

STATES OF JERSEY



DRAFT REGULATION OF CARE (REGULATED ACTIVITIES) (AMENDMENT OF LAW) (JERSEY) REGULATIONS 202- (P.45/2022): COMMENTS

**Presented to the States on 19th April 2022
by the Children, Education and Home Affairs Scrutiny Panel**

STATES GREFFE

COMMENTS

Background and introduction

P.45/2022 Draft Regulation of Care (Regulated Activities) (Amendment of Law) (Jersey) Regulations 202- have been lodged by the Minister for the Environment (hereafter ‘the Minister’) in order increase the scope of services that would be regulated by the Jersey Care Commission to include the following:

1. Adoption services
2. Children’s home services (already regulated but as a care home service)
3. Fostering services
4. Social work services for children and young people
5. Independent monitoring and review of children’s safeguarding arrangements
6. Child contact centres
7. Residential family centres
8. Children and Adolescent Mental Health Service (CAMHS)
9. Care services in special schools
10. Children and family community nursing services

The Independent Jersey Care Inquiry (IJCI) recommended that a statutory basis for the independent inspection of Children’s Services should be established. Whilst to date inspections have been undertaken on a number of aspects of Children’s Services, there has been no statutory basis for this to be conducted. The Regulation of Care (Jersey) Law 2014 (the ‘Primary Law’) was adopted by the States Assembly in 2014 and provides a modern framework for the regulation of health and social care in Jersey. It is noted that from January 2019 care homes, home care services and day care services for adults have been regulated under the Law by the Jersey Care Commission (JCC). In order to bring the services above into this regulatory framework, the Minister has lodged three propositions in order to give effect to this as follows:

- P.45/2022 Draft Regulation of Care (Regulated Activities) (Amendment of Law) (Jersey) Regulations 202-
- P.46/2022 Draft Regulation of Care (Standards and Requirements) (Amendment) (Jersey) Regulations 202-
- P.47/2022 Draft Regulation of Care (Transitional Provisions) (Jersey) Regulations 202-

It is noted that whilst three separate propositions have been lodged in order to make these changes, all three propositions are inherently linked and, therefore, would all need to be adopted in order for the changes to come into effect. It is also noted that the manner in which the Primary Law is structured allows for changes to be made via secondary legislation (draft Regulations). The Children, Education and Home Affairs Panel (hereafter ‘the Panel’) has therefore presented these comments in respect of all three propositions above rather than presenting three separate comments papers.

Overview of scrutiny

As the draft Regulations have been lodged by the Minister for the Environment, an initial briefing on the proposals was held by the Environment, Housing and Infrastructure Panel (hereafter ‘EHI Panel’) on 21st September 2021 which the Panel was invited to attend as they relate to the proposed regulation of children’s social work

and mental health services which falls under the remit of the Panel. It should also be noted that the Primary Law would normally sit under the remit of the Chief Minister, however, responsibility in this area has been delegated to the Minister for the Environment during the current term of Government. Further to the briefing, it was agreed that any scrutiny of the draft Regulations would be undertaken by the Panel. The Panel received a further briefing from Officers on the draft Regulations on Monday 4th April where it examined and discussed the proposals further.

Overall, the Panel is in agreement with the proposals being put forward under the draft Regulations. It has, however, produced these comments in order to highlight to States Members the areas discussed and some of the points raised during the briefings and further scrutiny of the draft Regulations.

Overview of the draft Regulations

It is noted that the purpose of P.45/2022 is to define the services which are intended to be regulated by the JCC by describing the nature of those services. Furthermore, every service listed under the regulations will be required to register as a service provider with the JCC and any individual who provides a service listed under the regulations and does not register with the JCC would be guilty of an offence (liable to imprisonment for a term of up to 12 months and to a fine). Once a service provider has registered with the JCC then they are required to adhere to the Regulation of Care (Standards and Requirements) (Jersey) Regulations 2018 and would be inspected by the JCC every year. The Panel questioned why the regulation of these services was being brought forward under the Primary Law given the differences with health and social care services. Officers explained to the Panel that it was deemed more expedient to fit the proposed changes within the current legislative format through taking the existing standards and requirements and extending them where required to meet the new services.

