



Jersey

MENTAL HEALTH (JERSEY) LAW 201-

Report

Explanatory Note

This draft Law would repeal and substantially re-enact (with appropriate modernisations) the Mental Health (Jersey) Law 1969, and the Criminal Justice (Insane Persons) (Jersey) Law 1964. It would also introduce wholly new provisions for Jersey, relating in particular to the representation and safeguarding of individuals suffering from mental disorder (“patients”) in the context of health care and of civil society at large, and to the powers of the court for dealing with such individuals when they appear as defendants in the criminal justice system.

Part 1 of the draft Law deals with the overall administrative framework under which care is to be provided for patients in Jersey. *Article 1* is the interpretation provision for the whole of the draft Law, and in particular newly defines key concepts such as ‘mental disorder’ (which does not, except in certain specific circumstances, include drug or alcohol dependence) and ‘treatment’, and also introduces roles not previously codified in statute such as the roles of mental health advocates and responsible medical practitioners (i.e. the psychiatric specialists with responsibility for particular patients).

Article 2 sets out the duties of the Minister under this Law. The primary duty is to make provision for care and treatment of patients, and in the exercise of that duty the Minister is particularly required to appoint an administrator, to authorize officers, to approved practitioners and ‘second opinion approved doctors’, and to approve establishments for the detention and care of patients. The Minister must also keep and publish a register of such appointments, approvals and authorizations. The Minister has power under *Article 3* to do anything which appears necessary, conducive or expedient to the proper discharge of the primary duty, including in particular doing such things as preparing codes of practice, providing establishments and facilities for the care of patients and providing ancillary or supplementary services for promotion of mental health and prevention of mental disorder. *Articles 4 and 5* deal further with the appointment of an administrator (who must publish an annual report), and with approval of establishments providing an appropriate and adequate standard of treatment. *Article 6* confers power on the Minister to authorize officers with training in and experience in mental health, who will carry out functions under the Law,

including in particular making applications for admission of patients into care and treatment or into guardianship.

Part 2 of the Law concerns representation of patients. *Article 7* provides for a patient's basic right to representation in decisions relating to care and treatment. It is to be presumed that a patient's nearest relative will be his or her representative, unless the patient nominates a person other than the nearest relative under *Article 10*, or a representative is appointed by the court under *Article 11* on one of the grounds listed in paragraph (4) of that Article. Those grounds include lack of a nearest relative, unsuitability of a nearest relative, or the patient's objection to representation by the nearest relative. The rules for determining which family member constitutes the 'nearest relative' of an adult patient are given by *Article 8*, and additional rules are given by *Article 9* for certain patients aged under 18 who fall within one of the cases described in that Article. An adult patient has the right, under *Article 10*, to nominate a person other than the nearest relative and who consents to act as such, as his or her representative. The principal rights of a representative to receive information as to the patient's care or treatment are stated in *Article 13*.

Part 3 deals with admission to approved establishments, and detention of patients in those establishments for care and treatment generally, under the civil regime for which the Minister has overall responsibility.

There are a number of routes to admission under Part 3. A patient may be admitted of his or her own volition under *Article 14*. A person may be admitted under *Article 15* on emergency grounds for up to 72 hours where, in the opinion of an approved practitioner, it is likely that the person is suffering from mental disorder and their remaining at liberty would endanger the safety either of that person or of others. (An 'approved practitioner' is defined by *Article 16* as one who is approved by the Minister as having sufficient experience and training in the field of mental health and in the operation of mental health legislation.) *Article 17* applies to give nurses powers to detain patients already receiving treatment for up to 6 hours, where the patient's liberty would endanger their own or others' safety and it is not practicable to secure immediate attendance by an approved practitioner.

In any other circumstances, a patient must be admitted by an application being made for the purpose in accordance with *Articles 18 and 19*. *Article 18* states the general requirements for admission applications, which must be made to the Minister in writing by an authorized officer who has personally seen the patient within the 7 days preceding the application, and (where reasonable practicable) following consultation with the patient's representative. An admission application must be made on the grounds stated in either *Article 21* (admission for assessment) or *Article 22* (admission for treatment), as the case may be, and must be accompanied by medical recommendations by 2 registered practitioners, one of whom must be an approved practitioner.

Further requirements as to the medical recommendations are set out in *Article 19*, which also contains safeguards to ensure that such recommendations are made independently, and in particular not by relatives of the patient or by persons in receipt of payments for the patient's maintenance.

By *Article 20* an admission application duly made in accordance with these provisions is sufficient authority for the patient to be conveyed to an approved establishment within 72 hours, and detained in that establishment for an initial period of up to a week beginning with the date of admission. *Article 20* also requires that a copy of the admission application must be provided to the managers of the approved establishment who, upon confirming that the application appears to be duly



completed, must give notice of the admission to the Minister. In response to an application which is duly made, the Minister must confirm that fact to the managers and must authorize the continued detention of the patient for assessment or treatment.

The grounds for admission and detention for assessment as stated in Article 21 are that the patient appears to be suffering from mental disorder of a nature or degree which warrants detention in an approved establishment, with or without treatment, for at least a limited period, and that such detention is necessary either in the interests of the patient's health or safety or for the protection of other persons. An authorization of admission on these grounds may not be renewed.

The grounds for admission and detention for treatment stated in Article 22 are similar but the nature or degree of the patient's mental disorder must warrant the detention of the patient for treatment. A patient may be detained under a treatment authorization under this Article for up to 6 months, and during that detention may be provided with any appropriate and lawful treatment. A treatment authorization may be renewed for one additional period of 6 months and thereafter for periods of 12 months, on each occasion following a review by the responsible medical officer recommending such renewal to the Minister.

If an admission application or any related medical recommendation is not duly made, *Article 23* permits rectification of the defect in question with the consent of the Minister.

The remaining provisions of Part 3 deal with the different circumstances in which a person liable to be detained under that Part may be leave or be absent (whether lawfully or not) from the approved establishment. Leave of absence may be granted by the responsible medical officer under *Article 24*, on terms and conditions (which may be prescribed by the Minister) and for specified or indefinite periods. Notice of grant of such leave must always be given by the responsible medical officer to the Minister. A direction may be given that, for reasons of the patient's health or safety or for the protection of other persons, the patient must remain in the custody of a member of staff or another authorized person during the leave of absence. Leave of absence may be revoked and the patient recalled at any time, for similar reasons. Where leave of absence is granted subject to a condition as to treatment which would require consent or a second opinion under Article 41, the treatment condition may be renewed during the absence following examination by a second opinion approved doctor (or SOAD, as defined in Part 6) confirming that the grounds for the treatment condition continue to apply.

