

DRAFT HEALTH CARE (REGISTRATION) (AMENDMENT) (JERSEY) LAW 200-

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by the Health and Social Services Committee**



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European Convention on Human Rights

The President of the Health and Social Services Committee has made the following statement -

In the view of the Health and Social Services Committee the provisions of the Draft Health Care (Registration) (Amendment) (Jersey) Law 200- are compatible with the Convention Rights.

(Signed) **Senator S. Syvret**

REPORT

1. Background

The registration of health professionals by an appropriate regulatory body is an important safeguard to the public, helping to ensure minimum standards of professional competence and conduct, promoting professional education and development, and providing disciplinary procedures and sanctions for those who fall short of the professional standards.

The following proposals reflect the latest developments in respect of registration of nurses, midwives and health visitors in the United Kingdom and would enable the Health and Social Services Committee to respond appropriately to imminent changes in the United Kingdom professional regulatory arrangements for allied health professions.*

2.1 Proposals

The primary objectives of the amendments to the Health Care (Registration) (Jersey) Law 1995 are as follows -

(a) to require the registration of nurses and health visitors

There is currently no legislation to require that nurses and health visitors practising in Jersey are registered with a professional regulatory body. Any person may presently claim to be a nurse or health visitor and engage in those occupations in Jersey without qualifications and without being subject to the professional standards and codes of conduct required by the United Kingdom Central Council for Nursing, Midwifery and Health Visiting (UKCC).

The UKCC -

- maintains a register of qualified nurses, midwives and health visitors;
- sets standards for education, practice and conduct;
- provides advice on professional standards;
- deals with cases of misconduct or unfitness to practice.

It is presently the policy of the Health and Social Services Committee that no nurse is employed unless he or she is registered with the UKCC. However, there is no means to ensure the same applies in the private sector, although it is believed to be the normal practice.

The amendment will add the profession of nursing, including health visiting, to the list of registrable occupations in the Schedule to the principle Law. This requirement does not, however, extend to “dental nurses”, “veterinary nurses” or to “nursery nurses”. The effect is to protect the public by prohibiting unregistered persons from engaging in nursing within health care, holding themselves out to be qualified nurses or implying that they are registered or qualified.

(b) to register midwives as an occupation under the principle Law

Midwives are presently enrolled by the Committee in accordance with the Loi (1922) sur la Santé Publique (Sages-femmes). This legislation and the associated 1923 Regulations for the guidance of midwives are now out-dated and require replacement with modern provisions.

The amendment would repeal the 1922 Loi and 1923 Regulations, adding the profession of midwifery to the list of registrable occupations in the Schedule to the principle Law. This would bring the midwifery profession into alignment with the principles, procedures and conditions of registration as for the other registered health care professions.

Repeal of the 1923 Regulations also abolishes the antiquated guidance framed to regulate the practice of midwives.

(c) to require the registration of ambulance paramedics and clinical scientists

Ambulance paramedics and clinical scientists are occupations that have not been required to be registered in Jersey, although they may make a significant contribution to health care of the public.

The lack of a nationally recognised professional regulatory body has been an obstacle to determining an objective basis for registration in the Island. However, following extension of the Professions Supplementary to Medicine Act to require registration of these occupations in the United Kingdom, it is now proposed that these health professionals should also be registrable under Jersey law.

(d) to enable the Health and Social Services Committee to prescribe by Order the appropriate qualifications for registration

The existing qualifications for registration of allied health professions under the Law specifically include registration by the Council for Professions Supplementary to Medicine (CPSM). However, this body will be superseded on 1st April 2001 by a new United Kingdom Health Professions Council (HPC), and the proposed amendment provides for the Health and Social Services Committee to prescribe by Order the appropriate qualifications for registration in Jersey, which should include registration by the new HPC.