As a result of the amendments arising in P.45/2022, P.46/2022 brings forward further amendments to the Regulation of Care (Standards and Requirements) (Jersey) Regulations 2018 in order to define the standards that will be required in relation to the proposed services. It should be noted that the 2018 Regulations are largely generic requirements and apply equally to all regulated services with the exception of Regulations 28, 29, 30 and 31 which apply only to children's homes and children's support services. In relation to these standards, it is noted that the JCC intend to develop and consult on new Care Standards based on the requirements under the 2018 Regulations. The Care Standards are the guidance that is used by regulated services to understand what the JCC require from them and against which the JCC would inspect them. During the briefing it was explained to the Panel that a number of additional Regulations have been brought forward in relation to adoption and fostering services due to deficiencies in the current legislation governing these areas. It is noted that in order to have specific standards and requirements in relation to adoption and fostering services, rather than amend the respective Laws, they could be included within the amendments to the 2018 Regulations instead.

P.47/2022 brings forward transitional provisions that provide that children's homes which are currently required to register as care comes under the Primary Law will automatically be registered as children's home services should the draft Regulations come in to force. Children and family nursing services which are currently required to register as home care services under the Primary Law will be able to re-register with the

JCC without paying a registration fee. Finally, P.47/2022 requires that those services which will become regulated activities for the first time (such as fostering and adoption services) will be required to register with the JCC within six months of the draft Regulated Activities Regulations coming into force.

Fees attached the draft Regulations

The Panel notes that the report accompanying P.45/2022 sets out the proposed fees in relation to services that would come under the regulation of the JCC. During the briefing on 4th April, the Senior Policy Officer explained that the fees in relation to registration that are determined by the 2014 Law will also be applied in respect of the new services, however, a consultation was being undertaken in respect of the proposed fees with the affected service providers and closed on Friday 8th April. The Panel notes that it is intended for the consultation response to be published.

It is important to note that the three propositions being debated by the States Assembly do not relate to the setting of fees and the Assembly is not being asked to approve these. Any fees under the draft Regulations would need to be set by Ministerial Order and it is likely that this Order would have to be made in the next States Assembly should the draft Regulations be adopted by the States Assembly. It is also noted that the provisional fee structure has been included within the draft Regulations in order to provide States Members with an idea as to the direction of travel prior to the debate. The Panel questioned whether inclusion of the proposed fee structure in the draft Regulations may steer the debate in the States Assembly away from the proposed amendments to the Regulations and towards the level of fees being imposed on the services. In response to this point officers explained that the general view was that it was better to provide States Members with this information in order to be open and transparent about the proposed fee levels.

One point to consider is that the Minister retains the ability to set the fee at zero as per the Primary Law and it is intended for one service that falls under the draft Regulations to have a zero-fee set for registration as it is the only service of its kind in the Island. Furthermore, when adopting the Primary Law in 2014, the States Assembly agreed to a mixed funding approach for the JCC with 55% funding being found from registration and annual fees. The Head of Policy explained during the briefing that it is important that the independence of the JCC is assured and ensuring its funding is not predominately from Government is important in that regard.

It is noted by the Panel that P.45/2022 proposes the inclusion of predominately government services and it therefore questioned how these fees would be met. It was confirmed to the Panel that funding towards the registration and annual fees under the Primary Law (set at 0.8% of the individual service's budget) has been included within the Government Plan 2020-23 and £450,000 has been set aside to cover these fees in 2023.

The Panel requested a breakdown of each Government service that would fall under the regulations and how much the 0.8% fee amounted to for each service. It was informed that, based on 2022 budget figures for the services, the fees would total **£160,736**. However, there are a number of caveats attached to this figure as follows:

- The figure is based on 2022 budget figures; however, the fees will be charged based on 0.8% of the 2023 budget as this is when the Regulations are likely to come into force.
- The budget for Mont à L'Abbé has not been included because it has not yet been possible to split out the parts of the budget which cover the provision of care (which will be regulated) from those which cover the provision of education (which will not be regulated). The Panel has been informed that work is ongoing to ascertain this figure, but an indicative figure would be less than £100,000.
- The budget for CAMHS does not include the costs of clinical staff which is part of the Department for Health and Community Services (HCS) Budget. The additional budget will be included in the fees assessment, but it is a complex exercise to determine which aspects of the HCS budget is for clinicians delivering outpatients (regulated) as opposed to inpatient (not regulated) mental health services. The Panel has again been informed that this work is being undertaken, although an indicative figure cannot be provided at this stage.