If a patient is absent without leave being granted under Article 24, or fails to return at the end of such leave or upon being recalled, *Article 25* provides that the patient may be taken into custody and returned to the approved establishment by the managers or any member of staff, or a police officer. If the patient is absent without leave within the week preceding the day on which his or her liability to detention would cease, that liability is continued by special provisions in *Article 29*, until the patient is returned or returns to the approved establishment [and arrangements for his or her discharge can be properly made in accordance with Article 27].

Under *Article 26*, the Minister may make arrangements for transferring a patient from one approved establishment to another, and where such a transfer occurs the admission application and subsequent authorization continue in effect as though made in relation to the establishment to which the patient is transferred.

Article 27 provides for the discharge of a patient by the responsible medical officer once the grounds for continued detention of the patient cease to apply. Notice in

writing of the discharge must be given to the patient's representative, the Minister, and the managers of the approved establishment, as well as to the patient. Discharge may be requested by the patient's representative and if the responsible medical officer declines the request, full reasons for doing so must be given.

Part 4 deals with guardianship and has some procedural features in common with Part 3 (under *Article 29* an application for guardianship must be made to the Minister by an authorized officer in accordance with the requirements in that Article, and be accompanied by medical recommendations of 2 registered medical practitioners, as to which Article 19 applies as though these recommendations related to an application under Part 3). In other respects it provides an alternative to detention under Part 3, for persons who appear to be suffering mental disorder, where it is necessary for them to be under guardianship in the interests of their own welfare or for the protection of others. A guardianship application naming a person other than the Minister as guardian must include evidence of the person's consent to act as guardian in relation to the patient.

Once authorized by the Minister a guardianship application is, under *Article 30*, sufficient authority for the reception of the patient into the guardianship of the person named in it as guardian, and confers power for the guardian to require the patient to reside at a specified place, to attend at specified times and places for treatment, training, etc., and to require access to the patient to be given to a registered medical practitioner, authorized officer or other specified person. Where the Minister is the guardian, the Minister may require the patient to reside in an approved establishment or to attend a specified training centre.

If a patient who is subject, under the terms of his or her guardianship, to a residence requirement is absent without the guardian's leave from the place at which he or she is required to reside, *Article 31* provides that the patient may be taken into custody and returned to that place by the guardian or a person authorized by the guardian, a police officer or other authorized officer, or by the managers of any approved establishment or a person approved by the managers. Article 31 also provides for the circumstances in which a person who is a guardian or who is authorized in this respect may apply proportionate restraint to the patient, and defines restraint as using, or threatening to use, force to secure the doing of an act by the patient which the patient is unwilling to do, or as restriction on the patient's liberty, whether or not the patient consents to the restriction.

Article 32 deals with transfer of patients between different guardians, and provides for the substitution of a guardian by another if the first becomes incapacitated, and creates a Regulation-making power to make further provision as to the transfer of patients between guardianship and detention in an approved establishment, and vice versa.

By virtue of *Article 33*, a guardianship authorization has effect for 6 months beginning with the date of approval, and for renewal of the authorization for one further period of 6 months and subsequent periods of 12 months, following a review by the responsible medical officer recommending such renewal to the Minister.

Part 5 makes provision for certain situations where it may not be clear, but it is suspected, that a person may be suffering mental disorder, and creates a suite of provisions whereby the Bailiff and the police force may legally deal with such persons, including by taking them into custody. *Article 34* defines expressions for the purposes of Part 5, in particular the expression 'place of safety' which in addition to an approved establishment may mean a police station or any other place designated for the purposes of Part 5 by the Minister. *Article 35* confers on authorized officers power to apply to the Bailiff for a warrant to enter and search premises where there is



reasonable cause to suspect that a person believed to be suffering mental disorder is being ill-treated, or is living alone but unable to care for him- or herself. A warrant under this Article may authorize the removal of such a person to a place of safety for the purpose either of making an admission application in respect of the person under Part 3, or making other arrangements for the person's care or treatment. Warrants may also be issued under Article 35 for the entry and search of premises for retaking into custody a person reasonably believed to be there, where admission to the premises has been or is likely to be refused. An authorized officer executing a warrant under Article 35 must be accompanied by a registered medical practitioner, and a person removed to a place of safety under these provisions may be detained there for up to 72 hours. The warrant may be issued without identifying the person sought under it.

Powers are conferred on police officers by *Article 36* for more urgent removal, from any place other than a private dwelling, of persons apparently suffering mental disorder and in immediate need of care and control. The maximum period of detention in a place of safety under this Article is also 72 hours.

Article 37 deals with persons who escape from legal custody (including a place of safety), and provides that such persons may lawfully be re-taken into custody by the person from whose custody the escape was made, or by a police officer, authorized officer, the managers of an approved establishment in which an escapee is liable to be detained, or, in a case of guardianship, by any person who would be entitled to take the escapee into custody under Article 31.

The principal provisions of Part 6 apply (by virtue of *Article 38*) to any patient, to create safeguards by requiring consent and a second medical opinion before the administration of certain types of treatment (listed in *Article 40*, these are: surgical operations for destroying brain tissue, surgical implantation of chemical castration hormones, and electro-convulsive therapy. Other types of treatment may be included, by Order.) Part 6 as a whole applies to any person liable to be detained under Part 3 whether directly or by reason of an order of the court under Part 9. The effect of this (by *Article 40*) is that certain treatments, including administration of medicine to a detained patient by any means after 3 months have elapsed since the first such administration, may only be given either with the patient's consent or under a certificate in writing given by a second opinion approved doctor (the definition of SOAD is given in Article 38). For the avoidance of doubt *Article 39* provides that treatments other than those listed in Article 40 or 41 may be given by or under the direction of a responsible medical officer. *Article 42* allows a patient to withdraw consent given to treatment at any time, whether or not the treatment has been completed. *Article 43* provides that the duration of a certificate given by a SOAD under Article 40 or 41 is limited to 6 months, and *Article 45* provides for the form of such certificates and sets out the powers of an approved practitioner or SOAD to examine patients and their records for the purposes of Part 6.

Article 44 disapplies the requirements for consent where treatment is immediately necessary to save a patient's life, is not irreversible or hazardous (as defined in paragraph (3) of that Article) and fulfils certain other conditions. Finally in Part 6, *Article 46* creates a Regulation-making power for the purpose of making further provision as to the application of consent requirements and in particular as to circumstances in which treatment may be administered to a child or to a person incapable of giving consent.

