

STATES OF JERSEY



DRAFT REGULATION OF CARE (JERSEY) LAW 201-

Lodged au Greffe on 20th May 2014
by the Minister for Health and Social Services

STATES GREFFE



Jersey

DRAFT REGULATION OF CARE (JERSEY) LAW 201-

European Convention on Human Rights

In accordance with the provisions of Article 16 of the Human Rights (Jersey) Law 2000, the Minister for Health and Social Services has made the following statement –

In the view of the Minister for Health and Social Services, the provisions of the Draft Regulation of Care (Jersey) Law 201- are compatible with the Convention Rights.

Signed: **Deputy A.E. Pryke of Trinity**

Minister for Health and Social Services

Dated: 20th May 2014

REPORT

Introduction

The purpose of the draft Regulation of Care Law is to replace the existing legislative framework for the regulation of health and social care in Jersey with a single enabling Law, supported by specific Regulations and standards of care.

As we grow older, or if we have or develop a disability, we expect to maintain our quality of life, but may need some form of care to enable us to do this. With an ageing population, increasing numbers of people may need a degree of support, either at home or in a supported care environment, in order to maintain their quality of life; and many of us may also from time to time require hospital care.

As the Health and Social Services White Paper – *Caring for each other, Caring for ourselves*, published in June 2012 (R.82/2012)¹ sets out; care services in the future are likely to be not only increasingly in demand, but also delivered by a wide range of providers. Islanders want services to be holistic, and expect high-quality person-centred care delivered in the community and not just in hospital and institutions. The essential expansion in the provision for these services will be part-funded by the Long-Term Care Insurance Scheme set out in the 2010 Social Security White Paper, which proposes that long-term care benefit should include payment for care at home.

For some time, it has been acknowledged that the current legislation regulating health and social care is inadequate, fragmented and no longer fit for purpose. There are currently significant gaps in regulation that allow high-risk services to operate without any monitoring of the safety, standards and quality of care provided to vulnerable people, and there are inherent conflicts in the current structure. It is essential that there is effective, fit-for-purpose regulation of care provision if the States is to be satisfied that services provided as part of this new system will command public confidence and be value for money. As part of the toolkit to ensure quality services and high standards of care, an effective independent regulatory framework has an important role to play.

The reasons why this draft Law is being brought forward and the existing legislation is no longer fit for purpose are set out in the 2013 States Report “Regulation of Care Law: proposals”, R.42/2013², but are summarised below.

Why do we need new legislation?

At present, the principal pieces of legislation covering the provision of health and social care in Jersey are the Nursing and Residential Homes (Jersey) Law 1994 (“the 1994 Law”); and the Nursing Agencies (Jersey) Law 1978 (“the 1978 Law”). The political accountability for both Laws lies with the Minister for Health and Social Services. In very broad terms –

- (a) the 1994 Law is concerned with regulating independent residential care homes, nursing homes, mental nursing homes and private hospitals; and
- (b) the 1978 Law is concerned with the licensing of businesses that supply nurses, midwives and auxiliary nurses.

The 1994 Law came into force in Jersey in May 1995 and was based on UK legislation from 10 years earlier, and the 1978 Law is even older than that. Over the intervening years the structure of health and social care changed significantly and the expectations of those using services have increased. There is now much greater

¹ www.statesassembly.gov.je/AssemblyReports/2012/R.082-2012.pdf

² www.statesassembly.gov.je/AssemblyReports/2013/R.042-2013.pdf

emphasis on the use of domiciliary care, the safety and quality of provision and a requirement for good governance and transparency. The inspection and regulatory regime in the UK is also focused more pro-actively on encouraging the incremental improvement of services rather than solely on regulatory enforcement. As a result, there are a large number of deficiencies with the provisions contained in and made under these existing Laws. Of the upmost importance, these Laws leave domiciliary care (i.e. care provided to support people in their own homes) and care provided by the States of Jersey unregulated. They also –

- lack clear, modern definitions of regulated activities;
- don't provide a basis for imposing sufficiently tailored and robust standards with regard to the quality of care provided in care homes or elsewhere;
- provide insufficient provision as to the background checks or the governance arrangements that care services should adopt to protect patients from abuse; and
- don't provide for a sufficiently independent, risk-based, transparent system of inspections or regulatory action.

As Jersey's population, like that of many western European countries, ages, these deficiencies will be of increasing concern to an ever greater numbers of Islanders. Further, as has recently been seen, failing to regulate the provision of domiciliary personal care can result in the, perhaps avoidable, neglect and mistreatment of vulnerable persons³.

