

New mental capacity law faces six-month delay in Jersey

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The implementation of Jersey's new Capacity and Self Determination Law 2016, which was originally slated to come into effect in April 2018, has been delayed and is now anticipated to come into effect in October 2018.

The new law will give islanders the opportunity to make decisions about what will happen to their financial and personal affairs should they lose mental capacity. There is currently no mechanism in place in Jersey for individuals to ensure that their wishes are respected should they lose mental capacity, with no equivalent of an English Lasting Power of Attorney.

Once implemented, the new law will enable islanders over the age of 18 with mental capacity to put into place two different types of Lasting Power of Attorney, one to deal with health and welfare matters including wishes in relation to medical treatment, and another to cover property and financial affairs.

Under current arrangements, decisions regarding the financial affairs of an individual without capacity are made by a Court-appointed Curator, but this individual has no legal authority to make decisions regarding care arrangements or other personal issues. Usually such decisions will fall to the family members of the individual, but should there be no family to make these decisions, the Curator will be required to do so instead. This can put the Curator in a difficult position, particularly if they are a professional who was not involved in the client's life until appointed by the Court.

Henry Wickham, counsel and probate manager at Ogier, said:

"The change in the law has long been anticipated by probate practitioners and their clients, as it will give individuals the peace of mind that their wishes will be respected should they lose the ability to make decisions about their personal and financial affairs and their welfare.

"Given how hotly anticipated this law has been, it's important that individuals make provisions

to accommodate the October implementation date."

Read Henry's briefing on the Capacity and Self Determination Law [here](#).

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