



Jersey

# **MENTAL HEALTH (GUARDIANSHIP) (JERSEY) REGULATIONS 2018**

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## MENTAL HEALTH (GUARDIANSHIP) (JERSEY) REGULATIONS 2018

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## MENTAL HEALTH (GUARDIANSHIP) (JERSEY) REGULATIONS 2018

**THE STATES**, in pursuance of Articles 30, 32 and 94 of the [Mental Health \(Jersey\) Law 2016](#), have made the following Regulations –

Commencement [[see endnotes](#)]

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### 1 Interpretation

In these Regulations –

“Law” means the [Mental Health \(Jersey\) Law 2016](#);

“private guardian” means, in relation to a patient, a person (other than the Minister) who is named as a guardian under Part 4 of the Law.

### 2 General duties of private guardians

- (1) In exercising powers conferred or duties imposed on a private guardian by the Law or these Regulations, the private guardian must comply with such Orders as may be made or such directions as may be given by the Minister.
- (2) A private guardian must furnish the Minister with all such reports or other information with regard to the patient as the Minister may from time to time require.
- (3) On reception of the patient into his or her guardianship (other than as a result of a transfer under Regulation 3 or 4 or Article 32 of the Law), a private guardian must notify the Minister of the private guardian’s address and the address of the patient.
- (4) On any permanent change of either address mentioned in paragraph (3) a private guardian must notify the Minister of the new address, either before or no later than 7 days after the change.
- (5) A private guardian must notify the Minister of the name and address of the patient’s responsible medical officer and general practitioner.
- (6) On any change of the patient’s responsible medical officer or general practitioner, a private guardian must notify the Minister of the name and address of the new responsible medical officer or general practitioner.
- (7) A private guardian must notify the Minister, as soon as reasonably practicable, of the death of the patient.

- (8) A private guardian must maintain a care plan with regard to the patient, in accordance with any requirements specified as to such plans in a code of practice issued by the Minister.
- (9) Any notification required to be given under this Regulation must be given in writing.

### **3 Duties arising upon, and arrangements for, transfer of patient between guardians**

- (1) Paragraph (2) applies where it appears to the Minister that a private guardian –
  - (a) has performed his or her function negligently or in a manner contrary to the interests of the patient;
  - (b) is incapacitated by illness or any other cause from acting as guardian in relation to the patient; or
  - (c) is otherwise no longer a fit and proper person so to act.
- (2) Where this paragraph applies, the Minister must notify the private guardian (“G1”) in writing –
  - (a) that the patient is to be transferred, within a specified period, out of the guardianship of G1 under Article 32(2) of the Law; and
  - (b) of the reasons why it appears to the Minister that such a transfer should be made.
- (3) Where a private guardian considers himself or herself to be unfit or unable to act as such by reason of illness or any other cause, the private guardian must notify the Minister, in writing or in such form as may be prescribed, of that fact and of his or her consent to the transfer of the patient out of his or her guardianship into the guardianship of such other person and under such arrangements as the Minister may see fit to make under Article 32 of the Law.
- (4) The Minister must notify in writing any private guardian into whose guardianship a patient is to be transferred (“G2”) under Article 32(2) of the Law, of the arrangements made for the proposed transfer.
- (5) Where the arrangements made for the proposed transfer of a patient under Article 32(2) of the Law name a person other than the Minister as guardian, the transfer shall not take place unless the Minister receives from G2 his or her consent, in such form as may be prescribed, to act as guardian in relation to the patient.
- (6) Upon receipt of notification under paragraph (3) or of G2’s consent under paragraph (5), and having notified the patient’s responsible medical officer in writing of the arrangements made for the transfer, the Minister must authorize the transfer and specify the period within which the transfer is to take place.
- (7) Where the Minister authorizes a transfer under this Regulation, the Minister must give notice of the authorization –
  - (a) to the patient’s responsible medical officer, before the transfer takes place; and

- (b) in writing to the patient's nearest person, either before the transfer takes place or as soon as reasonably practicable thereafter.
- (8) Authorization under this Regulation shall be sufficient authority for the Minister, G2 or a person authorized for the purpose by the Minister to take the patient and convey him or her, within the period of 14 days beginning with the date of the authorization, to such place as may be specified for his or her reception into the guardianship of G2.