What does the draft Law do?

The Regulation of Care Law is primary legislation setting out the regulatory framework for health and social care and how it operates. The provisions in the draft Law are based on fundamental principles of good regulatory practice, including –

1. INDEPENDENCE – separation from political considerations and any undue conflicting stakeholder influence.
2. COMPETENCE – both in technical and regulatory expertise.
3. ACCOUNTABILITY – to government as well as the general public achieved through transparency, prohibiting conflicts of interest, providing for appeals and subjecting the regulator's conduct to scrutiny.

The draft Law is the first step in the development of a new regulatory framework for health and social care, and contains powers for the States to enact Regulations which will be required to be in force before any new regulation of services takes effect. In particular the draft Law includes the following key elements:

Independent Regulatory Oversight

The legislation provides for the establishment of a non-departmental independent statutory body in the form of a Health and Social Care Commission to fulfil the functions of the regulatory authority under the Law. It transfers responsibility for regulating health and social care from the Minister for Health and Social Services to this Commission.

With an increasing number of examples of shared regulatory functions between Jersey and Guernsey, there is an opportunity to create a joint Channel Islands Health and

³ In *AG v Breen*, 14th March 2011 – the Royal Court considered a case in which a person suffered serious neglect by their carer who was providing unregulated personal care for a person with dementia in their home.

Social Care Commission. As Guernsey are in the process of developing equivalent legislation in parallel to our own, there is ongoing collaboration and discussion to explore the feasibility of appointing a single Commission providing regulatory oversight in both islands.

Defining regulated activities

Some key definitions of health and social care and activities that are to be regulated will be provided in the Law. In particular, the draft Law contains separate clear definitions of health, nursing, social and personal care. Further provision will then be made in Regulations under the Law to determine which specific health and social care activities will be regulated. It is expected that those activities will initially be the ones regulated under the existing law, domiciliary care and services provided by the States.

The regulated activities will be expanded by Regulations over time in accordance with the implementation plans outlined later in this Report, however eventually they will include –

- short- or long-term hospitals, general or specialist medical, surgical, psychiatric and substance abuse hospitals, mental hospitals, rehabilitation centres, and other institutions which have accommodation facilities which provide diagnostic and medical treatment to in-patients with any of a wide variety of medical conditions;
- medical consultation and treatment in the field of general and specialised medicine by general practitioners and medical specialists and surgeons; dental practice activities of a general or specialised nature and orthodontic activities;
- activities not performed by hospitals or by practicing medical doctors but by paramedical practitioners legally recognised to treat patients;
- cosmetic procedures or techniques undertaken by medical or non-medical staff that may create hazard to health;
- social care primarily provided in the community by a variety of professionals and support workers;
- provision of social work, personal and nursing care, protection or social support services to children or adults in need or at risk, or adults with needs arising from illness, disability, old age or poverty;
- residential accommodation combined with either nursing, personal, supervisory or other types of care;
- children's homes providing social assistance;
- care services directly to clients in their own homes;
- social work activities to children and adults.

Registration of regulated activities

The draft Law sets out an obligation for those carrying on regulated activities as providers and those managing regulated services to be registered. It also outlines how the registration process will work. The process will enable the Commission to apply a greater variety of conditions to the registration, conferring a degree of control over the particular service provision. A registration may be refused or cancelled on a number of grounds, including where the applicant has not demonstrated that they are a fit person and are capable to provide the service, has not complied with the legal requirements, or has a conviction for a relevant offence.

Requirements related to regulated activities

The draft Law contains powers for the requirements to be prescribed with which those carrying on or managing care services will need to comply. Regulations made under these powers will include obligations on the registered persons to ensure that services are well conducted with good standards of care. They will, among other things, also require the care provider to provide proper facilities, a safe and appropriate environment and to employ sufficient appropriately qualified and competent staff.

Standards of care

To provide greater clarity and transparency about what is specifically required in terms of the services and facilities provided to meet the Regulations, the draft Law gives the Commission the power to publish standards of care. These standards will give practical guidance on complying with the Law and will be taken into consideration in any enforcement action.

Inspection

The draft Law contains clear and comprehensive powers for inspections to be conducted to monitor the quality and standards of care. The purpose of inspection will not be limited monitoring compliance, but will also include supporting and encouraging service improvement. Where local expertise is not available, external agencies will carry out inspections of specialised activities on behalf of the Commission.

