STATES OF JERSEY

DRAFT MENTAL HEALTH, CAPACITY AND SELFDETERMINATION (JERSEY) AMENDMENT LAW 202- (P.42/2026): COMMENTS

Presented to the States on 17th March 2026
by the Health and Social Security Scrutiny Panel

STATES GREFFE

COMMENTS

Background

The Draft Mental Health, Capacity and Self-Determination (Jersey) Amendment Law 202- ("the draft Law"), was lodged on 11th February 2026. The draft Law sets out to introduce a first tranche of amendments to the Mental Health (Jersey) Law 2016 ("the Mental Health Law") and the Capacity and Self-Determination (Jersey) Law 2016 ("the Capacity Law") which follows a comprehensive cross-service review of both Laws, undertaken seven years post-enactment. The Amendments aim to address:

- drafting errors in the original legislation
- changes in professional best practice
- lessons learned from operational experience
- Jersey-specific service realities
- alignment with updated UK legislative approaches where appropriate.

The Health and Social Security Panel ("the Panel") received a private briefing with Government Officers on the proposed changes on 14th October 2024. Officers explained that the amendments represented the first tranche of legislative improvements to the Mental Health (Jersey) Law 2016 and the Capacity and Self Determination (Jersey) Law 2016, with a second tranche due at the end of 2024. The Panel was informed that initial work began in 2019 through a working group comprising legislative leads, the Law Officers' Department, and mental health practitioners, with policy officers becoming involved in 2021 due to the scale of amendments required. Officers further advised that progress had been delayed for a number of reasons, principally the inclusion of a small number of additional amendments considered necessary to further improve the Law, as detailed in the accompanying report. The second tranche of amendments has also experienced delays and remains in development; the incoming Minister for Health and Social Services will be briefed on these proposals upon taking up their Ministerial role. In addition, the Panel was informed that amendment Orders and revisions to the Code of Practice will need to be drafted over the summer, both of which must be in place prior to the Law, if approved, being enacted later this year.

The Panel heard that, when the laws were implemented, significant elements of UK legislation had been replicated, however, some provisions did not translate effectively to Jersey. Therefore, the purpose of the proposed amendments was to close gaps, correct drafting issues and better align the law with Jersey's service needs and practice.

The Panel raised questions about the necessity and breadth of the review, with Officers clarifying that several areas of the 2016 drafting were insufficient - particularly concerning young people, definitions and terminology. Officers also confirmed that stakeholders, including MyVoice (an independent advocacy service) and mental health professionals, had been consulted and were supportive of the proposed changes.

The Panel explored the operational use of Ministerial powers, asking whether a Minister had ever revoked the status of an Authorised Officer. Officers confirmed that, to their knowledge, this had not occurred and that approval for Authorised Officers (soon to be

termed Approved Mental Health Professionals) is subject to annual review and renewal.[1]

The Panel also asked questions regarding restraint data under Article 9(2)(a) of the Capacity and Self-Determination Law. Officers confirmed that all instances are recorded and authorised by the Minister where necessary. Mental Health Law statistics were (and continue to be) reviewed monthly by the Mental Health Law Oversight Group as part of routine monitoring of patient interventions.

The briefing provided the Panel with a detailed overview of the rationale, scope, and expected impact of the first tranche of amendments. Officers highlighted how the revisions would strengthen the legislative framework, improve practice, and align the law more closely with Jersey-specific needs.

Panel Observations

Correcting errors and omissions

The Panel noted that several statutory provisions contain drafting inaccuracies - such as incorrect conjunctions, outdated terms, and missing appeal routes - which have generated ambiguity and inconsistency in practice. The Panel agrees that the draft Law appropriately addresses these issues.

Modernise clinical roles and workforce flexibility

The introduction of Approved Clinicians (ACs)[2] is expected to broaden senior clinical responsibilities beyond medical practitioners, aligning Jersey with England and Wales and improving recruitment and retention. The Panel agrees that this alignment is positive and will strengthen the resilience of the workforce.

Strengthening patient safety and protections

The Panel acknowledges that amendments to emergency admission processes are intended to resolve gaps that risked delaying responses in crisis situations. Clarifications regarding restrictions on communication, postal items, significant restrictions on liberty (SRoLs), and tribunal processes improve transparency, fairness, and independent oversight. The Panel considers these amendments necessary and beneficial.

Ensure proportionality and avoid unnecessary distress

The Panel understands that changes to capacity assessment requirements aim to reduce unnecessary or duplicative medical examinations. The Panel supports this approach,

[1] Draft Mental Health, Capacity and Self-Determination (Jersey) Amendment Law 202- *Article 1 of the Mental Health Law currently defines an Authorised Officer as a person authorised by the Minister under Article 6 of that Law. An Authorised Officer is a health professional with specific training in the application of the Mental Health Law. They are responsible for making applications for admission to approved establishments (a hospital).* – Page 5

[2] Draft Mental Health, Capacity and Self-Determination (Jersey) Amendment Law 202- *The introduction of Approved Clinicians (ACs) status into the Mental Health Law will enable formal roles under the Law in relation to detained patients to be carried out by a wider range of mental health professionals than at present.* – Page 9

recognising the importance of respecting patient dignity and minimising avoidable distress.

Provide Jersey-appropriate solutions

While many features of UK legislation remain relevant, the Panel recognises that certain elements require adaptation to reflect Jersey's scale and service configuration. The Panel is satisfied that the draft Law strikes an appropriate balance between adopting established standards and tailoring provisions to local circumstances.

Conclusion

The Panel welcomes the lodging of the draft Law. In the Panel's view, the amendments represent a necessary and timely modernisation of the legislative frameworks governing mental health treatment, capacity and restrictions on liberty. They address identified weaknesses, improve clarity and practice, and enhance the protection of individuals using mental health and capacity services.

The Panel supports the draft Law as an important step in maintaining a safe, robust, and compassionate mental health and capacity system for Jersey.