

STATES OF JERSEY



Jersey

DRAFT COVID-19 (REGULATION OF CARE – STANDARDS AND REQUIREMENTS) (JERSEY) REGULATIONS 202-

**Lodged au Greffe on 20th November 2020
by the Minister for the Environment**

STATES GREFFE

REPORT

Introduction

The draft Covid-19 (Regulation of Care - Standards and Requirements) (Jersey) Regulations 202- (the “draft Regulations”) would allow registered providers of adult day care, care home and home care services to manage the impact of reduced staffing levels if this is caused by Covid-19.

Following the introduction of mass testing in the care sector, it is likely that some care workers will test positive for Covid-19. As the colleagues of those who test positive are likely to be their close contacts and to be required to self-isolate to await the result of Covid-19 tests, some care services may rapidly become short-staffed. The draft Regulations provide a mechanism by which care providers can operate with reduced staff without breaking the Law. The Care Commission would continue to provide regulatory oversight throughout.

Legislation

The draft Regulations propose temporary measures which are similar in scope to the [Regulation of Care \(Standards and Requirements\) \(Covid-19 - Temporary Amendment\) \(Jersey\) Regulations 2020 \[P.26/2020\]](#) but contain certain key amendments. These were approved by the States Assembly on 24 March 2020 and were repealed on 30 September 2020.

The draft Regulations are similar to [P.26/2020](#) in that they provide the Care Commission with a power to suspend conditions placed on service providers, if they inform the Commission that they are unable to meet their usual conditions of service as a result of Covid-19 and it is reasonable and proportionate to do so.

Provisions will also allow the Care Commission to disapply Regulations which require workers to be suitably qualified in circumstances when staff are unavailable because they are suffering with or are required to self-isolate because of Covid-19, and inexperienced, under-qualified staff are required to step in. Providers must, first, plan and instigate mitigations for being short-staffed due to Covid-19.

Following the repeal of P.26/2020 both the necessity and the proportionality of the original Regulations have been kept under review. While, with widespread testing in the care sector and an increase in Covid-19 infection rates across the Island, it has been deemed necessary to bring back these Regulations, amendments have been made to ensure that the draft Regulations provide a proportionate mechanism to deal with the present phase of the pandemic, including:

- the exclusion of any service which delivers care to under 18s from being able to rely upon the emergency provisions and, therefore, to deviate in any way from present regulatory requirements;
- the reduction of the original 3-month period for which conditions will not apply to registered care providers to 1 month, should they present evidence to the Care Commission that they cannot comply as a direct or indirect result of Covid-19;
- the removal of the provision which may have allowed care providers to employ staff before they had obtained an enhanced criminal record background check, if there was a significant delay within the Disclosure and Barring Service;
- the removal of the provisions to allow the temporary cessation of inspections by the Care Commission – under the draft Regulations, the Commission would

continue to conduct a full programme of inspections, as far as possible, until and beyond 30 April 2021; and

- a new duty on the Care Commission to report serious concerns about staffing levels immediately to both the Minister for the Environment and the Minister for Health and Social Services and to publish recommendations on how to address these matters.

The rationale for imposing this duty on the Commission to report its concerns and to make recommendations, is to enable the Government, particularly the Minister for Health, to manage resources across the whole care sector and to deploy any additional resources, which may be available, where they are most required.

The draft Regulations have been designed specifically to address the potential difficulties which may be experienced by the care sector during the present phase of the pandemic. They would expire on 30 April 2021.

Financial and manpower Implications

There are no financial or manpower implications for the States arising from the adoption of these draft Regulations.

EXPLANATORY NOTE

These Regulations, if passed, would make renewed temporary changes to certain requirements in respect of the registration of registered providers, the employment of workers and inspections by the Jersey Health and Social Care Commission (“the Commission”) in relation to activities regulated under the Regulation of Care regime (“regulated activities”) as a consequence of the outbreak of Covid-19 in Jersey or its aftermath. Earlier temporary changes expired on 30th September 2020.

The Regulation of Care (Standards and Requirements) (Jersey) Regulations 2018 (“the 2018 Regulations”) are amended in the following respects (*Regulation 1*).

Regulation 2 inserts Regulation 3A into the 2018 Regulations. This provides that the conditions of registration in Regulation 3 of those Regulations, on types and numbers of care receivers and the number of hours during which care is given and the requirement to follow the submitted Statement of Purpose, are suspended for a period of one month where the registered provider cannot meet them as a result of a Covid-19 outbreak or its aftermath, the provider has notified the Commission of this and the Commission determines it is proportionate and reasonable to suspend the conditions.

Regulation 3 inserts Regulation 17A into the 2018 Regulations. This provides that the stipulation in Regulation 17 of those Regulations that to be a “fit person” to work in a regulated activity, the person has to be suitably qualified, skilled, competent and experienced for the duties to which he or she is assigned, along with the factors to take into consideration when determining this fitness and various other related requirements on registered persons, are disapplied for a period of one month. This disapplication happens in relation to any of those requirements if the registered person has put a plan in place to mitigate the effects of a shortage of those fit persons but is still unable to comply with that requirement due to a Covid-19 outbreak in Jersey or its aftermath and has reasonable grounds for declaring this to the Commission.

