

# **A new Mental Health Law for Jersey**

## **Why a new law?**

At present, the treatment of people with mental health problems and conditions (referred to in the new Law as 'mental disorders'), is covered under the Mental Health (Jersey) Law 1969. However, there are a number of difficulties with the 1969 Law, which does not reflect modern standards for the diagnosis and treatment of individuals with mental disorders.

Therefore a new law has been drafted to better reflect current standards and expectations. This has been developed to align more closely with current law in England and Wales, Guernsey and other jurisdictions where there has been recent advancements in mental health legislation. An alignment in legislation will ease the process of transferring individuals between jurisdictions where it is necessary.

It is intended that the new Law should safeguard the dignity and wellbeing of individuals who suffer from a mental disorder and also provide assurance that these individuals and the public will be protected from harm.

## **What areas will the new law cover?**

Like the 1969 Law, the new Law will set out the processes that must be followed when an individual is detained for assessment or treatment. It will set out emergency powers for doctors and nurses to detain an individual when it is necessary. The police will also have the power to detain an individual temporarily so that an assessment of their mental health can take place in an appropriate place of safety.

One important change is that the new Law will include additional measures to protect the human rights of people detained under the new Law and ensure that they are not inappropriately detained or treated without their consent.

The new law will make explicit provision regarding the circumstances in which an individual who is detained may be treated without his or her consent – including provision for the review of some patients' treatment plans by independent 'second opinion' doctors.

The new law will also reflect developments in the treatment of mental health service users. For example it will enable certain individuals to be treated in the community - rather than, for example, in a hospital setting.

If an individual is detained under the 1969 Law, they can appeal to be discharged at the Mental Health Review Tribunal. Under the new Law there will continue to be an important role for the Mental Health Review Tribunal to play in providing a safeguard for patients. In addition, individuals should also be able to more easily access independent Mental Health Advocates (MHAs), who will help patients and persons affected by the new Law to understand their rights under the new Law, providing representation for them where appropriate.

Finally, the new Law will provide the courts with the appropriate powers to dispose of criminal cases involving individuals who are mentally disordered. The new Law will allow the Magistrates and Youth Courts as well as the Royal Court to determine whether or not an individual is capable of participating in a criminal trial. Where an individual is not capable of being tried, or where they are capable but require treatment for mental disorder, it will allow the courts to send individuals to hospitals for treatment, or another place that is deemed appropriate for the safety of the individual and the general public.

## **What are the key changes in the new law?**

### **a. New definitions and roles:**

Mental disorder – “Any disability or disorder of mind or brain.”

This definition is in line with the definition used in the UK and Guernsey. However, the application of this definition will be limited so that people with a learning disability may only be detained under the new Law where their disability is “associated with abnormally aggressive or seriously irresponsible conduct”. The definition also no longer covers people suffering with alcohol or drug dependency.

The following are roles are created or recognised by the new law to ensure higher standards of care, the safeguarding of the individual and better decision making surrounding the treatment of those suffering from a mental disorder:

Duly Authorised Officer (DAO) – A DAO will make all applications for compulsory admission for assessment, treatment or guardianship [a guardianship is where the day-to-day affairs of an individual are taken care of by a designated person or organisation.]

This will usually be performed by social workers, but may potentially be performed by mental health nurses, occupational therapists and psychologists, with experience or training in the field of mental health – comparable with the Approved Mental Health Professional in the England & Wales Law.

Article 16 Approved Practitioner (AAP) – Under the current law ‘Registered Medical Practitioners’ (RMPs) are responsible for a patient’s treatment and play a role in giving recommendations for assessment or treatment and guardianships.

They do not necessarily have expertise in mental health (though they often do.) AAPs will have the same role as RMPs, but will have to be approved by the Minister as having appropriate training and expertise in mental health.

Second Opinion Approved Doctor (SOAD) - A SOAD is an independent psychiatrist, who will undertake assessments and formally review and authorise treatment.

Mental Health Advocate (MHA) - The role of MHAs will be to provide assistance to patients and persons affected by the provisions of the new Law in understanding their rights and how the new Law operates. They will also provide representation for patients as appropriate.

Approved establishment – This will be any establishment approved by the Minister for the medical treatment of a mental disorder – this could include a registered nursing home.

#### **b. Patient's representative**

The new Law will provide that patients will have a representative who will have powers that enable them to help protect the rights of a patient and make sure their views are heard. That representative may be either the patient's nearest relative or a person nominated by the patient. A patient might, for example, nominate a representative when there has been a breakdown in the relationship between an individual and their nearest relative.

#### **c. Compulsory powers**

Under the new Law the following types of assessment or treatment will be available:

Authorised admission for Assessment – this will allow compulsory admission for assessment of a mental disorder for no longer than 28 days – as per the 1969 Law. However, in the new Law only a DAO will be able to make this application (not relatives or Connétables), having seen the individual within the past seven days.

Authorised admission for Treatment – this will allow a patient to be detained and treated in an approved establishment for up to 6 months (this period was 12 months in the 1969 Law.) The periods for renewal will also be shorter – firstly 6 months and then every 12 months after that. As with assessments, only a DAO can make the application for authorised treatment.

#### **d. Leave of absence changes**

Under the new Law leave of absences from hospital can be granted either for a short period (i.e. a day trip or to visit family) or for longer or indefinite periods – for example to support an individual to return to the community. Leave may be granted subject to conditions, including conditions requiring the patient comply with treatment.

#### **e. Consent to treatment and safeguards on compulsory treatment**

Under the new law, where possible, consent to treatment of an individual must be obtained before the patient is treated. If a patient lacks capacity (as detailed in the new Capacity and self-determination Law\*), a decision can be made to treat them, if it is in their best interest. If the individual has not been able to consent to treatment after 3 months, an independent assessment must be carried out by a SOAD.

#### **f. Place of safety**

In certain circumstances a police officer or other authorised officer will be able to place an individual - who may be suffering from a mental illness and need immediate care - in a place of safety for up to 72 hours for an assessment to be carried out.

The primary places of safety will be the police station and the hospital. Alternative places of safety can also be designated. It is expected that children will be taken either to the accident and emergency department or to Robin Ward.

#### **g. Replacement of the Criminal Justice (Insane Persons) Law 1964**

The existing law will be replaced and instead a new test will be put in place in the new law to assess whether an individual is capable of participating in a criminal trial. Where they are not capable, new provision will be made as to the powers of the court to make orders so that the person can be detained for appropriate treatment.

#### **h. Criminal offences,**

For those found guilty of forgery and fraud in relation to the new Law, the penalty will be increased to up to two years imprisonment or an unlimited fine.

## Sexual offences

The new Law will be updated to provide greater protection to mentally disordered individuals from sexual exploitation.

### **i. Curatorship**

The new Law will repeal and not replace the current outdated provisions for curatorship. However, there will be provision in the new Capacity and Self-Determination Law for new powers and processes to support a person and make decisions in the person's best interests where the person does not have capacity to make a decision. There will be further discussion about the arrangements for either temporarily preserving curatorship for people already subject to that system or for transferring them from curatorship to support under the new Capacity Law when that law is published.

### **j. Code of practice**

The new law will allow the Minister for Health and Social Services to publish a code of practice to be followed by all staff regarding the medical treatment of patients.

2<sup>nd</sup> July 2015

*\* A new draft Capacity and self-determination Law will go out to public consultation on 31<sup>st</sup> August, 2015.*

