



Jersey

**CAPACITY AND SELF-DETERMINATION  
(SUPERVISION OF DELEGATES ETC.)  
(JERSEY) REGULATIONS 2018**

**Official Consolidated Version**

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Jersey

## **CAPACITY AND SELF-DETERMINATION (SUPERVISION OF DELEGATES ETC.) (JERSEY) REGULATIONS 2018**

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**CAPACITY AND SELF-DETERMINATION  
(SUPERVISION OF DELEGATES ETC.) (JERSEY)  
REGULATIONS 2018**

**THE STATES**, in pursuance of Articles 33, 36, and 69 of the [Capacity and Self-Determination \(Jersey\) Law 2016](#), have made the following Regulations –

Commencement [[see endnotes](#)]

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**1 Interpretation**

In these Regulations –

- (a) the “Law” means the [Capacity and Self-Determination \(Jersey\) Law 2016](#);
- (b) “attorney” means a person on whom authority is conferred by a lasting power of attorney under Part 2 of the Law; and
- (c) a reference (without further specification) to “P” is a reference to the person who is the person so designated under Part 2 or, as the case may be, Part 4 of the Law.

## **2 Designated person or office**

- (1) The Viscount is designated as having responsibility for the matters set out in Article 36(1)(a) to (c) of the Law and shall exercise such responsibility in accordance with the further provision made by these Regulations.
- (2) For the purpose of exercising such responsibility the Viscount may enter into all such arrangements, including by or with any other person, as the Viscount may consider necessary or expedient.

## **3 Powers of investigation where representations etc. received**

- (1) This Regulation applies where –
  - (a) the Viscount has received representations (including, but not limited to, complaints) about the exercise of powers, or a failure to exercise powers, by an attorney or a delegate; or
  - (b) it otherwise appears to the Viscount that there are circumstances, such as described in paragraph (2), justifying investigation.
- (2) The circumstances mentioned in paragraph (1)(b) are such circumstances as –
  - (a) give the Viscount sufficient cause to believe that the attorney or delegate has behaved, is behaving or proposes to behave –
    - (i) in contravention of the terms, or outside the scope, of his or her appointment, or
    - (ii) otherwise not in P's best interests;
  - (b) give rise to concerns on the part of the Viscount about the conduct of the attorney or delegate (including, but not limited to, the level of fees charged or proposed to be charged by a delegate);
  - (c) suggest that an attorney or a delegate has failed to comply with an order made or directions given by the Court; or
  - (d) otherwise constitute good reason, in the view of the Viscount, to seek further information about an attorney's or delegate's discharge of his or her functions.
- (3) Where this Regulation applies, the Viscount may –
  - (a) by notice in writing given to the attorney or delegate, require the attorney or delegate to provide –
    - (i) such information (including accounts) or documents as may be specified, or as are of such description as may be specified, and
    - (ii) such reports as the Viscount may require, from the attorney or delegate, as to the exercise of his or her functions,and in either case, to do so in such a manner and before the end of such reasonable period and at such place as may be specified; and
  - (b) require that an act or decision, or a proposed act or decision, by an attorney or a delegate be suspended or postponed until such time as, for the purpose of concluding the investigation, the Viscount may reasonably require.
- (4) Where any information or document is provided to the Viscount under paragraph (3)(a)(i), the Viscount may further require such information to be verified, or such document to be authenticated, in such reasonable manner as the Viscount may see fit.

- (5) Nothing in these Regulations shall require the Viscount to investigate, consider or determine any complaint if, in the Viscount's opinion –
  - (a) the subject matter of the complaint is trivial; or
  - (b) the complaint is frivolous or vexatious or is not made in good faith.

#### **4 Application for additional time to submit a report**

- (1) A person required under Regulation 3(3)(a)(ii) to submit a report may make an application to the Viscount to request more time for doing so.
- (2) An application under paragraph (1) must –
  - (a) state the grounds for requesting more time; and
  - (b) contain, or be accompanied by, such information as the Viscount may reasonably require to determine the application.
- (3) The Viscount may, in response to an application under paragraph (1), grant such extension of time as the Viscount may consider reasonable.