Part 7 establishes a mental health review tribunal for the purpose, as further set out in *Article 50*, of reviewing certain decisions under this Law. A full list of such decisions,

and of the persons who may make applications for review to the Tribunal, is set out in a table in Part 2 of Schedule 1, which is given effect by *Article 47*. Article 47 also provides for the appointment by the Bailiff of a panel from which membership of the Tribunal is to be drawn, consisting of qualified persons as defined in that Article (briefly, those with relevant legal or medical qualifications, or lay members experienced in the field of mental health and considered suitable by the Bailiff). However the Bailiff, Deputy Bailiff, other members of the States, States' employees and persons providing services to the States or to a Minister are disqualified. The Minister may pay persons appointed to a panel under this Article and may provide administrative support. The duration of terms of office of members of the panel is provided for by *Article 48* and limited in normal circumstances to 5 years or the occurrence of a member's 72nd birthday, whichever is earliest. Under *Article 49* the Bailiff is obliged to appoint a Chairman, Vice Chairman and the number of members required to discharge the functions of a Tribunal. Article 49 also brings into effect Part 1 of Schedule 1, dealing with the detailed constitution and procedures of the Tribunal, and provides that Part 1 may be amended by Regulations. Part 1 includes provisions as to conflicts of interest, and creates an offence of unlawful disclosure of information acquired in the exercise of functions by a panel member, punishable by up to 2 years' imprisonment and/or a fine of unlimited amount.

Article 51 permits references to the Tribunal by the Attorney General or the Minister, in relation to patients liable to be detained under Part 3 or subject to guardianship under Part 4. The Tribunal has power to direct the discharge of a patient unless the Tribunal is satisfied that the continued detention or guardianship is necessary, as provided in *Article 52*. Provision is made by *Article 53* as to examination of, and reports on, a patient by a registered medical practitioner for the purpose of the application to the Tribunal. *Article 54* enables appeals to be made to the Royal Court from decisions of the Tribunal.

Parts 8 and 9 provide for the powers of the court in dealing with mentally disordered defendants. By *Article 55*, which deals with interpretation and application, Part 8 applies in any proceedings where it appears to the court that a defendant may be incapable of participating effectively in those proceedings, because of mental disorder or inability to communicate. (This Part replaces the Criminal Justice (Insane Persons) (Jersey) Law 1964, which is repealed by *Article 97*.) Under *Article 56*, the court may adjourn the proceedings to enable determination of any issue as to incapacity, and the issue must be determined as soon as possible (unless the court determines that it is both expedient and in the interests of the defendant to postpone determination of the issue). That Article also provides that if the incapacity is due to inability to communicate, which might be alleviated by special measures such as the provision of an interpreter or of mechanical or electronic aids, the court must put such special measures in place. The factors to be taken into account in determining whether or not a defendant is incapable within the meaning of Part 8 are set out in *Article 57*.

On an initial finding of incapacity, *Article 58* provides that the court may make an order such as it has power to make under Part 9 remanding the defendant on bail or to an approved establishment for reports or treatment while the proceedings are stayed, with a view to the defendant's full participation at a later date. However if, on medical evidence, the defendant will foreseeably remain incapable of participating effectively, the court may dispose of the proceedings in accordance with *Article 59*.

Part 9 applies as provided by *Article 60*, principally to confer a suite of powers for a court to deal with defendants charged with (in the case of Articles 61 to 63) or convicted of (in the case of those Articles, and also of Articles 64 and 65 to 67) an offence punishable by imprisonment, where treatment for a mental disorder would be



more appropriate than a prison sentence. Under *Article 61* the court may remand a defendant on bail, and order his or her attendance at an approved establishment, for the purpose of obtaining a report on the defendant's mental condition. Where the court is of the opinion that the defendant would not comply with an *Article 61* order, and is satisfied on the evidence of 2 registered medical practitioners that there is reason to suspect that the defendant is suffering from mental disorder, *Article 62* enables the court to remand the defendant to a specified approved establishment for the purpose of obtaining such a report. The court may give directions for the defendant to be conveyed to and detained in the approved establishment (or, pending admission to the establishment, in a place of safety). The defendant may be remanded for 28 days at a time, up to a limit of 26 weeks in total. *Article 62* also provides for the defendant's rights to obtain an independent medical report and to apply to the court for the remand to be terminated. *Article 63* gives the court power to remand a defendant to an approved establishment for the purpose of treatment, if, on the evidence of 2 registered medical practitioners, the defendant is suffering mental disorder of a nature or degree which makes such detention appropriate. The defendant may be further remanded in accordance with the same limits as provided for by *Article 62*. Where the medical evidence indicates that a treatment order may be warranted, the court may order the admission and detention of the defendant under *Article 64* in order to assess the nature and degree of the defendant's mental disorder and the advisability of making a treatment order in the case. A period of detention of up to 12 weeks may be specified under *Article 64*, with subsequent renewals of 28 days up to a maximum of 26 weeks in total. Either following detention under *Article 64*, or where warranted by the serious nature of the defendant's mental disorder, the nature of the offence and the defendant's character and antecedents, the court may make a treatment order that the defendant be admitted to and detained in an approved establishment under *Article 65*, in lieu of a sentence of imprisonment. Similarly where it is most appropriate having regard to all the circumstances, under *Article 66* the court may order that a defendant be received into guardianship. If, on the other hand, it is appropriate to impose a sentence of imprisonment, but the defendant is suffering mental disorder for which appropriate treatment is available in an approved establishment, the court may direct, under *Article 67*, that the defendant be detained in such an establishment rather than in prison, and may also specify restrictions on discharge of the defendant. Further restrictions on a treatment order may be imposed, by the Royal Court only, to protect the public from serious harm, in accordance with *Article 68*. A defendant subject to a restriction order is admitted and detained as though under a treatment authorization, but may not be given leave of absence, nor transferred to another establishment, without leave of the Royal Court, and may not be discharged unless and until the court considers that the restriction order should no longer have effect.

Where a person is already detained in prison, but the evidence of 2 registered medical practitioners shows that the person is suffering from mental disorder such that he or she should be detained in an approved establishment, the Royal Court may order transfer to such an establishment under *Article 69*. The medical evidence must be in writing except in a case of emergency. A prisoner subject to a transfer order may be detained in the approved establishment for 6 months initially, renewable for one further period of 6 months and thereafter for periods of 12 months, unless the sentence of imprisonment expires. The prisoner may be returned to prison if in the opinion of the responsible medical officer, detention in an approved establishment ceases to be necessary.

If a person to whom an admission or guardianship application relates is detained in custody pursuant to an order of the court for a period exceeding 6 months, *Article 70* provides that the application ceases to have effect at the end of that period.