The UKCC is also due to be superseded in the United Kingdom by a new Nursing and Midwifery Council (NMC). The amendment will also enable the Committee to prescribe registration in the United Kingdom by the NMC as an appropriate qualification for registration in Jersey as a nurse, midwife or health visitor.

2.2 Consultation

The Health and Social Services Department has consulted with representatives of the nursing, midwifery and allied health professions, who have indicated their support for the proposals.

The Department has also consulted with the Law Officers Department, which has confirmed that in their view the draft Law is compliant with the European Convention on Human Rights. The Health and Social Services Committee is satisfied that the proposed legislation is compatible with the Convention Rights and a statement to that effect is included below.

3. Outline of the Law

Articles 1 and 2 contain definitions of the “principal Law” and a “nurse” respectively. It should be noted that “nurse” includes health visitors, but does not include dental nurses or veterinary nurses, who are regulated separately, or “nursery nurses” who do not carry out health care. Article 2 also includes a drafting improvement to the definition of the “material date” that applies in relation to the requirement to be registered in any particular occupation.

Article 3 introduces statutory defences where an unregistered person is charged with engaging in a registrable occupation. The amendment would give an unqualified person a defence if he proves that he -

- qualifies to be registered under the “grandfather” provision - i.e. he was practising in the occupation for six months before the requirement to be registered took effect;
- had applied for registration within three months of the requirement to be registered, and that application was yet to be determined;
- was acting reasonably in an emergency;
- was undergoing approved training under the supervision of an appropriate registered practitioner. The emergency defence would subsume the defence that is already available to a midwife under Article 11 of the Loi (1922) sur la Santé Publique (Sage-femmes) but is a new provision for the other registered professions.

Article 4 takes account of imminent changes arising from draft United Kingdom Statutory Instruments to be made under the Health Act 1999, i.e. the United Kingdom Health Professions Order 2001 and the United Kingdom Nursing and Midwifery Order 2001. The CPSM and the UKCC will cease to exist and the corresponding professional regulatory bodies will become the Health Professions Council (HPC) and the Nursing and Midwifery Council (NMC).

The proposed amendment would replace the existing provision, in Article 3(b) of the Law, which only recognises qualifications under the United Kingdom Professions Supplementary to Medicine Act 1960. It is intended that the Committee would be able to prescribe, by Order, qualifications for registration under the principle Law. This should include the relevant United Kingdom professional regulatory bodies - the Health Professions Council, the Nursing and Midwifery Council and other professional bodies, for example, in respect of clinical psychologists.

This Article also includes provisions to ensure that existing registrants and any applications pending are not disadvantaged by the effects of the prescribed qualifications.

Article 5 makes a minor drafting improvement.

Article 6 clarifies the powers of the Royal Court. The present Law confers a statutory right of appeal, but it does not state the powers of the court on the appeal. The amendment will provide the Royal Court with the power to stay the effect of a decision pending the outcome of the appeal. The Court is also expressly empowered to confirm, reverse or vary the decision under appeal.

Article 7 removes a reference to the Loi (1922) sur la Santé Publique (Sage-femmes) which becomes redundant upon repeal of that legislation.

Article 8 extends the Schedule of registrable occupations to include nurses and midwives.

The opportunity has also been taken to add ambulance paramedics and clinical scientists in the Schedule. This arises from extension of the Professions Supplementary to Medicine Act 1960 to include these professions, and it is considered appropriate to similarly extend registration to ambulance paramedics and clinical scientists in Jersey.

The Article also amends the titles of “Speech therapist” to “Speech and language therapist” and “Medical laboratory technician” to “Biomedical scientist” in accordance with accepted usage.

Article 9 repeals the out-dated Loi (1922) sur la Santé Publique (Sage-femmes) and the corresponding Regulations, following the inclusion of midwives under the Health Care (Registration) (Jersey) Law 1995.

Article 10 is a transitional arrangement to ensure the continuing registration of health professionals who were previously registered under the provisions that are replaced by the above amendments.