#### **5 Powers of investigation: general**

- (1) For the purpose of further enabling the Viscount to exercise responsibility under the Law or functions under these Regulations, the Viscount may exercise the powers conferred by paragraphs (2), (3), and (5) to (7).
- (2) The Viscount may, at all reasonable times, examine and take copies of any record kept in relation to P –
  - (a) by the Minister or by the Health and Social Services Department, and relevant to a decision made or proposed to be made on behalf of P;
  - (b) by –
    - (i) a person registered under the [Health Care \(Registration\) \(Jersey\) Law 1995](#) or the [Nursing and Residential Homes \(Jersey\) Law 1994](#), or
    - (ii) any person, other than such a person as mentioned in subparagraph (b)(i), providing domiciliary care to P; and
  - (c) by persons or bodies carrying on the business of providing financial services within the meaning given to that expression by Article 1(1) of the [Financial Services Commission \(Jersey\) Law 1998](#); or
  - (d) by the Judicial Greffe.
- (3) The Viscount, or a person authorized by the Viscount to do so, may interview an attorney, a delegate, P, or such other person and by such means (subject to and in accordance with paragraphs (4) to (6)), including by visiting the person, as the Viscount may reasonably consider necessary.
- (4) Where it is proposed to exercise the power conferred by paragraph (3) by visiting a person, the Viscount or the authorized person must notify, or make arrangements to notify, the person to be interviewed of –
  - (a) the proposed date, time and place of the visit;
  - (b) to the extent that it is practicable to do so, any specific matters which are the subject of the interview; and

- (c) any proposal to inform any person, other than a person mentioned in paragraph (3), of the interview.
- (5) The Viscount, or a person authorized by the Viscount to do so, may with P's consent interview P privately without the attendance of P's attorney or delegate.
- (6) The Viscount, or a person authorized by the Viscount to do so, may request an attorney or a delegate to attend for interview at the Viscount's offices at a specified date and time.
- (7) For the purposes of investigation into a complaint received by the Viscount, the Viscount may consult such persons, being persons having expertise in the matter in respect of which the complaint is made, as the Viscount may see fit.

## **6 Power to request final reports concerning delegates**

- (1) This Regulation applies in any case where –
  - (a) P, being a person in relation to whom a delegate was appointed under Part 4 of the Law, has died;
  - (b) a delegate has become incapable of carrying out his or her function as such, or has died;
  - (c) the Court has made an order discharging a delegate; or
  - (d) a delegate otherwise ceases to be under a duty to discharge his or her function as such.
- (2) Where the case in which this Regulation applies is that described –
  - (a) in paragraph (1)(a), the delegate must notify the Viscount of P's death;
  - (b) in paragraph (1)(c), the Judicial Greffe must notify the Viscount of the order of the Court;
  - (c) in paragraph (1)(d), the delegate must notify the Viscount of the discharge.
- (3) The Viscount may require an attorney or delegate (or, in the case where the delegate has died, his or her personal representatives or such other persons as the Viscount considers appropriate) to submit –
  - (a) at such place;
  - (b) by the end of such reasonable period; and
  - (c) in such form and manner,as may be specified by notice in writing given to the delegate, a final report on the exercise of the delegate's function.
- (4) The Viscount must consider a final report submitted under paragraph (3), together with any other information the Viscount may have in relation to the discharge of functions by the delegate, and may, for the purpose of such consideration, request such additional information or documents from the delegate as the Viscount may consider necessary.
- (5) Where the Viscount is dissatisfied with any aspect of a final report, the Viscount may apply to the Court for an appropriate remedy (including the enforcement of any security given by a delegate).

