

STATES OF JERSEY



DRAFT REGULATION OF CARE (TRANSITIONAL AND TRANSFER) (JERSEY) REGULATIONS 201-

Lodged au Greffe on 23rd October 2018
by the Chief Minister

STATES GREFFE



Jersey

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REPORT

Section 1: Introduction

The Draft Regulation of Care (Transitional and Transfer) (Jersey) Regulations 201- set out the transitional arrangements with regard to services that are already regulated under the [Nursing Agencies \(Jersey\) Law 1978](#) and the [Nursing and Residential Homes \(Jersey\) Law 1994](#), at the point at which the [Regulation of Care \(Jersey\) Law 2014](#) (the “2014 Law”) comes into force.

It is one of 4 sets of draft Regulations being brought forward under the 2014 Law for States approval, the other 3 being –

- Draft Regulation of Care (Regulated Activities) (Jersey) Regulations 201-(P.126/2018): Regulations that describe the types of health and social care to be regulated in the first instance. This includes care home services, home care services¹, and adults’ day care services.
- Draft Regulation of Care (Standards and Requirements) (Jersey) Regulations 201-(P.127/2018): Regulations that set out the requirements to be imposed on registered care providers and applicants for registration.
- Draft Regulation of Care (Transfer of Functions) (Jersey) Regulations 201-(P.128/2018): Regulations that will transfer a range of registration, inspection and regulation functions from the Minister for Health and Social Services to the Care Commission.

Section 2: Background

The 2014 Law was adopted by the States Assembly on 3 July 2014 following debate on the draft Law as lodged *au Greffe* on 20th May 2014 ([P.95/2014](#)). It is a single enabling Law which will be underpinned by a series of Regulations, each focusing on a distinct type of health and social care provision.

The Draft Regulation of Care (Regulated Activities) (Jersey) Regulations 201-(P.126/2018) provide background information about –

- the purpose and function of the 2014 Law
- the fees to be brought forward under the 2014 Law
- the associated consultation process.

¹ Home care is also known as domiciliary care.

Section 3: Draft Regulation of Care (Transitional and Transfer) (Jersey) Regulations 201-

The Draft Regulation of Care (Transitional and Transfer) (Jersey) Regulations 201- set out the transitional arrangements with regard to services that are already regulated under the [Nursing Agencies \(Jersey\) Law 1978](#) and the [Nursing and Residential Homes \(Jersey\) Law 1994](#).

The draft Regulations provide that –

- Licensed nursing agencies will be treated from the date the Law comes into force as if they are registered home care services. Any holder of a nursing agency licence must inform the Care Commission within one month of the commencement date if they do not wish to be registered under the 2014 Law to ensure that they do not incur the payment of the annual fee.
- A registered home that falls within the definition of a Regulated Activity will be treated from the date the Law comes into force as if they are providing registered care home services. Any person carrying on a care home service must inform the Care Commission within one month of the commencement date if they do not wish to be registered under the 2014 Law to ensure that they do not incur the payment of the annual fee.
- Anyone who has provided a service falling within the definition of a Regulated Activity who at the date the Law comes into force, is not registered under either the 1978 or 1994 Law, will have 6 months in which to apply for registration under the 2014 Law.

The 1978 Law will be repealed, as the Regulations provide for the transition from the 1978 Law to the 2014 Law. The 1994 Law will not be repealed, but will be amended and renamed the Nursing Law. It will make provision for services that do not, at this point in time, fall under the 2014 Law (for example laser clinics).

Section 4: Financial and manpower implications

Information about the financial and resource implications of the 2014 Law are set out in Section 4 of the report accompanying the Draft Regulation of Care (Regulated Activities) (Jersey) Regulations 201- (P.126/2018), which is lodged for debate on the same day as these draft Regulations.

Providers who are currently regulated under the Nursing Agencies (Jersey) Law 1978 and the Nursing and Residential Homes (Jersey) Law 1994 already pay registration fees, but those fees will increase under the 2014 Law.

Explanatory Note

These Regulations provide for holders of licences under the Nursing Agencies (Jersey) Law 1978 and persons carrying on homes registered under the Nursing and Residential Homes (Jersey) Law 1994 to be treated as registered providers of a home care service or a care home service respectively, under the Regulation of Care (Jersey) Law 2014. If such persons cancel registration within the first 30 days of the operation of the 2014 Law no registration fees are payable. For the first 6 months of their period of registration they are not liable for conviction of any offence under the 2014 Law relating to registration (*Regulations 2 and 3*). In the case of a person who becomes the provider of a home care service under *Regulation 2(1)*, the person has, under paragraph (3)(b), 6 months in which to register a manager before committing an offence.