Article 71 deals with committal to the Royal Court of defendants convicted in other courts of offences punishable with imprisonment, where it appears that a restriction order would be appropriate in the case.

Finally in Part 9, *Article 72* (which applies in any proceedings, whether or not the defendant has been convicted, or has been found to be incapable under Part 8) provides that where there is evidence that the defendant committed the alleged act, but at the time of doing so was suffering from mental disorder to such a degree that he or she ought not to be held criminally responsible, the court must record a special verdict to that effect and either acquit the defendant or make a treatment order, a guardianship order or another order such as may be specified by Regulations.

Part 10 creates new offences for the further protection of vulnerable patients. *Article 73* makes it an offence for [the managers and] staff of an approved establishment to ill-treat or wilfully neglect patients in the establishment, whether detained there or receiving treatment or otherwise in the care or custody of the establishment. It is also an offence under that Article for an individual to ill-treat or neglect a patient subject to his or her guardianship or otherwise in that individual's care or custody. *Article 74* creates an offence of committing certain acts ("prohibited acts" of sexual activity etc.) with, towards or in relation to a person suffering mental disorder who is unable because of that disorder to refuse involvement in such an act. By *Article 75*, it is an offence for a person who knows, or could reasonably be expected to know, that another person suffers from mental disorder, to secure the participation of that other person in a prohibited act. *Article 76* creates similar offences where one person is involved in the care (as further defined by that Article) of another who suffers from mental disorder; and provides that it is to be presumed, for the purpose of proving an offence under Article 76, that unless the contrary is shown the care-giver knows or could reasonably be expected to know that the person in receipt of care suffers from mental disorder. It is a defence to a charge under Article 76 that the care-giver is lawfully married to, or in civil partnership with, the person in receipt of care. A person guilty of an offence under Part 6 is liable to up to 5 years' imprisonment and/or a fine of unlimited amount.

Other safeguards are created by Part 10. *Article 78* requires managers of an approved establishment to take all reasonable steps to ensure that a patient in the establishment understands the terms of his or her detention, the rights (of advocacy, representation and review) available under this Law, and the effect of certain of the Law's provisions - in addition to those in Part 10 itself - as to the appointment of representatives, discharge from detention, and consent to treatment. *Article 79* is a power for the States to make Regulations requiring the Minister to make arrangements for the provision of an independent patient advocate service, on behalf of patients who are detained, subject to guardianship, or receiving out-patient treatment for mental disorder. *Article 80* makes it an offence (punishable by up to 2 years' imprisonment, and/or a fine) for a person to forge documents, or to make or use forged documents, in particular admission applications and medical recommendations.

Under *Article 81* the Minister may pay amounts in respect of the occasional personal expenses of patients who would otherwise be without resource to meet such expenses.

Articles 82 and 83 provide for the circumstances in which a patient's access to, respectively, electronic media and postal correspondence may be restricted by the managers of an approved establishment in which the patient is detained. *Article 84*



confers a right on the patient (and the addressee of postal correspondence, where notice of a relevant restriction has been given) to apply to the Mental Health Review Tribunal for review of a restriction imposed under either Article 82 or 83.

Part 12 regulates the circumstances in which patients may be transferred between Jersey and other jurisdictions. Generally a patient may not be removed from Jersey except as authorized by order of the court, or in the case of removal to a place without reciprocal arrangements (*Article 87*) or of removal of a patient who is [an alien] (*Article 88*), by the Minister with the approval of the Tribunal. Under *Article 86* the Minister may authorize removal of a patient from Jersey to another place in the British Isles where it appears that this is in the patient's best interests and there are reciprocal arrangements. *Article 89* provides for the application of the Law to persons brought to Jersey under enactments corresponding to Article 86.

Part 13 makes miscellaneous and general provision for the implementation of the Law. *Article 90* empowers the Minister to issue a code of practice for the guidance of persons carrying out functions under the Law, which must include a statement of principles informing decisions under the Law, addressing specified matters and the weight to be accorded to each of them. Failure to comply with such a code may be taken into account in proceedings for any offence, but does not otherwise or of itself give rise to liability.

Offences of assisting patients to abscond, and of obstructing authorized persons in carrying out functions under the Law, are created by *Articles 91 and 92* respectively, and are each punishable by up to 2 years' imprisonment and a fine.

Article 93 confers protection for acts done in the discharge of functions under the Law, so long as those acts are not done in bad faith or negligently.

Articles 94, 95 and 96 confer general powers to make, respectively, Regulations, Orders and Rules of Court. *Article 97* repeals the Criminal Justice (Insane Persons) (Jersey) Law 1964 and the Mental Health (Jersey) Law 1969. *Article 97* also [makes a consequential amendment to the Loi (1895) modifiant le droit criminel], and brings into effect Schedule 2, which makes consequential amendments.

Article 98 provides for the citation of this Law and for its commencement by Act of the States.



Jersey

MENTAL HEALTH (JERSEY) LAW 201-

Arrangement

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Jersey

MENTAL HEALTH (JERSEY) LAW 201-

A LAW to make provision with respect to the care and treatment of persons suffering mental disorder, including offenders and other such persons subject to the criminal justice system; and for connected purposes

Adopted by the States [date to be inserted]

Sanctioned by Order of Her Majesty in Council [date to be inserted]

Registered by the Royal Court [date to be inserted]

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 –

“approved establishment” means an establishment approved by the Minister under Article [5];

“approved practitioner” or “AP” 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];

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

“Court”, except in Part [8], means the Royal Court;

“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 as defined by Article [77];

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

“nearest relative” –

- (a) in relation to an adult patient, has the meaning given by Article [8];
- (b) in relation to certain patients aged under 18, has the meaning given by Article [9];

“representative”, in relation to a patient and without further qualification, means a person 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”, without more, means –

- (a) in Articles [6, 16, 38 and 45], prescribed by a code of practice, and
- (b) in all other places, prescribed by Order made by the Minister under Article [92];

“registered medical practitioner” means a person registered as a medical practitioner under the Medical Practitioners (Registration) (Jersey) Law 1960;

“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;

“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];

“Tribunal” means the 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) The States may by Regulations amend any provision of this Article.

2 Duties of the Minister

- (1) It is the duty of the Minister under this Law 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 shall 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 or approved under Articles [6, 16 and 38]; and
 - (d) keep a register of such appointments, approvals and authorizations, and publish each register in whatever manner the Minister considers appropriate.