## **7 Power to draw complaints to the attention of the Court**

- (1) Where, following –

- (a) an investigation under Regulation 3; or
  - (b) the Viscount's consideration of a final report under Regulation 6,
- the Viscount considers it necessary or appropriate to do so, the Viscount may make, or may request the Attorney General to make, an application to the Court requesting the exercise, in relation to an attorney or a delegate, of any of the Court's powers under the Law.
- (2) In considering whether it is necessary or appropriate to exercise the power conferred by paragraph (1), the Viscount –
- (a) must consider P's best interests; and
  - (b) may consider such other matters as the Viscount considers relevant, including (but not limited to) compliance by the attorney or delegate with any requirements of –
    - (i) the Law, and of any other applicable enactments or rules made under the Law,
    - (ii) the code of practice issued by the Minister under Article 68 of the Law,
    - (iii) guidance issued by the Viscount under Regulation 12(1)(c),
    - (iv) the terms of the lasting power of attorney (in the case of an attorney) or of appointment (in the case of a delegate), and
    - (v) orders or directions given by the Court.

## **8 Power to share information**

Where the Viscount considers it necessary or expedient to do so, the Viscount may disclose, to the Court, the Minister or such other persons as the Viscount thinks fit, any information –

- (a) obtained by the Viscount in the exercise of a function under the Law or these Regulations; and
- (b) relating to P, to P's assets, or to an attorney or a delegate.

## **9 Functions in relation to persons carrying out specific transactions**

- (1) This Regulation applies where, by an order made under Article 24(5) of the Law, the Court has authorized a person ("T") to carry out any transaction for or on behalf of P.
- (2) Where this Regulation applies, the Viscount has the functions of –
  - (a) receiving any reports from T which the Court may require; and
  - (b) dealing with representations (including complaints) about –
    - (i) the way in which the transaction has been or is being carried out, or
    - (ii) any failure to carry out the transaction.
- (3) The provisions of Regulations 3 to 6 shall have effect in relation to T as though T were an attorney or a delegate.

## **10 Powers and functions exercisable on death of P**

The powers and functions conferred by Regulations 3 to 9 shall remain exercisable by the Viscount notwithstanding the fact that P has died.

## **11 Right to require reconsideration of Viscount's decisions**

- (1) An attorney or a delegate may require the Viscount to reconsider any decision made by the Viscount under Regulations 3 to 8 in relation to that attorney or delegate.
- (2) The right conferred by paragraph (1) is exercisable by the attorney or delegate giving notice in writing to the Viscount within the period of 21 days beginning with the date on which notice of the decision was given to the attorney or delegate.
- (3) Notice given in accordance with paragraph (2) must –
  - (a) state the grounds for the request for reconsideration; and
  - (b) contain, or be accompanied by, any relevant information or documents.
- (4) At any time after receiving the notice and before reconsidering the decision to which it relates, the Viscount may require the attorney or delegate to provide such further information, or to produce such documents, as the Viscount reasonably considers necessary to enable reconsideration of the decision.
- (5) Following reconsideration, the Viscount must give to the attorney or delegate –
  - (a) notice in writing of the decision on reconsideration; and
  - (b) if the previous decision is upheld, a statement in writing of the reasons for upholding it.

## **12 General regulatory functions of Viscount**

- (1) For the purposes of exercising responsibility for the matters in relation to which the Viscount is designated by Regulation 2, the Viscount may –
  - (a) review the activities of delegates (whether individually or by reference to selected classes of delegates), and for this purpose and from time to time request reports in writing from delegates as to such matters as the Viscount may reasonably consider necessary and appropriate;
  - (b) submit, and where appropriate publish, such reports on the activities of attorneys and delegates, to the Minister, the Court and to such other persons as the Viscount may reasonably consider necessary and appropriate; and
  - (c) following any such review as mentioned in sub-paragraph (a) –
    - (i) issue such guidance to delegates (in addition and without prejudice to any code of practice issued by the Minister under Article 68 of the Law), and
    - (ii) for this purpose consult such persons, as the Viscount may consider necessary and appropriate.
- (2) In the exercise of any function under paragraph (1), the Viscount may, by notice in writing given to any person, require the person –
  - (a) to provide such information (including accounts) or documents as may be specified, or as are of such description as may be specified; and



- (b) to do so in such a manner and before the end of such reasonable period and at such place as may be specified.