Article 11 includes the title and provides for the Law to come into force on a date or dates to be appointed by the States. It is intended that the date(s) might coincide with the commencement dates of any Orders to be made in respect of prescribed qualifications, and should also take into account the implementation date(s) for the United Kingdom Orders which will formally establish the Health Professions Council and the Nursing and Midwifery Council.

4. Conclusions

The Health Care (Registration) (Amendment) (Jersey) Law 200- is intended to safeguard the interests of the public by helping to ensure minimum standards of professional competence and conduct, promoting professional education and development, and if necessary enabling the implementation of appropriate disciplinary procedures for various health care occupations.

The draft Law extends this provision to the regulation of nursing, health visiting, ambulance paramedics and clinical scientists, and modernises the regulation of midwifery in Jersey.

Financial and manpower implications

The proposed legislation will have no significant revenue implications and minor manpower consequences in regard to administering the registration procedures, which will be accommodated within the Health and Social Services Committee’s total revenue and manpower allocation.

European Convention on Human Rights

Article 16 of the Human Rights (Jersey) Law 2000 will, when brought into force by Act of the States, require the Committee in charge of a Projet de Loi to make a statement about the compatibility of the provisions of the Projet

with the Convention rights (as defined by Article 1 of the Law). Although the Human Rights (Jersey) Law 2000 is not yet in force, on 3rd October 2001 the Health and Social Services Committee made the following statement before Second Reading of this Projet in the States Assembly -

“In the view of the Health and Social Services Committee the provisions of the Draft Health Care (Registration) (Amendment) (Jersey) Law 200- are compatible with the Convention Rights”.

Explanatory Note

This draft Law, if adopted, will amend the Health Care (Registration) (Jersey) Law 1995 (“the principal Law”).

The main changes are -

- (a) The profession of nursing will be added to the list of registrable occupations in the Schedule to the principal Law. The effect is to prohibit unqualified persons from engaging in nursing or holding themselves out as qualified nurses.

This restriction extends to the activities of a health visitor. Persons who are not registered nurses will commit an offence under the principal Law if they act as health visitors, or hold themselves out as being qualified to do so. However, the right of a person who is a registered nurse to do so will remain a matter of professional control.

The restriction will not extend to persons who act or hold themselves out only as dental nurses or veterinary nurses; and it will not prevent persons from calling themselves “nursery nurses” or acting as such if they do not undertake health care.

- (b) The profession of midwifery will become a registrable occupation under the principal Law. The “Loi (1922) sur la Santé Publique (Sages-femmes)” under which they are at present registered will be consequentially revoked, with appropriate transitional measures for midwives who are already registered and for applications pending under that Loi.
- (c) The occupations of ambulance paramedic and clinical scientist will become registrable for the first time.
- (d) The profession of biomedical scientist will also become registrable. Persons who are already engaged in that profession, although required to hold appropriate qualifications to practise as such, are now registered as “medical laboratory technicians”. This latter description will be deleted from the Schedule and those who are already registered as medical laboratory technicians will on the commencement of these provisions become registered biomedical scientists.
- (e) The description of the registrable occupation of speech therapist will be changed to “speech and language therapist” to conform to current usage.
- (f) The existing provisions in the principal Law that recognize qualifications under the Professions Supplementary to Medicine Act 1960 (c.66) of the United Kingdom will be repealed, and the Health and Social Services Committee will instead have power to prescribe qualifications for registration, by Order.

The other grounds on which registration may now be granted remain unchanged.

- (g) An unqualified person who is charged with undertaking a registrable occupation will have a statutory defence if he proves that he was acting reasonably in an emergency or that he was undergoing approved training under appropriate supervision.
- (h) The Royal Court will have power, on an interlocutory application in the course of an appeal, to stay the effect of a decision pending the outcome of the appeal. The Court is also expressly empowered to confirm, reverse or vary the decision under appeal.