3 Powers and functions of the Minister

- (1) For the purpose of carrying out the duty imposed by Article 2, the Minister may do anything which appears to the Minister to be necessary, conducive or expedient to the proper discharge of that duty.
- (2) In particular and without derogation to the generality of paragraph (1), the Minister may –
 - (a) prepare, issue and revise codes of practice;
 - (b) keep registers of persons appointed or authorized under this Law, and publish any register so kept in such manner as the Minister may think fit;
 - (c) upon appointing or authorizing any person, impose such terms and conditions as the Minister may think fit;
 - (d) provide, or secure the provision of, establishments and facilities for treatment, and management and general supervision of such establishments and facilities;
 - (e) 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;
- (f) 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;
- (g) 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 shall appoint a person to be the administrator in relation to such matters under this 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 shall approve establishments or premises for the purpose of the care and treatment of patients, upon such terms and conditions (subject to paragraph (2)) as the Minister may think fit.
- (2) The Minister may not exercise the power 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) such persons –
 - (a) as are registered pursuant to the Health Care (Registration) (Jersey) Law 1995; and
 - (b) have such training and experience in the field of mental health and in the application of mental health legislation and practice as the 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, impartiality and independence; and
 - (b) in the best interests of any patient with whose care or treatment he or she is involved.
 - (3) In addition to and not in derogation from any other function conferred on an authorized officer by this Law, an authorized officer must make an application for admission under Part [3] or for guardianship under Part [4] in respect of a patient, in any case where the officer –
 - (a) is satisfied that such an application ought to be made; and
 - (b) having regard to any wishes expressed by relatives of the patient or other relevant circumstances, that it is necessary and proper for such an application to be made.
 - (4) 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

REPRESENTATION

7 Representation of patients

- (1) A patient is entitled to be represented by a person (the patient's "representative") who is a person nominated or appointed in accordance with this Article and Articles [8 to 11].
- (2) The representative shall have all such rights and responsibilities as are conferred by this Law or by any other enactment, and in particular the right to act on behalf of the patient as further provided by Article [13].
- (3) The representative must carry out his or her responsibilities and functions in the manner which is in the patient's best interests.
- (4) It shall be presumed that a patient's nearest relative as determined in accordance with Article [8 or 9]) is that patient's representative, unless this presumption is displaced by the application of Article [10 or 11].

8 'Nearest relative': principal definition

- (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 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 (1) does not apply, the patient's nearest relative is the living person who 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 purpose of the application 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 time of the application of paragraph (3) –
- (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 purpose of the application 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 further described in paragraph (2), (3) or (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 shall be 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 representative 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 Nominated representatives

- (1) A patient who is aged 18 or over may nominate a person as his or her representative ("R"), 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 appoint a person as the patient's nominated representative 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 that he or she is unable or unwilling to act as the patient's representative.
 - (3) A nomination under paragraph (1) or an appointment under paragraph (2) –
 - (a) shall not take effect unless 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 representative; 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 nominated representative 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 representative.

11 Appointment of representative 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 representative, 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 representative.
- (2) The applicant may be –
 - (a) the patient;
 - (b) a duly 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 a duly authorized officer, paragraph (1) shall apply as if for the word “applicant” there were substituted the word “Minister”.
- (4) An application for an order may be made –
- (a) where no nominated representative has been appointed 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;
 - (b) where a nominated representative has been appointed under Article [10], on either of the following grounds –
 - (i) that the nominated representative is incapable of acting as such by reason of mental disorder or other illness, or
 - (ii) that the nominated representative is otherwise not a suitable person to act as such; and
 - (c) in any case, on the grounds that –
 - (i) the patient objects to being represented by his or her nearest relative or by the nominated representative, as the case may be; or
 - (ii) the patient’s existing representative unreasonably objects to the making of a guardianship application in respect of the patient.

12 Discharge or variation 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 representative 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 the patient’s nearest relative.

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- (2) An order under Article [11] may be varied by the Court on the application of –
- (a) the representative appointed by the order; or
 - (b) a duly authorized officer,
- by substituting for that representative the Minister or any other person who, in the opinion of the Court, is a proper person and consents to exercise the functions of the patient’s representative.
- (3) If the representative 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 representative.
- (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 or variation 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 representative to receive information as to patient’s care or treatment

- (1) Unless a condition in paragraph (2)(a) or (b) is satisfied, a representative is entitled –
- (a) to receive written details of any care or treatment proposed in respect of the patient; and
 - (b) to make representations to the responsible medical officer about such proposals,
- and the responsible medical officer shall, in administering care or treatment to the patient, have regard to any representations made under sub-paragraph (b).
- (2) 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 representative of the details of



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- proposed care or treatment (whether generally or in a particular case); or
- (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.
- (3) Where one of the conditions in paragraph (2) is satisfied, the responsible medical officer shall inform the representative in writing of the reason why details of the proposed care or treatment have not been provided.
 - (4) In particular and without derogation from the general rights conferred by paragraph (1), the responsible medical officer must inform the representative –
 - (a) where a treatment authorization is renewed under Article [22], of the matters mentioned in Article 22(5);
 - (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 care plan is formulated under Article [38(4)], of the contents of the plan and of any significant changes which may be [made/proposed] to the plan from time to time; and
 - (d) of any proposed treatment for which a certificate would be required from a SOAD under Article [40 or 41].
 - (5) A representative 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 representative by this Law or any other enactment.
 - (7) The rights and functions of a representative are without prejudice to the patient's right under Article [77] to be represented by an independent mental health advocate.

PART 3

APPROVED ESTABLISHMENTS: PROCEDURES FOR ADMISSION 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 assessment under Article [21] or treatment authorization under Article [22]; 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 or is remaining in] an approved establishment under arrangements such as are mentioned in Article [14], 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 own safety or that of other persons,the approved practitioner may authorize 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 person who is a medical practitioner registered as such pursuant to the Medical Practitioners (Registration) (Jersey) Law 1960 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 own 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 may 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 1 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 1995.

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 representative, 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 [13]; or
 - (b) on an emergency basis, under Article [14].

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.

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- (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 applicant;
 - (b) a partner of, or person employed as an assistant 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 sub-paragraphs (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 duly 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”) 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 M must, as soon as reasonably practicable and in any event no later than 24 hours before the end of the initial period –
 - (a) confirm that –
 - (i) the admission application appears to be duly completed, and
 - (ii) the admission is within the time period mentioned in that sub-paragraph;and
 - (b) give notice in writing to the Minister that the patient to whom the admission application relates has been admitted.
- (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.

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- (4) Following receipt of notice under paragraph (2)(b) 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.

