



Jersey

COVID-19 (CAPACITY AND SELF-DETERMINATION) (JERSEY) REGULATIONS 2020

*Made**13th May 2020**Coming into force**14th May 2020*

THE STATES make these Regulations under Article 2 of the Covid-19 (Enabling Provisions) (Jersey) Law 2020¹ –

1 Temporary amendment of the Capacity and Self-Determination (Jersey) Law 2016

After Article 60 of the Capacity and Self-Determination (Jersey) Law 2016² there is inserted –

“60A Power to declare that an extraordinary period exists

- (1) This Article applies if the Minister is satisfied that –
 - (a) the disruption caused by the Covid-19 outbreak in Jersey is limiting the ability to carry out assessments for the purpose of standard authorizations for imposing significant restrictions on liberty under Part 5; and
 - (b) it is proportionate and necessary to make the Order described in paragraph (2).
- (2) The Minister may, by Order, declare the start of an extraordinary period and the end of that period, being no later than 28 days after the start.
- (3) Despite Article 11 of the Interpretation (Jersey) Law 1954³, the provision declaring the end of the period may not be amended other than –
 - (a) to declare an earlier end; or
 - (b) to declare a later end, being no later than 28 days after the commencement of each Order making such an amendment.

60B Temporary provision during the Covid-19 outbreak

Articles 60C to 60G apply where the Minister for Health and Social Services has declared an extraordinary period by an Order made under Article 60A.

60C Temporary provision permitting significant restriction on liberty

M may lawfully impose on P a significant restriction on liberty under Article 38 if, in respect of P, an interim authorization has been granted by the Minister under Article 60F.

60D Application for an interim authorization

- (1) M may apply to the Minister for an interim authorization if M reasonably believes that –
 - (a) the duty imposed by Article 43(3) applies to M;
 - (b) P lacks capacity in relation to giving consent to the arrangements for his or her care or treatment;
 - (c) it is necessary, in the interests of P's health or safety, to impose a significant restriction on P's liberty;
 - (d) it is in P's best interests to be provided with care or treatment in circumstances which would amount to a significant restriction on P's liberty;
 - (e) the restriction on P's liberty is a proportionate response to –
 - (i) the likelihood of P's suffering any harm, and
 - (ii) the seriousness of that harm, should it occur; and
 - (f) it is not practicable or would result in undesirable delay for a standard authorization to be granted.
- (2) An application under paragraph (1) must be in writing, in such form as the Minister may require, and must contain the following matters –
 - (a) P's name;
 - (b) M's name and the name of any other registered person concerned;
 - (c) the name and address of the relevant place;
 - (d) the grounds for the application;
 - (e) the nature and extent of the proposed restriction on P's liberty;
 - (f) the names of any person listed in Article 44(5) whom M considers it appropriate for the Minister to consult; and
 - (g) a report containing the information set out in paragraph (3).
- (3) The report must –
 - (a) set out M's assessment regarding the matters in paragraph (1)(b) to (e) and include supporting evidence of diagnosis of impairment or disturbance in the functioning of P's mind or brain; and

- (b) state whether to M's knowledge P has made an advance decision to refuse treatment under Part 3, and if so set out the terms of that decision.

60E Consultation with appropriate persons

Upon receipt of an application under Article 60D the Minister –

- (a) must, if practicable, consult –
 - (i) any person on whom authority has been conferred by a health and welfare LPA,
 - (ii) P's guardian, if any, and
 - (iii) any other person named in the application as a person whom M considers it appropriate for the Minister to consult; and
- (b) may consult with any other person whom the Minister considers appropriate.

60F Interim authorization

- (1) This Article applies where –
 - (a) the Minister is satisfied that the application under Article 60D is duly made; and
 - (b) where practicable, any appropriate persons have been consulted in accordance with Article 60E.
- (2) Where this Article applies, the Minister may authorize the imposition of significant restrictions on P's liberty for a period of no longer than 90 days beginning with the day of the authorization.
- (3) As soon as practicable following an authorization under paragraph (2) the Minister must give notice in writing to M, which must specify –
 - (a) P's name;
 - (b) M's name and the name of any other registered person concerned;
 - (c) the date on which and the period during which the authorization is to take effect;
 - (d) the nature and extent of the significant restrictions on P's liberty which are permitted to be imposed by the authorization; and
 - (e) any conditions or directions relating to the imposition of such restrictions.
- (4) Nothing in this Article permits the Minister to authorize a significant restriction on P's liberty which conflicts or would conflict with a valid advance decision made by P under Part 3.

60G Application of Articles 51 and 55

Articles 51 and 55 apply to an interim authorization in the same way that they apply to a standard authorization.

60H Expiration of this Article and Articles 60A to 60G

- (1) Subject to paragraph (2), this Article and Articles 60A to 60G expire on 30th September 2020.
- (2) Where an interim authorization is in place on 30th September 2020, or when the extraordinary period ends, that authorization remains in place until the end of the period specified in the authorization.”.

2 Citation, commencement and expiry

These Regulations may be cited as the Covid-19 (Capacity and Self-Determination) (Jersey) Regulations 2020 and come into force on the day after they are made.

L.-M. HART

Deputy Greffier of the States

ENDNOTES

Table of Endnote Reference

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| <i>1</i> | <i>L.2/2020</i> |
| <i>2</i> | <i>chapter 20.040</i> |
| <i>3</i> | <i>chapter 15.360</i> |