### **13 Security to be given by delegates**

- (1) Where, in the exercise of its powers under Article 34(8)(a) of the Law, the Court orders a delegate to give to the Judicial Greffier, or to such other person as the Court may direct, security for the delegate's discharge of his or her functions, that security must be given –
  - (a) by means of a bond for such amount as the Court may think fit; or
  - (b) by such other means as the Court may direct.
- (2) For the purposes of paragraph (1), the Court may require the delegate to provide to the Court such endorsements, guarantees or undertakings, in such form or manner, as to the provision of security as the Court may specify.
- (3) Where –
  - (a) security is given to the Court in accordance with this Regulation; and
  - (b) any premium is payable in respect of that security,the delegate must provide, on such dates or at such intervals as the Court may determine, such information or evidence as the Court may specify as to payment of the premium.
- (4) Where the Court orders the enforcement of any security given in accordance with this Regulation, the Court must notify the Viscount of the arrangements made in respect of that security under this Regulation, and direct that the Viscount shall be responsible for enforcement of that security.

### **14 Court's determination as to supervision of delegate**

Where, under Article 24(2)(b), (4) or (5) of the Law, the Court exercises its power to appoint a delegate or to vary the powers conferred on a delegate, the Court shall consider whether or not the delegate will require to be supervised by the Viscount in the performance of his or her functions as delegate, and –

- (a) for the purposes of such consideration, the Court may request such information or reports from such persons as the Court may reasonably consider necessary; and
- (b) if the Court determines that the delegate should be so supervised, the Court shall further determine the level of supervision required, and shall order accordingly.

### **15 Fees for supervision of delegate**

- (1) Where, under Regulation 14, the Court makes an order for the supervision of a delegate, the Viscount shall –
  - (a) agree a supervision plan with the delegate; and
  - (b) require the delegate to pay to the Viscount such an amount by way of a fee in relation to the supervision (a "supervision fee") as may, by reference to the prescribed scale of fees, be appropriate.
- (2) The supervision fee shall be payable within 30 days of the date of the requirement made under paragraph (1)(b) and thereafter annually throughout the duration of the plan and, subject to paragraphs (3) to (5) –

- (a) shall be payable –
    - (i) throughout the duration of the plan, within 30 days of the date on which a requirement for payment of the fee is made, or
    - (ii) upon termination of the plan, within 30 days of that termination; and
  - (b) be paid by the delegate out of P’s assets.
- (3) Where the period in respect of which a supervision fee is payable is less than one year, the amount of the fee shall be in the same proportion to the full fee prescribed for a year as the proportion that period bears to one year.
- (4) No amount of any supervision fee shall be payable where, at the date when the fee would otherwise be payable under paragraph (2)(a) –
- (a) P is in receipt of a qualifying benefit; or
  - (b) in an case where P is not in receipt of such a benefit, P’s assets are insufficient to pay the amount.
- (5) Without prejudice to paragraph (3), in any case other than one described in that paragraph where the Viscount considers that the imposition of a supervision fee would, in the circumstances of the particular case, cause undue hardship, the Viscount may determine that the fee is to be reduced (or, where the fee has already been paid, remitted) by such amount as the Viscount sees fit, including by the full amount of the fee.
- (6) An application for the remission of the whole or part of a supervision fee under paragraph (5) shall be made to the Viscount within the period of 6 months beginning with the date on which the request for payment of the fee is made under paragraph (1)(b).
- (7) For the purpose of paragraph (4)(a), P is in receipt of a “qualifying benefit” if –
- (a) P is a member of a household in receipt of income support under the [Income Support \(Jersey\) Law 2007](#);
  - (b) P meets the requirements for a special payment to defray the expenses of long-term care being provided to P, under Regulation 2 of the [Income Support \(Special Payments\) \(Long-Term Care\) \(Jersey\) Regulations 2014](#);
  - (c) P receives a grant under Article 11, or a loan under Article 12, of the [Long-Term Care \(Benefits\) \(Jersey\) Order 2014](#) for the purpose of meeting the weekly costs mentioned in Article 9(c) of that Order; or
  - (d) P is a person admitted to the health bonus scheme pursuant to a determination under Article 5 of the [Social Security \(Health Bonus Scheme\) \(Jersey\) Order 2016](#).