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 sub-paragraph (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 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 representative 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 sub-paragraph (2)(a) shall begin with the day on which the admission application is received by M.
- (8) Paragraphs (2) and (5)(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 –

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- (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 period mentioned in that paragraph 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(2) to (4)] and is not defective in any respect is provided to the managers; and
 - (b) that recommendation, taken together with the other recommendation relating to the same application, is sufficient to warrant the detention.

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 of absence under paragraph (1) –
 - (a) may be made subject to such terms and conditions as the responsible medical officer may consider necessary in the interests of the patient or for the protection of other persons; and
 - (b) shall be made subject to any compulsory terms and conditions which the Minister may prescribe.
- (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 of the grant of leave in writing to the Minister.
- (5) Subject to paragraphs (8) and (9), 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 (8) and to the rights conferred on a patient by Article [50(1)]) by notice in writing revoke the leave of absence and recall the patient to the approved establishment.
- (8) 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.

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)].

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.

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- (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, having regard to the care or supervision which would be available to the patient if discharged, the responsible medical officer is satisfied that –
- (a) the patient is suffering from a mental disorder of a nature or degree which warrants continued detention and treatment; and
 - (b) it is necessary for the patient to be detained –
 - (i) in the interests of the patient's own health or safety, or
 - (ii) 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 representative;
 - (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 representative 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 representative 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 representative.

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- (6) For the avoidance of doubt a direction for discharge may not be made under this Article in respect of a patient detained pursuant to the provisions of [Part 9].

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 1 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 until the expiration of the period of one week beginning with the day on which the patient is returned or returns to the approved establishment or 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 [24(9)] may be made within that period as so extended.
- (4) Where an assessment, treatment or guardianship authorization is renewed by virtue of this Article after the day on which (apart from this Article) the authorization would have expired, the renewal shall take effect as from that day.

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 representative, 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) Subject to paragraph (6), 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 in it 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 in the guardianship authorization 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 a training centre specified by the Minister at such times or for such periods as may be so specified.
- (6) 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.
- (7) 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, and restraint

- (1) Where a patient who is subject to guardianship and to a residence requirement under Article [30(2)(a) or (4)(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) Where a residence requirement is imposed on the patient under Article [30(6)(a)(i)], a member of staff of the establishment in question having care and custody of the patient may, if that member of staff reasonably believes it to be necessary to do so to protect the patient or others from harm, apply proportionate restraint to the patient.
- (3) Where a person, being –
 - (a) the guardian of a patient; or
 - (b) a person authorized in this regard by the guardian or such a person as mentioned in Article [30(4)(a)(ii)],reasonably believes it to be necessary to do so to protect the patient from harm, that person may apply proportionate restraint to the patient.
- (4) For the purposes of paragraphs (2) and (3) –
 - (a) a person shall be taken to restrain a patient if –
 - (i) the person uses, or threatens to use, force to secure the doing of an act by the patient which the patient is otherwise unwilling to do, or
 - (ii) the person restricts the patient's liberty of movement, whether or not the patient consents to the restriction;and
 - (b) proportionality of restraint is to be judged in relation to the harm which it is believed the patient would suffer in the absence of that restraint and to the seriousness of that harm.

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 detention in (or liability to detention in) an approved establishment; and
 - (b) between detention in (or 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 the Regulations; and
 - (c) make provision regulating the conveyance of patients transferred under the 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 approved 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 [who is aged 16 or over], the Minister must inform the patient and the patient's representative of the recommendations and the action proposed to be taken and –
 - (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 police station or approved establishment, or any other place such as may be designated for the purposes of this Part by the Minister; and
 - “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; 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 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 mentioned in sub-paragraph (a), in the place of safety or in any other premises, including the person’s own 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 an authorized officer shall be accompanied by a registered medical practitioner and 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 –
 - (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(4)] 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 while being conveyed to or from an approved establishment under Article [20(1)] or while in custody or being conveyed to another place under Article [83], 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 any patient liable to be detained under this Law, except such a patient liable to be detained under Articles [15] or [17] or Parts [4 or 5].
- (2) Articles [40, 42, 43 and 44] apply 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 –
 - (i) is a registered medical practitioner,
 - (ii) having such training and expertise in the field of psychiatry and in the application of mental health legislation as may be prescribed, and
 - (iii) is approved by the Minister for the purpose of carrying out functions of a SOAD under this Part.

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- (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 specified by Order.
- (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 practitionerhas 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 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 and 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 a 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 and Self-Determination (Jersey) Law 201–].

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 (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 Schedule 1).
- (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 Schedule 1.
- (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 or any employee of the Crown or States employee;
 - (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 require.

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(4)(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 Schedule 1.
- (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 Schedule 1 has effect with respect to the constitution and procedures of the Tribunal.
- (3) The States may by Regulations amend Part 1 of Schedule 1.

50 Purpose and functions of the Tribunal

- (1) A patient, a patient's representative 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 first column of the table in Part 2 of Schedule 1.
- (2) The principal functions of the Tribunal shall be to determine –
 - (a) applications made under this Article and in accordance with Part 2 of Schedule 1; 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 representative) mentioned as such in the second column of the table in Part 2 of Schedule 1.



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 Powers of 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 own 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 own 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 own 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 47 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 1948 shall extend to making rules for the purpose of the conduct of, and proceedings in, appeals under paragraph (1).
- (3) On an appeal under paragraph (1) the Court may –
 - (a) quash the decision 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 Interpretation and application 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) In this Part –

- (a) a reference to the “court” is to whichever court has jurisdiction, in a particular case, to try the proceedings mentioned in Article [56(1)] and includes (for the avoidance of doubt) the Magistrate’s Court, the Youth Court, or the Royal Court, as the case may be;
- (b) “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
- (c) “special measures” is to be construed in accordance with Article [56(4)].

56 Power to stay proceedings where defendant apparently incapable

- (1) Where it first appears to the court that a defendant is incapable of participating effectively in proceedings, the court may (subject to paragraphs (3) and (5)) adjourn the proceedings to enable determination of the issue of the defendant’s incapacity.
- (2) The determination of that issue shall be held as soon as possible and at such time and place as the court may direct.
- (3) Where the court considers that the defendant’s apparent incapacity might be alleviated by special measures to assist 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.
- (4) For the purposes of paragraph (3), 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.
- (5) 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) An 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) reports must be provided by at least 2 registered medical practitioners who, in the opinion of the court, have appropriate experience in the diagnosis and treatment of mental disorder; 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) Where, on the hearing of an issue as to a defendant's incapacity, it is determined that the defendant is incapable (even if special measures are put in place) of participating effectively in the proceedings, the court may –
 - (a) make any such order as it has power to make under Articles [61 to 63]; and
 - (b) order that the proceedings be adjourned for a specified period not exceeding 6 months.
- (2) Where either –
 - (a) no such order as mentioned in paragraph (1) is made; or
 - (b) following the expiration of the period specified in an order under sub-paragraph (1)(b),

and the court is satisfied, on the evidence of a registered medical practitioner, that the defendant is and will (so far as reasonably foreseeable) remain incapable, the court shall dispose of the proceedings in accordance with [Article 59].