The opportunity has also been taken to make some minor drafting changes.

The draft Law is set out in the following way -

Article 1 identifies the Law that is being amended (“the principal Law”).

Article 2 defines “nurse” and “nursery nurse”. It also revises the wording of the definition “material date” (see *Article 3* below).

Article 3 addresses a *lacuna* in the principal Law. At present, on the date on which an occupation first becomes registrable (“the material date”), persons in the Island who are already engaged in that occupation and continue to work in it for the next six months are then entitled by reason of those facts to be registered. This is commonly known as a “grandfather” clause.

At the end of the six-month period, any unregistered person who engages in or holds himself out as qualified in the occupation commits an offence, but this does not allow a person who qualifies by reason of the grandfather clause sufficient time to apply for registration.

Article 3 therefore provides that if a person is charged with the offence, it is a defence to prove that he is qualified under the grandfather clause, that he has applied for registration within three months after so qualifying and that his application has not yet been decided.

Article 3 also introduces the two statutory defences where an unregistered person is charged with engaging in a registrable occupation.

The defence that he was acting reasonably in an emergency will subsume the defence that is already available to a midwife under Article 11 of the “Loi (1922)” but, as a statutory defence in other cases, it is new.

The defence that the person was undergoing training will be available if he proves that the course of training was approved by the Committee, and that he was being supervised either by a person who is registered in the occupation concerned or by any other person of a class prescribed by the Committee.

Article 4 will enable the Committee, by Order, to prescribe qualifications for registration under the principal Law. This replaces the existing provision, in Article 3(b) of that Law, recognizing qualifications under the Professions Supplementary to Medicine Act 1960. It also amends Article 3(c) of the principal Law consequentially and includes transitional provisions.

Article 5 corrects a minor drafting error.

Article 6 deals with the powers of the Royal Court on appeal, in the way explained in sub-paragraph (h) above.

Article 7 amends Article 18 of the principal Law in consequence of the repeal of the “Loi (1922)”.

Article 8 adds the occupations of ambulance paramedic, biomedical scientist, clinical scientist, midwife and nurse to the list of registrable occupations in the Schedule to the principal Law. It also removes the occupation of medical laboratory technician from the Schedule, and changes the description of the occupation of speech therapist to “speech and language therapist”.

Article 9 repeals the “Loi (1922)”, and revokes the Regulations for the guidance of midwives made by the Public Health Committee on 16th March 1923 and subsequently approved by the States on 7th April 1923.

Article 10 contains savings and transitional provisions.

Persons who are already registered by reason of qualifications under the Professions Supplementary to Medicine Act 1960 will continue to be registered. Persons who are already enrolled as midwives under the “Loi (1922)” will automatically become registered midwives under the Health Care (Registration) (Jersey) Law 1995. Matters that are still pending under the Loi (for example, applications for enrolment as a midwife) will be dealt with under the 1995 Law and, if any applications are pending under the 1995 Law for registration as medical laboratory technicians, they will be treated as applications for registration as biomedical scientists.

Article 11 describes the manner in which the draft Law may be cited. It also provides for the States to bring the Law into force by Act. For that purpose, the States may appoint different dates for the commencement of different provisions.

HEALTH CARE (REGISTRATION) (AMENDMENT) (JERSEY) LAW 200-

A LAW to amend the Health Care (Registration) (Jersey) Law 1995; sanctioned by Order of Her Majesty in Council of the

(Registered on the day of 200-)

STATES OF JERSEY

The day of 200-

THE STATES, subject to the sanction of Her Most Excellent Majesty in Council, have adopted the following Law -

ARTICLE 1

In this Law, “principal Law” means the Health Care (Registration) (Jersey) Law 1995,^[1] as amended.^[2]

ARTICLE 2

(1) In Article 1(1) of the principal Law,^[3] for the definition “material date” there shall be substituted the following definition -

“ ‘material date’ in relation to an occupation, means the date that is six months after the date on which it becomes a registrable occupation;”.