## **16 Viscount acting as delegate: application of Regulations, etc.**

- (1) Regulations 3, 4, 6, and 10 to 12 shall not apply to the Viscount acting in the capacity of a delegate under Part 4 of the Law.
- (2) A code of practice issued under Article 68 of the Law shall apply to the Viscount acting as mentioned in paragraph (1) –
  - (a) to the extent that the code is relevant to the circumstances of the particular appointment of the Viscount as delegate; and
  - (b) taking into account the needs, and assets, of P in the particular case in question.

- (3) Nothing in these Regulations shall be taken to restrict the right of any person, on behalf of P, to make a complaint to the Viscount or to the Court in respect of any default or neglect in the performance by the Viscount of the Viscount's function as a delegate.

## **17 Limitation of liability of Viscount**

- (1) The Viscount, or any member of the Viscount's Department, shall not be liable in damages for anything done or omitted in the discharge of or purported discharge of any function under the Law, these Regulations or any other enactment made under the Law.
- (2) Paragraph (1) does not apply –
  - (a) if it is shown that the act was done, or the omission made, in bad faith; or
  - (b) so as to prevent an award of damages made in respect of an act on the ground that the act was unlawful as a result of Article 7(1) of the [Human Rights \(Jersey\) Law 2000](#).

## **18 Orders as to professional fees of delegates**

- (1) The Minister may by Order make provision as to professional fees to be charged by delegates in respect of their functions, including in particular (but not limited to) provision as to the matters listed in paragraph (2).
- (2) The matters mentioned in paragraph (1) are –
  - (a) the amount of fees, whether by reference to a prescribed scale of fees or by reference to a percentage of P's assets, or otherwise;
  - (b) the services in respect of which fees are chargeable;
  - (c) requirements to provide estimates of fees to the Court, including the matters or services as to which such estimates must be provided;
  - (d) requirements for agreement by the Court of such estimates and powers of the Court to confirm such estimates;
  - (e) powers of the Court to impose terms and conditions, in relation to particular estimates of fees or to such estimates generally;
  - (f) powers of the Viscount to refer any matter or question arising as to such fees or estimates to the Court for the Court's determination;
  - (g) powers of the Court and of the Viscount to seek further information as to fees or estimates from the delegate or from any other person concerned;
  - (h) powers of the Court and of the Viscount exercisable in cases where an estimate of fees is exceeded; and
  - (i) cases in which exemptions from, or reductions or remissions of fees may be granted.

## **19 Offence of providing false or misleading information**

Where, in response to a request made under the Law or these Regulations for provision of any information, document or report, an attorney or delegate knowingly or recklessly provides information or a document or report which is, in a material particular, false or

misleading, the attorney or delegate is guilty of an offence and liable to a fine of level 3 on the standard scale.

## **20 Offence of obstruction**

An attorney or delegate who, without reasonable cause or excuse, refuses –

- (a) to allow the interviewing (including visiting) of P by the Viscount or any other person authorized by the Viscount under Regulation 5; or
- (b) to provide any information, document or report to the Viscount or other person authorized by the Viscount under that Regulation,

or who otherwise obstructs any such person in the exercise of his or her functions under these Regulations, is guilty of an offence and liable to a fine of level 3 on the standard scale.