59 Final disposal of proceedings where defendant incapable

- (1) Where Article [58(2)] applies –
 - (a) the proceedings in question, including any proceedings adjourned under Article [56(3)], shall not proceed further; and
 - (b) the court may, having considered any evidence already given, or such further evidence as may be adduced, for the purpose of

determining whether the defendant did the act with which he or she is charged –

- (i) acquit the defendant, or
 - (ii) make an order under paragraph (3).
- (3) The orders which may be made by a court in disposing of proceedings under this Article are –
- [(a) an approved establishment treatment order (with or without restriction) under [Article 63];
 - (b) a guardianship order under [Article 66]; and
 - (c) such further orders as the States may by Regulations provide or specify (and such Regulations may, for this purpose, amend or modify any other enactment).

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],
 - (ii) in Articles [64 to 66], is to the Magistrates’ Court or the Royal Court,
 - (iii) in Articles [68 and 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 2013; and
 - (c) “place of safety” has the same meaning as given to that expression by Part [5], but also includes a prison; and
“prison” has the same meaning as given by Article 1(1) of the Prison (Jersey) Law 1957.
- (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 and 65 to 67] may be exercised in relation to a defendant who is convicted by the court of an offence punishable by imprisonment[, the sentence for which is not fixed by law].
- (4) The power conferred by Article [72] may be exercised in relation to any defendant.]
- (5) Where a court makes an order in exercise of a power conferred by 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.

- (4) 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 (5); 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.
- (5) 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.
- (6) 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.
- (7) 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.
- (8) 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.

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(5) 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 (5) to (8) of Article [62] shall have effect as though a remand under this Article were a remand under Article [62].

64 Interim treatment 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.

- (4) 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 terminate the remand if it appears appropriate to the court to do so.

- (5) 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 (4)]; 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.

- (6) 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.

- [(7) 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.

- (8) The court may deal with a defendant brought before it under paragraph (7) 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.
- (3) 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) 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 of the Law 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 Hybrid orders

- (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)(c), 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.

68 Restriction 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
 - (ii) Article [27] 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 representative 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) –

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- (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 (7); 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 if, in the opinion of –
- (a) the court; or
 - (b) the responsible medical officer, with the consent of the court,
- 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 admission application; or
 - (b) is subject to guardianship by virtue of a guardianship application,is detained in custody pursuant to any order or sentence of a court in Jersey (including an order under Part [9]) 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 aged 14 years or over 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 as a restriction order,the court shall commit the defendant, in custody or as described in paragraph (2), 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 subject to 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(4)].

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 a fine of level [2 on the standard scale and to imprisonment for a term of 6 months].
- (4) No proceedings shall be instituted for an offence under this Article except by, or with the consent of, the Attorney General.

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 engages in sexual activity with B;
 - (b) A intentionally touches B, where the touching is sexual;
 - (c) A intentionally causes or incites B to engage in an activity which is sexual;
 - (d) A intentionally engages in an activity 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 activity; or
 - (e) for the purpose of obtaining sexual gratification, A intentionally causes B to watch a third person engaging in an activity which is sexual, or to look at an image of any person engaging in such an activity.
- (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 activity is sexual if a reasonable person would consider that –
 - (i) whatever the circumstances or any person’s purpose in relation to the activity, it is because of its nature sexual; or
 - (ii) because of the nature of the activity it may be sexual and because of its circumstances or the purpose of any person in relation to it (or both), it is sexual.

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- (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 activity, or for any other reason); or
 - (b) for any reason, B is unable freely to communicate such a choice to A.

75 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.

76 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 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.

77 Sexual offences: penalties

A person guilty of an offence under any of Articles [74 to 76] is liable to imprisonment for a term of 5 years and to a fine.

PART 11**SAFEGUARDING: PATIENTS' RIGHTS****78 Information to be given to detained patients**

- (1) The managers of an approved establishment in which a patient is detained under this Law must, as soon as practicable after the detention or, as the case may be, 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, and the effect of those provisions;
 - (b) what rights of advocacy, representation and review are available to the patient under this Law in respect of that detention;
 - (c) the effect, so far as relevant in that patient's case, of Articles [7], [27], Part [6], Articles [79], [81, 83, 85 and 91]; and
 - (d) such other matters as may be required by [Regulations/a code of practice].
- (2) The steps to be taken under paragraphs (2) and (3) include giving the information required by that paragraph both in writing and orally, having regard to the patient's ability to understand that information however given.
- (3) The managers must further (unless the patient requests otherwise) take such steps as are practicable to provide the patient's representative, at the same time as or within a reasonable time of giving information to the patient under paragraph (1), with a copy of that information.

79 Independent mental health advocates: regulations

- (1) The States may make Regulations for the purpose of requiring the Minister to make arrangements for the provision of the services of independent mental health advocates ("MHAs") to and on behalf of qualifying patients.
- (2) Such Regulations –
 - (a) shall require the Minister, in making any such arrangements, to have regard to the overriding principle that any services provided by an MHA to a qualifying patient under the arrangements must, so far as practicable, be provided by a person who is independent of any person professionally concerned with that patient's treatment; and
 - (b) may make provision as to the definition of independence for the purpose of sub-paragraph (a).

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- (3) Such Regulations may, in particular (but without limitation), make provision as to –
 - (a) the qualifications required of a person acting as an MHA;
 - (b) the circumstances in which a person may so act;
 - (c) the method of appointment or approval of MHAs;
 - (d) terms and conditions of such appointment or approval;
 - (e) steps to be taken to ensure that qualifying patients and their representatives under Part 2 are aware of the availability of the services of MHAs;
 - (f) the 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)(f) 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 their rights under this Law, including the right to the help of an MHA under Regulations made in pursuance of this Article.
 - (5) Powers for the purpose of paragraph (3)(f) 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 records held by approved establishments, by the Minister or the Department), and the circumstances and manner of its exercise (including, for the avoidance of doubt, provision as to circumstances in which a patient may object to such disclosure).
 - (6) In this Article, “qualifying patient” means –
 - (a) a patient detained, or liable to be detained, in an approved establishment in pursuance of Part [3];
 - (b) a patient subject to guardianship under Part [4]; and
 - (c) a patient receiving treatment as an out-patient [under a care plan].

