------|
| Authorization to remove person from Jersey | The Minister | As provided by Article 85(2) |
|--|--------------|------------------------------|

2 Limit on applications, and further interpretation of table

- (1) Only one application may be made by the same applicant within a period described in the third column of the table, except where a previous application made by the same applicant under the same provision has been withdrawn.
- (2) For the avoidance of doubt, in relation to the first two entries in the table, detention under an authorization includes any detention during the initial period (as defined in Article 20(1)(b)).

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- 1 *L.30/2016*
2 *chapter 20.600*
3 *chapter 20.300*
4 *chapter 20.300*
5 *chapter 16.325*
6 *chapter 07.770*
7 *chapter 08.380*
8 *L.27/2014*
9 *chapter 23.775*
10 *chapter 15.350*
11 *chapter 12.600*
12 *chapter 15.720*
13 *chapter 07.770*
14 *chapter 08.280*
15 *chapter 20.650*