The Panel notes this figure and the caveats raised and would suggest that the Minister ensures the necessary work to ascertain the amounts relating to the Mont a L'Abbe and CAMHS budgets are identified as a matter of priority prior to any Order being made.

It is also noted that, previously, the funding for inspections within children's care homes has sat within the departmental budget for Children, Young People, Education and Skills (CYPES), however, it is intended to extract funding from that budget so that it sits within the Department for Strategic Policy, Performance and Planning (SPPP) who would in turn pay the fees on their behalf.

Concern was raised by the Panel during the briefing that the JCC should not be a profit-making body (especially noting the rules within the Public Finances Law in that regard) and it therefore questioned how the fees would be monitored to ensure that the JCC is not making a profit as a result. The Head of Policy explained that, since the JCC had begun operating in 2019, it has overspent during every year to date, with SPPP having to offset the overspends from its own budget. Should the draft Regulations be adopted it is expected that a period of review would be undertaken by both the JCC and SPPP to determine whether the proposed fee levels are sufficient, and steps could be taken to address the issue of over or underspends if required as the Minister holds discretion over setting the fees.

The Panel suggests that, as the Order to set the fees is not included within debate of the proposition, the Minister should determine the fees after a period of review should the draft Regulations be adopted.

Timescales for inspections

The Panel questioned the manner in which the JCC determined how and when they inspected services, noting that other services, such as the States of Jersey Police Force, are inspected every three years. It was also questioned whether, as an annual fee was required, this meant an annual inspection was intended for all services proposed under the draft Regulations.

It was informed that there will likely be different timescale for different services, however, the expectation is that yearly inspections would be carried out for the next two to three years whilst the JCC determined whether that timescale was appropriate or not. It is important to note that it is uncommon to inspect whole services annually, however, a mix of planned and unplanned inspections could be undertaken annually on specific aspects within a service (an example would be of a particular children's care home rather than Children's Services as a whole). The Panel understands that care homes already established under the Primary Law are inspected on yearly basis due to the high-risk environments and the need to ensure effective regulation in line with the standards and requirements. The Head of Policy informed the Panel that, as registration for the services with the JCC under the Primary Law commenced from 2019, inspections by the JCC had started in earnest from 2020, although prior to this there had been an inspection team within Health and Community Services which had been fulfilling this function. Given that initial work it is noted that the JCC is prepared for the level of inspection which it is intended to undertake.

Exclusion of certain services under the draft Regulations

The Panel questioned why services such as the Youth Service, La Pasarelle School and ARK services based within schools have not been included under the proposed services to be regulated. It was explained that there has been much discussion over how to define the services that fell under the draft Regulations, and it has been agreed that services would be included where a Social Worker was either involved in the delivery or oversight of the service or where a service was provided by a registered medical professional. It is noted that counsellors do not fall under the umbrella of registered medical professionals (as a mental health practitioner) and private nurseries do not fall under children and family community services, however, it does not mean that they would not be subject to regulation in the future. The Senior Policy Officer also explained that a phased approach to services being subject to regulation by the JCC has been adopted to prevent the JCC from falling under the weight of the number of inspections it is undertaking. By adopting this approach, the JCC can, therefore, align its resources more effectively with the increasing workload over time. It is noted that the next phase of regulation will likely focus on the hospital and health related services which will require significant additional funding for fees paid by Government and resourcing for the JCC.

The Panel is aware that there are considerable issues with mental health provision and wellbeing in local schools and most schools have separate budgets for Special Educational Needs (SEN) and wellbeing offerings. It questioned whether these services within schools would be covered by the proposal to regulate care services in special schools. It has been informed that, for the purposes of the draft Regulations, only Mont-à-L'Abbé school would fall under this particular tranche of regulation.

Care Leavers provision

The Panel also notes that, in the draft Regulations, children's homes services relate to children and young people up to the age of 22. It was questioned whether services for care leavers, who are defined up to the age of 25, would be captured by the proposed regulations. The Panel also notes within this question that care leavers are appointed Personal Advisers and questions have been raised as to whether these roles could be considered as social worker roles. It was explained by the Senior Policy Officer that it

will depend on how the services are structured and whether social workers have oversight of the roles. If a Social Worker is involved in the delivery of the scheme, then it would fall under the proposed draft Regulations. The Panel agreed that it would be important to ascertain whether Personal Advisers were considered as social workers in relation to the draft Regulations. The following information was provided in writing:

“Proposed new paragraph 9 of Schedule 1 to the Regulation of Care (Jersey) Law 2014, which would be inserted by the [Draft Regulation of Care \(Regulated Activities\) \(Amendment of Law\) \(Jersey\) Regulations 202- \(gov.je\) \(P.45/2022\)](#)- defines social work services. Under this provision, of itself, a Personal Advisor service for care leavers would not be required to register with the Care Commission and would not, therefore, be regulated.