Both modifications described above last for one month (instead of 3 months under the earlier temporary provision) but the registered provider or person is able to follow the process again, and, if the requirements are met, subsequent one-month suspensions or disapplications of conditions or requirements apply (instead of 3 months under the earlier provision). The modifications (unlike the earlier temporary provision) do not apply where the care concerned is provided to a child.

Regulation 4 (which is different from the derogations in the previous temporary provisions) adds to the inspection requirements in Regulation 32 of the 2018 Regulations. The new paragraphs inserted into that Regulation provide for the Commission to report to the Ministers for the Environment and Health and Social Services concerns of serious risks to care receivers due to a lack of suitable qualified workers occasioned by an outbreak of Covid-19 in Jersey or its aftermath. The Commission must also make written recommendations to those Ministers as to the steps to be taken to address the risks. The recommendations and the fact of reporting the concerns must be published.

Regulation 5 inserts Regulation 34A into the 2018 Regulations, which provides for the inserted Regulations 3A, 17A and 32(3) to (5) to expire on 30th April 2021.

Regulation 6 sets out how the Regulations may be cited and provides for them to come into force on the day after they are made.



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Contents

Regulation

1	Amendment of Regulation of Care (Standards and Requirements) (Jersey) Regulations 2018.....	9
2	Regulation 3A inserted.....	9
3	Regulation 17A inserted.....	10
4	Regulation 32 (requirement for Commission to carry out certain inspections) amended.....	10
5	Regulation 34A inserted.....	11
6	Citation and commencement.....	11

ENDNOTES **12**

Table of Endnote References.....	12
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Jersey

DRAFT COVID-19 (REGULATION OF CARE – STANDARDS AND REQUIREMENTS) (JERSEY) REGULATIONS 202-

Made [date to be inserted]

Coming into force [date to be inserted]

THE STATES make these Regulations under Article 2 of the Covid-19 (Enabling Provisions) (Jersey) Law 2020¹ –

1 Amendment of Regulation of Care (Standards and Requirements) (Jersey) Regulations 2018

These Regulations amend the Regulation of Care (Standards and Requirements) (Jersey) Regulations 2018².

2 Regulation 3A inserted

After Regulation 3 there is inserted –

“3A Modification of application of Regulation 3 due to outbreak of Covid-19

- (1) Paragraph (2) applies if –
 - (a) a registered provider is unable to comply with any of the relevant conditions of the provider’s registration imposed under Regulation 3 as a direct or indirect result of an outbreak of Covid-19 in Jersey or its aftermath; and
 - (b) the registered provider notifies the Commission of the conditions that the provider is unable to comply with.
- (2) Where this paragraph applies, the Commission must suspend the imposition of any relevant condition in relation to that registered provider for a period of one month if the Commission determines, on the basis of information supplied by the registered provider, that it is proportionate and reasonable to do so.
- (3) Paragraph (2) also applies if, at the end of that and any subsequent one-month period, paragraph (1)(a) continues to apply and the registered provider again notifies the Commission as required by paragraph (1)(b).

- (4) In this Regulation “relevant conditions” means the conditions set out in Regulation 3(1)(d) to (j).
- (5) Nothing in this Regulation applies to a registered provider to the extent that the regulated activity concerned includes provision of care to a child.”.

3 Regulation 17A inserted

After Regulation 17 there is inserted –

“17A Modification of application of Regulation 17 due to outbreak of Covid-19

- (1) Paragraph (2) applies if –
 - (a) a registered person has put in place a plan to mitigate the effects of a shortage of persons who are suitably qualified, skilled, competent and experienced for the duties to which they are assigned as a direct or indirect result of an outbreak of Covid-19 in Jersey or its aftermath; and
 - (b) the registered person has reasonable grounds for declaring to the Commission that, due to that outbreak, the registered person is nevertheless still unable to comply with any relevant requirement.
- (2) Where this paragraph applies, any relevant requirements that the registered person is unable to comply with do not apply to the registered person for a period of one month.
- (3) Paragraph (2) also applies if at the end of that or any subsequent one-month period, the registered person again satisfies the conditions set out in paragraph (1).
- (4) In this Regulation “relevant requirements” means the requirements set out in Regulation 17(1)(a), (3) and (4).
- (5) Nothing in this Regulation applies to a registered person to the extent that the regulated activity concerned includes provision of care to a child.”.

4 Regulation 32 (requirement for Commission to carry out certain inspections) amended

After Regulation 32(2) there is inserted –

- “(3) Paragraph (4) applies where the Commission believes that there are serious risks to care receivers due to a lack of suitably qualified workers resulting directly or indirectly from an outbreak of Covid-19 in Jersey or its aftermath.
- (4) Where this paragraph applies the Commission must as soon as reasonably practicable report its concerns about the standard or quality of care being provided, to the Minister and to the Minister for Health and Social Services and make written recommendations as to the steps that should be taken to address the serious risks to care receivers.

- (5) The Commission must publish the recommendations and the fact that it has reported its concerns to the Ministers.”.

5 Regulation 34A inserted

After Article 34 there is inserted –

“34A Expiry of Regulations 3A, 17A and 32(3) to (5)

Regulations 3A, 17A and 32(3) to (5) expire on 30th April 2021.”.

6 Citation and commencement

These Regulations may be cited as the Covid-19 (Regulation of Care – Standards and Requirements) (Jersey) Regulations 202- and come into force on the day after they are made.

ENDNOTES

Table of Endnote References

1	<i>L.2/2020</i>
2	<i>chapter 20.820.65</i>