## **21 Offence of disclosing confidential personal information**

- (1) An attorney or delegate who knowingly or recklessly discloses confidential information relating to P, other than in the exercise of his or her authority as attorney or delegate in accordance with the Law or these Regulations, is guilty of an offence and liable to a fine of level 3 on the standard scale.
- (2) For the purposes of paragraph (1) “confidential information” is any information relating to P which has been obtained by the attorney or delegate in the course of the exercise of his or her authority as such.
- (3) It is a defence for a person charged with an offence under paragraph (1) to prove that, at the time of the alleged offence –
  - (a) any of the circumstances in paragraph (4) applied in relation to the disclosure; or
  - (b) the person reasonably believed that any of those circumstances so applied.
- (4) The circumstances mentioned in paragraph (3) are that –
  - (a) the disclosure was made in such a form or manner that P could not be identified from the information disclosed;
  - (b) the disclosure was made with P’s consent;
  - (c) the information disclosed had previously been lawfully disclosed to the public;
  - (d) the disclosure was made in accordance with any enactment or order of a court;
  - (e) the disclosure was necessary or expedient for the purpose of protecting P’s best interests; or
  - (f) it was necessary or expedient for the disclosure to be made to a person or body for the purpose of enabling that person or body to exercise functions under any enactment.
- (5) If a person relies on a defence under paragraph (3) and evidence is adduced which is sufficient to raise an issue as to that defence, the court must assume that the defence is satisfied unless the prosecution proves beyond reasonable doubt that it is not.

## 22 Transitional and saving provisions

- (1) In this Regulation, a reference to the “commencement day” is to the day on which the [Capacity and Self-Determination \(Jersey\) Law 2016](#) (the “Capacity Law”) comes into force, and a reference to a delegate is to a delegate within the meaning of Part 4 of the Capacity Law.
- (2) Where, immediately before the commencement day, a curator appointed under Article 43 of the Mental Health (Jersey) Law 1969 is managing and administering the property and affairs of a person in accordance with that Article, Part 4 of the Capacity Law shall apply, on and after the commencement day, subject to and with the further modifications set out in paragraphs (3) and (4), and –
  - (a) in relation to the curator, as though the curator were a delegate appointed under that Part, having given the consent required by Article 34(2) of the Capacity Law, and having all powers; and
  - (b) in relation to the person whose property and affairs are managed and administered by the curator, as though that person were “P” within the meaning of that Part.
- (3) Notwithstanding the repeal of the Mental Health (Jersey) Law 1969 by the [Mental Health \(Jersey\) Law 2016](#) –
  - (a) the provisions of Article 43(8), (9) (except for sub-paragraph (a)) and (10) of the Mental Health (Jersey) Law 1969 shall continue to apply, on or after the commencement date, so that a person to whom paragraph (2)(a) would otherwise apply may cease to hold office (whether as curator or as delegate) under any of those provisions;
  - (b) where a curator declines to act as a delegate, he or she may resign his or her office and Article 43(11) of the Mental Health (Jersey) Law 1969 shall continue to have effect for the purpose of enabling such resignation, but as though for the power of the Court under that provision to appoint some other person as curator there were substituted the power of the Court to appoint a delegate under Article 24 of the Capacity Law; and
  - (c) Article 43(20), (21) and (24) of the Mental Health (Jersey) Law 1969 shall continue to have effect as though the requirements for submitting inventories and accounts under those provisions were requirements made by the Court under Article 34(8)(b) of the Capacity Law for reports to be provided to the Judicial Greffier, except that Article 43(20)(b) of the Mental Health (Jersey) Law 1969 shall apply as though for the time limit of 30 days in that provision there were substituted a limit of 90 days.
- (4) A person becoming a delegate by virtue of the application of paragraph (2) shall have all such powers as are exercisable by a delegate appointed under Part 4 of the Capacity Law, subject to any conditions or restrictions which may be imposed by the Court of its own motion under that Part or pursuant to an application made to the Court by that person.

## 23 Citation

These Regulations may be cited as the Capacity and Self-Determination (Supervision of Delegates etc.) (Jersey) Regulations 2018.

## ENDNOTES

### Table of Legislation History

Legislation	Year and No	Commencement	Project No (where applicable)
Capacity and Self-Determination (Supervision of Delegates etc.) (Jersey) Regulations 2018	<a href="#">R&amp;O.46/2018</a>	1 October 2018	<a href="#">P.45/2018</a>

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

### Table of Endnote References

*There are currently no endnote references*