#### **4 Transfer of patient into guardianship from approved establishment**

- (1) An application for the transfer into guardianship of a person who is liable to be detained in an approved establishment must be made in writing by an authorized officer to the Minister and in accordance with this Regulation.
- (2) The provisions of Article 29 of the Law shall apply in relation to an application under paragraph (1) as though such an application were an application under that Article for reception of a patient into guardianship, except that paragraphs (2)(b) and (3) to (5) of that Article shall not apply, but instead of those provisions –
  - (a) the application must contain a statement that in the opinion of a registered medical practitioner who is an approved practitioner, the grounds stated in paragraph (3) are met; and
  - (b) the application must include, or be accompanied by, the recommendation of the approved practitioner (the “medical recommendation”) as to which Article 19 of the Law shall apply as if the application were an application under Part 3.
- (3) The grounds mentioned in paragraph (2)(a) 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 in the interests of the patient's welfare for the patient to be transferred from the approved establishment in which he or she is detained, and received into guardianship.
- (4) Where the Minister agrees to the transfer the Minister must authorize the transfer and specify the period within which the transfer must take place, and –
  - (a) authorization under this Regulation shall be sufficient authority for the managers of the approved establishment, or a person authorized for the purpose by the managers, to take the patient and convey him or her, within the period of 14 days beginning with the date on which the approved practitioner last examined the patient, to such place as may be specified for his or her reception into guardianship; and
  - (b) Article 30(1) to (4) of the Law shall apply in relation to such an authorization as those provisions apply in relation to a guardianship authorization under that Article.
- (5) Where the Minister authorizes a transfer under this Regulation, the Minister must give notice in writing of the authorization to –

- (a) the managers of the approved establishment from which the patient is to be transferred;
  - (b) the patient's nearest person; and
  - (c)(in the case of a private guardian) the guardian.
- (6) Where a form of application under this Regulation is prescribed, an application must be made using that form.

## **5 Transfer of patient into approved establishment from guardianship**

- (1) An application for the transfer into an approved establishment of a patient who has been received into guardianship must be made in writing to the Minister and in accordance with this Regulation.
- (2) All such applications must –
  - (a) be made by an authorized officer –
    - (i) who has personally seen the patient within the period of 7 days ending with the date of the application, and
    - (ii) following consultation with the patient's nearest person (unless such consultation is not reasonably practicable or would involve unreasonable delay) and responsible medical officer;
  - and
  - (b) contain a statement that, in the opinion of the authorized officer, the grounds stated in paragraph (3) are met.
- (3) The grounds mentioned in paragraph (2)(b) are that the existing arrangements made for the patient under guardianship do not provide, or have ceased to provide, an environment that is –
  - (a) conducive to the further assessment or treatment of the patient for the purposes of preventing a deterioration in the patient's mental illness and condition; or
  - (b) appropriate, having regard to the need for protection of other persons.
- (4) The Minister must not authorize the transfer of a patient into an approved establishment unless the Minister is satisfied that the managers of the approved establishment –
  - (a) consent to the transfer; and
  - (b) have made arrangements sufficient to enable the admission of the patient to the approved establishment within the period of 14 days beginning with the date on which the patient was last seen by the authorized officer.
- (5) Authorization under this Regulation shall be sufficient authority for –
  - (a) the Minister or a person authorized for the purpose by the Minister to take the patient and convey him or her, within the period of 14 days beginning with the date of the authorization, to the approved establishment; and
  - (b) the admission and detention of the patient in the approved establishment (and such detention shall be regarded, for the



purposes of the application of Articles 23 to 28 and 50 of the Law and of Regulation 4, as detention pursuant to a treatment authorization under Article 22 of the Law).

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

## **6 Confidentiality of records to be kept by Minister**

The Minister must keep copies of all applications made, notifications given, and reports or other information furnished or provided to him or her under these Regulations or Part 4 of the Law, in such a manner as to ensure the confidentiality of the contents of such applications, notifications, reports or other information.

## **7 Offences and penalties**

- (1) A private guardian who fails without reasonable excuse to furnish the Minister with any report or other information as required by the Minister under Regulation 2 is guilty of an offence and liable to a fine of level 3 on the standard scale.
- (2) A private guardian who fails without reasonable excuse to comply with directions given by the Minister under these Regulations is guilty of an offence and liable to a fine of level 2 on the standard scale.
- (3) A private guardian who knowingly or recklessly discloses any information relating to the patient, the patient's care or treatment, or the patient's guardian or guardianship, or any other similar matter arising in relation to guardianship under these Regulations or under the Law, otherwise than in accordance with or for the purposes of the Regulations or the Law, is guilty of an offence and liable to a fine of level 3 on the standard scale.
- (4) A private guardian who provides, in connection with an application to be made under these Regulations or under Part 4 of the Law, any information which the person knows to be false or intends to be misleading is guilty of an offence and liable to a fine of level 3 on the standard scale.

## **8 Citation**

These Regulations may be cited as the Mental Health (Guardianship) (Jersey) Regulations 2018.

## ENDNOTES

### Table of Legislation History

Legislation	Year and No	Commencement	◦Projet No (where applicable)
Mental Health (Guardianship) (Jersey) Regulations 2018	<a href="#">R&amp;O.47/2018</a>	1 October 2018 ( <a href="#">R&amp;O.51/2018</a> )	<a href="#">P.46/2018</a>

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

### Table of Renumbered Provisions

Original	Current
None	

### Table of Endnote References

*There are currently no endnote references*