The arrangements about the frequency and type of inspection will be set out in Regulations and determined on a risk basis. Following an inspection, a report of the findings will be sent to the care provider. The purpose of this report will be to inform the provider of evidence of non-compliance with conditions of registration, the regulations and standards and the action the care provider should take to comply. It will also include, where appropriate, recommendations for improvement.

A copy of the inspection report will be available to the public; however, information of a confidential nature relating to individuals using the service will be excluded from the public report.

Complaints and matters of concern

The draft Law requires the Commission to ensure it has a proper process for handling complaints about a service and that these are properly investigated.

Fees

The draft Law allows the Commission, with the permission of the Chief Minister, to introduce a fee structure comparable to other jurisdictions. This will include setting the initial registration fee at an appropriate level that reflects the responsibility and accountability of providing such a service, plus an annual fee based on the size of the service. The changes in fees will be phased-in over a period of time.

Consultation history

In May 2006 the Council of Ministers acknowledged that the legislation regulating the provision of health and social care in Jersey was no longer fit for purpose and approved drafting time for a new Law. A Green Paper stakeholder consultation on proposals for reform was issued in November 2007⁴ and offered providers of health and social care in Jersey an opportunity to comment on the current legislation, and to offer their views about how health and social care in Jersey should be regulated in the

⁴ Regulation of Care (Jersey) Law 200- Stakeholder Consultation
www.statesassembly.gov.je/ScrutinyReviewResearches/2008/S-35164-48106-10122008.pdf

future. A range of stakeholders responded to the consultation process, including representation from independent care homes, domiciliary care and home nursing, general practice, service managers, acute hospital clinicians, voluntary sector and service users. In January 2010⁵, the Health and Social Services Department published the response to the consultation, which indicated a majority of respondents thought that the legislation required updating; only 6% did not think this necessary. Respondents also strongly supported independent regulation and the inclusion of domiciliary home care and services provided by the States of Jersey in the proposed Law. The report set out the key policy objectives, agreed by the Minister for Health and Social Services, that would form the basis of the new Law.

A further stakeholder consultation was held in respect of the Draft Regulation of Care (Jersey) Law 201- between 25th March and 30th April 2014 (see Appendix 1) Although the consultation period was short, it offered interested parties an opportunity to identify any particular concerns with the proposed powers that will be put in place to enforce a new framework for regulating health and social care in Jersey. The consultation also allowed stakeholders to comment on any other technical matters that may arise from the draft Law. A copy of the draft Law and explanatory report were sent to 41 stakeholder groups. A press release and copy of the consultation documents were made available on the gov.je website. Stakeholder briefing sessions were held on 9th and 23rd April 2014. Meetings with individual stakeholders or organisations were held on request. A briefing about the draft Law was also given to the Health, Social Security and Housing Scrutiny Panel.

Nine written responses were received from the consultation, and these were generally supportive of the draft Law. A number of technical points were raised in respect of the draft Law and a number of these have been addressed where that was appropriate. Most respondents also understandably made clear their wish to be consulted on the nature of future regulations (see Appendix 1).

Timetable for phased implementation

To ensure that the implementation process is not overwhelmed by the size and complexity of the task, it is intended to phase in the Regulations in relation to particular regulated activities over a realistic and manageable timeframe.

There are some key drivers that will set the implementation timetable; primarily the introduction of the long-term care funding proposals, which is contingent on the regulation of particular health and social care activities. Consequently, it is proposed to bring into force the primary enabling Law with Regulations pertaining to the first set of Regulated Activities pertaining to care homes, children's homes, and personal and nursing domiciliary care, including those provided by the Health and Social Services Department and other States departments during 2015.

Financial and manpower implications

A business plan for funding implementation of the first phase of introducing the new regulatory regime has been undertaken. The enactment of the Regulation of Care (Jersey) Law 201- will result in additional work for the executive function, requiring up to an additional 3 full-time equivalents' pay and non-pay costs in addition to the cost of a part-time Commission to be funded through the application of a realistic fee structure in Jersey. The fees will be comparable to current equivalent charges in the UK.

⁵ Regulation of Care (Jersey) Law 200-, Report of Stakeholder Consultation – www.gov.je/SiteCollectionDocuments/Government%20and%20administration/R%20RegulationofCareResponseReport%20201001%20MC.pdf

It is assumed that the existing recurrent budget of the current inspection team (net of a sum equal to the fees that would be charged to HSSD units falling into charge) will be grant-funded to the new executive function, which will represent approximately 45% of the total cost of administering the Law. This reflects similar practice as in the UK, where the CQC is funded for 34% of its operating costs⁶ and the Scottish Care Inspectorate is funded for 65% of its operating costs⁷. If the Jersey Commission were required to be initially fully self-funding, annual fees would need to be significantly in excess of current UK fees, however self-funding may be a longer-term objective.