(2) In Article 1(1) of the principal Law,^[4] after the definition “medical practitioner” there shall be inserted the following definitions -

“ ‘nurse’ includes a person who practises or holds himself out as a health visitor, but does not include a person who practises or holds himself out only as -

(a) a dental nurse; or

(b) a veterinary nurse,

and does not include a person who acts or holds himself out only as a nursery nurse;

‘nursery nurse’ means a person who has the care (not being the health care) of children;”.

ARTICLE 3

After Article 2(2) of the principal Law^[5] there shall be added the following paragraphs -

“(3) Where a person is charged with an offence under paragraph (2), it shall be a defence to prove -

(a) that he satisfies the requirements of paragraph (1)(a) of Article 3 in respect of the registrable occupation;

(b) that not later than three months after the material date, he made an application in accordance with this Law for registration to engage in that occupation; and

(c) that his application had not been finally determined at the time to which the charge relates.

(4) Where a person is charged with an offence under paragraph (2) by reason of engaging in a registrable occupation, it shall be a defence to prove that -

(a) he was acting reasonably, in an emergency; or

(b) he was undertaking, under the supervision of an appropriate practitioner, a prescribed course of training or any other course of training that is for the time being approved in writing by the Committee.

(5) In paragraph (4), 'appropriate practitioner' means -

(a) a person who is registered in respect of the registrable occupation to which the charge relates; or

(b) a person of any prescribed class.”

ARTICLE 4

(1) Article 3 of the principal Law^[6] shall be renumbered as paragraph (1) of that Article.

(2) In Article 3(1)(a) of the principal Law⁶ (as so renumbered), the word “or” shall be deleted.

(3) For sub-paragraphs (b) and (c) of Article 3(1) of the principal Law^[7] (as so renumbered) there shall be substituted the following sub-paragraphs -

“(b) he holds a prescribed qualification;

(c) he holds any other qualification which the Committee accepts for the purposes of this Article in any particular case; or”.

(4) After Article 3(1) of the principal Law^[8] (as so renumbered) there shall be added the following paragraphs -

“(2) An Order made under this Law for the purposes of paragraph (1)(b) shall not affect -

(a) the registration of any person who is already registered; or

(b) any application for registration which is pending when the Order comes into force,

and any such application shall accordingly be dealt with as if the Order had not been made.

(3) Where such an Order has the effect of replacing or revoking a prescribed qualification in respect of a registrable occupation, it must also contain provisions allowing persons who already possess that qualification but have not applied for registration in respect of that registrable occupation before the Order comes into force a reasonable period of time in which to do so, and if any such person so applies his application shall be dealt with as if the Order had not been made.

(4) In this Article, 'qualification' includes the entry of one's name, in any place other than the Island, on a register in respect of any profession which is identical with the registrable occupation for which the qualification is prescribed under this Law.”.

ARTICLE 5

In Article 6(1)(a) of the principal Law,^[9] before the word “application” there shall be inserted the word “an”.

ARTICLE 6

(1) Article 14 of the principal Law^[10] shall be renumbered as paragraph (1) of that Article.

(2) After Article 14(1) of the principal Law¹⁰ (as so renumbered) there shall be added the following paragraphs -

“(2) Unless the Court so orders, the lodging of an appeal shall not operate to stay the effect of a decision pending the determination of the appeal.

(3) On hearing the appeal, the Court may confirm, reverse or vary the decision against which the appeal is brought.”.

ARTICLE 7

Article 18(1)(a) of the principal Law^[11] shall be deleted.

ARTICLE 8

(1) In the Schedule to the principal Law,^[12] before the entry “Chiroprapist” there shall be inserted the entry “Ambulance paramedic”.

(2) In the Schedule to the principal Law¹² -

(a) after the entry “Ambulance paramedic” (as so inserted) there shall be inserted the entry “Biomedical scientist”;

(b) the entry “Medical laboratory technician” shall be deleted.