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) 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.

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- (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 representative;
 - (g) a police officer;
 - (h) the Mental Health Review Tribunal; or
 - (i) 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 representative;
 - (g) a police officer;
 - (h) the Mental Health Review Tribunal; or
 - (i) 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 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 of the court 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 [88]; 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 [87] but the patient is ordinarily resident in that place; and
 - (c) that 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 Code of practice

- (1) The Minister may –
- (a) produce, in accordance with this Article; and
 - (b) publish, in such manner as it thinks fit,
- a code of practice for the guidance of persons on whom functions are conferred by or under this Law in carrying out such functions.
- (2) The Minister may from time to time revise any code of practice produced in pursuance of paragraph (1) (a “code”).
- (3) 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;
 - (f) respect for the views of patients’ carers;
 - (g) the wellbeing and safety of patients; and
 - (h) public safety.
- (4) Before producing or revising a code the Minister must consult such persons as appear to the Minister to be interested.
- (5) In producing 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.
- (6) A code shall be binding upon all those persons to whom it is addressed, and –
- (a) compliance with a code may be taken into account in any proceedings for an offence under this Law or any other enactment; and



- (b) a code is admissible in evidence in any such proceedings.
- (7) Notwithstanding paragraph [(6)], failure to comply with a code shall not of itself give rise to any civil or criminal liability.
- (8) A code may amend or revoke any previous code and the power to produce a code in paragraph (1) may be exercised as if the code were an enactment to which Article 11(4) of the Interpretation (Jersey) Law 1954 applies.

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
 - (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 convicted 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 on conviction to imprisonment for a term of 2 years and a fine.

93 Protection for acts done in pursuance of this Law

No liability is incurred by any person in respect of anything done in the discharge or purported discharge of a function conferred on the person by or

under this Law, unless the thing was done in bad faith or without due and reasonable care.

94 Regulations

- (1) The States may make Regulations for or in respect of any matter –
 - (a) that by this Law is required or permitted to be done by Regulations; or
 - (b) that is necessary or expedient to be prescribed by Regulations for further carrying out or giving effect to this Law.
- (2) For the purpose of bringing this Law into force the States may by Regulations make all such transitional, saving, supplementary and consequential provisions as appear to the States to be necessary or expedient.

95 Orders

- (1) The Minister may make Orders for prescribing anything which is required or authorized to be prescribed under this Law.
- (2) Orders made by the Minister under paragraph (1), may, without prejudice to the generality of that power –
 - (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 mentioned in sub-paragraph (a) may be served, and proved in evidence;
 - (c) prescribe 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 representatives 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 2001;
 - (f) make provision for enabling functions of a patient's representative under Part[s 2 or 3] or of a guardian under Part 4 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;
 - (g) prescribe the circumstances in which, and conditions under which, patients may be transferred under Article[s xx and yy].
- (3) The Minister may further, and subject to any conflicting provision of Part [4] (which shall prevail), make provision by Order for –
 - (a) imposing on guardians, in cases where the Minister is not the guardian, such duties as the Minister may consider necessary or expedient in the interests of such patients;



- (b) requiring such patients to be visited on behalf of the Minister on such occasions or at such intervals as may be prescribed; and
 - (c) for the creation of offences, punishable by a fine or no more than [level 3] on the standard scale, for breach of provision made under this paragraph.
- (4) The Subordinate Legislation (Jersey) Law 1960 applies to Orders made under this Law.

96 Rules of Court

- (1) The power to make rules of court under the Royal Court (Jersey) Law 1948 includes power to make rules regulating practice and procedure in or in connection with proceedings before the court under this Law and in particular (but without derogation from the generality of this power) to make rules as to –
- (a) applications under Articles [11 and 12] (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 consequential amendments

- (1) The Criminal Justice (Insane Persons) (Jersey) Law 1964 and the Mental Health (Jersey) Law 1969 are repealed.
- (2) Schedule 2 shall have effect to make such consequential amendment to an enactment mentioned in that Schedule as is specified in each entry in respect of that enactment.

98 Citation and commencement

This Law may be cited as the Mental Health (Jersey) Law 201– and shall come into force on such day or days as the States may by Act appoint.

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SCHEDULE 1

(Articles [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 any deputy chairman);
- (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 the court.
- (3) A person who makes a disclosure in contravention of paragraph (1) is guilty of an offence and liable on conviction to imprisonment for a term of 2 years and to a fine.

PART 2

APPLICATIONS TO THE TRIBUNAL

1 Types of applications and applicants

An application may be made to the Tribunal –

- (a) for review by the Tribunal of a decision or other exercise of a power as described in the first column of the following table;
 - (b) by a patient as described in the second column or that patient’s representative (the “applicant”); and
 - (c) within the period described in the third column,
- in such form as may be prescribed, or in writing substantially to the same effect.

CIRCUMSTANCES	APPLICANT	PERIOD
Detention under an assessment authorization	The patient to whom the authorization relates	14 days beginning with the day on which the patient is admitted to the approved establishment
First detention under a treatment authorization	The patient to whom the authorization relates	6 months beginning with the day on which the patient is admitted to the 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
The making of an approved establishment order	The patient to whom the order relates	6 months beginning with the day on which the order is made
The renewal of an approved establishment order	The patient to whom the order relates	6 months beginning with the day on which the authorization is first renewed
Authorization of guardianship	The patient to whom the authorization relates	6 months, beginning with the day 6 months after the day on which the authorization is made
Decision by managers of an approved	The patient	6 months beginning with the day on which



establishment to withhold a postal packet or the contents of such a packet	A person (other than the patient) by whom a postal packet was sent	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

Only one application may be made by the same applicant within a period specified in the third column of the table, except where a previous application made by the same applicant under the same provision has been withdrawn.

SCHEDULE 2

(Article [97(3)])

CONSEQUENTIAL AMENDMENTS*[E.g.***1. Employment (Jersey) Law 2003**

In Article 90(11)(g) of the Employment (Jersey) Law 2003, for the words “Article 38 of the Mental Health (Jersey) Law 1969” there shall be substituted the words “[Part 10] of the Mental Health (Jersey) Law 201-”.

2. Loi (1895) modifiant le droit criminel

In Article 4.2 of the Loi (1895) modifiant le droit criminel, the words

“ou

2 avec une fille ou femme idiote ou aliénée d’esprit”

shall be deleted.

etc.]



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