Regulation 4 gives a period of 6 months from commencement of the 2014 Law regime for a person carrying on or managing a regulated activity under the 2014 Law before any offence relation to registration under that Law is committed. Where an application to register that regulated activity is made during that 6-month period the offence provision is suspended until that application is finally determined (including on appeal, if any).

Regulation 5 enables any enforcement action (including any prosecution) under the 1978 or 1994 Laws that has not been concluded when the new regime becomes effective to continue until its outcome is concluded despite the repeal of the Law under which it was commenced.

Regulation 6 provides for any records held by the Minister in relation to any services under the 1978 Law or the 1994 Law (to the extent to which those services are being replaced) to be transferred to the Health and Social Care Commission, but with right of access to those records being retained by the Minister.



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Arrangement

Regulation

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Made [date to be inserted]
Coming into force [date to be inserted]

THE STATES, in pursuance of Article 49 of the Regulation of Care (Jersey) Law 2014¹, have made the following Regulations –

1 Interpretation

In these Regulations –

“1978 Law” means the Nursing Agencies (Jersey) Law 1978² as it applied before the commencement date;

“1994 Law” means the Nursing and Residential Homes (Jersey) Law 1994³ as it applied before the commencement date;

“2014 Law” means the Regulation of Care (Jersey) Law 2014⁴;

“commencement date” means the date that the Regulation of Care (Regulated Activities) (Jersey) Regulations 201-⁵ come into force;

“enforcement action” means any action taken by or on behalf of the Minister to enforce the 1978 Law or the 1994 Law and includes any action taken by way of prosecution under either of those Laws;

“finally determined” means, in relation to an application for registration under the 2014 Law, that the Commission has made a decision on the application and either the time for appealing that decision has expired without such an appeal being made, or, if such an appeal was made, that appeal has been concluded;

“Minister” means Minister for Health and Social Services.

2 Licensed nursing agencies

- (1) A holder of a licence granted under Article 2 of the 1978 Law that was in force immediately before the commencement date is treated on the commencement date as being registered as the provider of a home care service under the 2014 Law.

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- (2) A person treated as being the registered provider of a home care service under paragraph (1) who cancels that registration within 30 days is not liable to pay any fees in respect of such registration.
 - (3) A person treated as being the registered provider of a home care service under paragraph (1) is not liable to be convicted of an offence under Article 3 of the 2014 Law –
 - (a) for a period of 6 months following the commencement date; and
 - (b) if that person has applied to register a manager under Article 4 of that Law within that 6-month period and that period has expired, before that application has been finally determined.

3 Registered homes

- (1) A person carrying on a home that was registered under Article 4 of the 1994 Law immediately before the commencement date is treated on the commencement date as being registered as a provider of a care home service under the 2014 Law.
- (2) A person treated as being the registered provider of a care home service under paragraph (1) on the commencement date who cancels that registration within 30 days is not liable to pay any fees in respect of such registration.
- (3) A person treated as being the registered provider of a care home service under paragraph (1) is not liable to be convicted of an offence under Article 3 of the 2014 Law for a period of 6 months following the commencement date.

4 Persons undertaking regulated activity not previously registered

- (1) This Regulation applies to a person who, after the commencement date, is carrying on or managing a regulated activity that was not registered under either the 1978 Law or the 1994 Law.
- (2) A person to whom this Regulation applies is not liable to be convicted of an offence under Article 3 of the 2014 Law –
 - (a) for a period of 6 months following the commencement date; and
 - (b) if the person has applied to register that regulated activity under Article 4 of that Law within that 6-month period and that period has expired, before that application has been finally determined.

5 Enforcement action under 1978 Law or 1994 Law

Where any enforcement action has been taken under the 1978 Law or the 1994 Law before the commencement date but the outcome of that action has not been concluded by that date, the action may continue after the commencement date until such conclusion as if the Law under which it was taken was still in force as it applied immediately before the commencement date.

6 Transfer of records

- (1) Any records held by the Minister in relation to any services under –
 - (a) the 1978 Law; or
 - (b) the 1994 Law other than services for which registration is unaffected by the commencement date,
are, on the commencement date, transferred to the Commission.
- (2) However, the Minister continues to have the right to access the records.

7 Citation and commencement

These Regulations may be cited as the Regulation of Care (Transitional and Transfer) (Jersey) Regulations 201- and shall come into force on the commencement date.

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- 1 *chapter 20.820*
 - 2 *chapter 20.700*
 - 3 *chapter 20.725*
 - 4 *chapter 20.820*
 - 5 *P.126/2018*