

**THE STATES OF DELIBERATION
of the
ISLAND OF GUERNSEY**

29th April 2025

Proposition No. P.2025/59

**THE CAPACITY (COMMENCEMENT AND MISCELLANEOUS PROVISIONS)
(GUERNSEY AND ALDERNEY) ORDINANCE, 2025
AMENDMENT**

Proposed by: Deputy AH Brouard
Seconded by: Deputy MP Leadbeater

To amend the Capacity (Commencement and Miscellaneous Provisions) (Guernsey and Alderney) Ordinance, 2025 as follows:-

- (a) for section 1(c), substitute "(c) sections 71A and 72,"
- (b) insert the following section as section 6 and re-number the following sections accordingly -

"Applications for declarations under section 37.

6. Where the person wishing to make an application for a declaration under section 37 of the Law in a relevant court set out in section 37(5)(a) or (c), is –

- (a) the States of Guernsey Committee for Health & Social Care,
or
- (b) the provider of medical treatment at the request, or with
the agreement, of the States of Guernsey,

no permission is required for the purposes of section 21 of the Law.", and

- (c) in subsections (1) and (2) of section 8 (as originally numbered), for "6 and 7" substitute "7 and 8".

Rule 4(1) information

- (a) This proposition contributes to the States' objectives and policy plans by supporting the introduction of processes to recognise individuals' rights when they no longer have capacity to make relevant decisions.
- (b) In preparing the proposition no consultation has been undertaken.
- (c) The proposition has been submitted to His Majesty's Procureur for advice on any legal or constitutional implications.
- (d) There are no financial implications to the States of amending the legislation in the way set out.
- (e) Drafting advice has not been sought from the States Greffier, but officers of the Committee are aware of the amendment.

Explanatory note

The amendment primarily deals with the position of Advanced Decisions to Refuse Treatment ("ADRT") introduced under the Capacity (Bailiwick of Guernsey) Law, 2020 ("the Law"). An ADRT allows a person, whilst having capacity, to refuse a specified treatment if it is proposed to be undertaken at a later stage when that person does not have capacity to make the decision to consent or refuse it. The specified treatment cannot then be given to that person. The treatment which can be refused can include life-sustaining treatment. Under section 37 of the Law, a relevant court can be requested to declare whether an ADRT exists, is valid and is applicable to the treatment to be refused. The proposed amendment removes the requirement for the Committee *for* Health & Social Care and a medical treatment provider (e.g. the Medical Specialist Group) to apply for permission to make such an application, due to their role in providing medical treatment and the potential urgency on which such an application could be made, particularly if the treatment which has been refused is life-sustaining. The amendment also ensures that all of the relevant sections of the Law are commenced at the appropriate time.