(3) In the Schedule to the principal Law,¹² after the entry “Clinical psychologist” there shall be inserted the entry “Clinical scientist”.

(4) In the Schedule to the principal Law,^[13] after the entry “Dietitian” there shall be inserted the entry “Midwife”.

(5) In the Schedule to the principal Law,¹³ after the entry “Midwife” (as so inserted) there shall be inserted the entry “Nurse”.

(6) In the Schedule to the principal Law,¹³ for the entry “Speech therapist” there shall be substituted the entry “Speech and language therapist”.

ARTICLE 9

(1) The “Loi (1922) sur la Santé Publique (Sages-femmes)”^[14] shall be repealed.

(2) The Regulations for the guidance of midwives, made by the Public Health Committee on the sixteenth day of March 1923 and approved by the States on the seventh day of April 1923 under Article 12 of that Loi, shall be revoked.

ARTICLE 10

(1) This Article shall apply notwithstanding any other provision in the principal Law (as amended by this Law).

(2) On the commencement of Article 4 of this Law, every person who immediately before the commencement of that Article was a registered person (other than a registered medical laboratory technician) by reason of having satisfied the requirement in Article 3(b) of the principal Law^[15] shall continue to be so registered, subject to the other provisions of the principal Law (as amended by this Law) relating to registered persons.

(3) On the commencement of Articles 7, 8(4) and 9 of this Law, every person who immediately before their commencement was enrolled as a midwife under the “Loi (1922) sur la Santé Publique (Sage-femmes)”^[16] shall be a registered midwife under the principal Law (as amended by this Law), subject to the other provisions of the principal Law (as so amended) relating to registered persons.

(4) Any matter that is pending under the “Loi (1922) sur la Santé Publique (Sages-femmes)”¹⁶ immediately

before the commencement of Articles 7, 8(4) and 9 of this Law shall, after their commencement, be treated and dealt with in accordance with the provisions of the principal Law (as amended by this Law).

(5) On the commencement of Article 8(2) of this Law, every person who immediately before the commencement of that Article was registered under the principal Law as a medical laboratory technician shall be a registered biomedical scientist under the principal Law (as amended by this Law), subject to the other provisions of the principal Law (as so amended) relating to registered persons.

(6) Any application for registration as a medical laboratory technician that is pending under the principal Law immediately before the commencement of Article 8(2) of this Law shall, after the commencement of that Article, be treated and dealt with as an application for registration as a biomedical scientist under the principal Law (as amended by this Law).

ARTICLE 11

(1) This Law may be cited as the Health Care (Registration) (Amendment) (Jersey) Law 200-.

(2) This Law shall come into force on such day as the States may by Act appoint and different days may be appointed for different provisions or different purposes of this Law.

* - The allied health professions, specified in the Schedule to the Health Care (Registration) (Jersey) Law 1995 presently comprise: chiropodists, chiropractors, clinical psychologists, dieticians, medical laboratory technicians, occupational therapists, orthoptists, osteopaths, physiotherapists, psychotherapists, radiographers and speech therapists.

[1] Volume 1994-1995, page 585.

[2] R & O 8957.

[3] Volume 1994-1995, page 587.

[4] Volume 1994-1995, page 587.

[5] Volume 1994-1995, page 589.

[6] Volume 1994-1995, page 589.

[7] Volume 1994-1995, pages 589 and 590.

[8] Volume 1994-1995, page 589.

[9] Volume 1994-1995, page 591.

[10] Volume 1994-1995, page 595.

[11] Volume 1994-1995, page 597.

[12] Volume 1994-1995, page 599 and R & O 8957.

[13] Volume 1994-1995, page 599 and R & O 8957.

[14] Toms IV-VI, page 556.

[15] Volume 1994-1995, page 589.

[16] Toms IV-VI, page 556.