There are 2 key caveats, however:

- 1. If the Personal Advisor service is a standalone service being provided by a registered social worker (and by others being under the direction or supervision of a social worker) then it is likely to be required to register. This is because, they are likely to be deemed to be providing “personal support” to care leavers which is by or under the direction of a social worker. Under Article 1 of the Regulation of Care Law ““personal support” includes supervision, guidance, counselling (other than counselling that is health care) and other support in daily living that is provided to an individual as part of a programme of such support.” In summary, if a social worker is performing or running a service which is doing something the aforementioned definition of personal support then they must be registered.*
- 2. The other scenario when a Personal Advisor service would be regulated would be if the Personal Advisor service is part of the social work service. In this case, it would be regulated but as part of that overall social work service (and not as a service in its own right). For example, if the Government of Jersey’s Children’s Service were to contract with an organisation that provides a Personal Advisor service (and that’s all they do, and it is not staffed with social workers) then the Personal Advisor service would be regulated as part of what the social work service is providing i.e. it would be deemed to be part of a social work service provided by the Children’s Service. In this case, the provider of the Personal Advisor service would not have to register. They would just have to comply with the regulatory requirements placed on Children’s Services in respect of services provided to care leavers and, if this aspect of the service was inadequate, the responsibility would fall on Children’s Services to rectify.*

Ultimately, every service is different and so it is only when provided with concrete example (i.e., this is a service which is provided by people with x qualifications, it performs x services, and it does so on a contractual basis for x, y and z) that it can be definitively stated whether or not they would be captured by the Regulations.”

From the information provided, the Panel would assume that the Personal Adviser service would not necessarily be required to register itself, however, the JCC would cover the service in inspections of the wider social work services provided by Children's Services.

Time available to scrutinise the draft Regulations

The Panel would like to raise the point that the draft Regulations have been lodged late in the political term of office. It is understood that the COVID-19 pandemic has delayed their completion, however, the Panel has questioned why they have to be brought forward prior to the election.

It is important to note that inspection of children's social work and mental health services was a key recommendation of the Independent Jersey Care Inquiry, and it has been a priority for the current Government to bring this legislation forward. Concerns were raised by Policy Officers that delaying the draft Regulations until after the election could lead to a situation where they were not brought forward.

The Panel notes this point, however, with the draft Regulations being lodged so late in the political term (as well as the impact of the recent Bridging Island Plan debate and penultimate sitting) it has not been able to scrutinise them in depth. The Panel would remind Ministers of their duty under the code of engagement which states that, where possible, six-months should be provided for scrutiny prior to the election.

Conclusion

The Panel thanks the Minister and Officers for providing it with briefings in relation to the proposed draft Regulations. As stated previously, it has examined them in a relatively short timeframe and has therefore covered as many points in these comments as possible. The Panel would reiterate its point that this has been brought forward late in the political term and this has made it difficult for full scrutiny to be undertaken in the time available. Whilst the impact of COVID-19 on policy development is noted, the Panel would suggest that further consideration is given by the next Council of Ministers as to how it can avoid this situation in the run up to future elections as it does not allow full and informed debate to take place within the Assembly.

Overall, the Panel is satisfied with the requirements of the proposals under the draft Regulations, however, there are a couple of points it would like to raise for States Members to consider ahead of the debate.

The draft Regulations are not related to the proposed fee schedules outlined in P.45/2022. The fees have been provided as a guide for States Members to show the direction of travel and would only be brought into effect by Ministerial Order. The Panel has suggested that the Minister should determine the fees after a period of review should the draft Regulations be adopted. In the Panel's view, this should be two years.

Further information is required over any plans to regulate other services working with children and young people. It is noted that the services defined under the draft Regulations require a Social Worker or registered medical practitioner to be involved, however, there is potential for some important services to fall through the cracks given the wide definition applied with examples of service not being covered at this stage including counsellors and SEN provision within non-specialist schools.