The proposals outlined for Phase 1 (excluding primary care, acute hospital care and social services) is cost-neutral to HSSD and the States of Jersey, but any increase in fees by providers to cover annual fees or compliance costs following inspection may be passed onto public or private users.

In terms of compliance costs for providers to meet the requirements of the proposed legislation, the majority of existing providers are likely to meet the expected standards and therefore will have little or no extra costs. Some are meeting most of the standards and may have some but not significant extra costs. A small number may fail on a number of standards and would face significant costs. However, significant failure to meet standards is likely to be symptomatic of unacceptably low levels of care and detrimental to individuals using the service. In the currently regulated independent sector, much progress has been made towards improving quality and most providers are either already compliant or have a development programme in place to upgrade their services and facilities. It is also anticipated that, should the Law and Regulations come into force, there will be a reasonable timescale for providers to meet any new requirements.

Human Rights

The notes on the human rights aspects of the draft Law in **Appendix 2** (*see page 20*) have been prepared by the Law Officers' Department and are included for the information of States Members. They are not, and should not be taken as, legal advice.

⁶ Corporate governance and financial statements, Care Quality Commission (CQC) Annual report and accounts, 2010/2011

⁷ Personal Communication with Social Care and Social Work Improvement Scotland (SCSWIS)

APPENDIX 1 TO REPORT

DRAFT REGULATION OF CARE (JERSEY) LAW 201- Response to Stakeholder Consultation

1. Introduction

- 1.1 The Draft Regulation of Care (Jersey) Law 201- is primary legislation that enables a new framework for the regulation of health and social care to be established in Jersey.
- 1.2 New legislation is necessary as it's been known for some time that the existing Laws are inadequate, fragmented and out-of-date. There are currently significant gaps in regulation that allow high-risk services to operate without any monitoring of the safety, standards and quality of care provided to vulnerable people. Additionally, inherent conflicts exist within the current structure with the Minister for Health and Social Services responsible for providing, commissioning and regulating care.
- 1.3 The policy underpinning the draft Law is based on responses from stakeholders to a Green Paper Consultation published in 2010⁸ and is described in a States Report published in May 2013⁹. The provisions in the draft Law are also based on fundamental principles of good regulatory practice including –
- INDEPENDENCE – separation from political considerations and any undue conflicting stakeholder influence
 - COMPETENCE – both in technical and regulatory expertise
 - ACCOUNTABILITY – to government as well as the general public achieved through transparency, prohibiting conflicts of interest, providing for appeals and subjecting the regulator's conduct to scrutiny.
- 1.4 The draft Law is the first step in the development of a new regulatory framework for health and social care, and contains powers for the States to enact Regulations which will be required to be in force before any new regulation of services takes effect. In particular the draft Law –
- transfers responsibility for regulating health and social care from the Minister for Health and Social Services to an independent Commission
 - sets out how the Commission will be appointed
 - requires providers of care services to be registered by the Commission, describes the registration process and enables the Commission to apply appropriate conditions to registration to maintain standards
 - enables Regulations and standards to be written about the quality of care services
 - describes the Commission's powers to inspect services
 - explains the enforcement procedures and appeals process.

⁸ States of Jersey Department for Health and Social Services, Regulation of Care (Jersey) Law 200-, Report of Stakeholder Consultation, January 2010

⁹ States of Jersey, Regulation of Care Proposals, R.42/2013

2. Consultation Process

- 2.1 The consultation on the Draft Regulation of Care (Jersey) Law 201- offered interested parties an opportunity to identify any particular concerns with the proposed powers that will be put in place to enforce a new framework for regulating health and social care in Jersey. The consultation also enabled stakeholders to comment on any other technical matters that may arise from the draft Law.
- 2.2 It was emphasized that the draft Law is only the first stage in the creation of a comprehensive regulatory regime for health and social care. Further consultation will be included as part of drafting subsequent Regulations setting out the detail of the activities to be regulated and specific obligations that will be placed on providers and managers of health and social care services.
- 2.3 The consultation took place between 25th March and 30th April 2014. A copy of the draft Law and explanatory report¹⁰ were sent to 42 stakeholder groups (see attached Annex). A press release and copy of the consultation documents were made available on the gov.je website.
- 2.4 The Health, Social Security and Housing Scrutiny Panel were briefed about the draft Law, and stakeholder briefing sessions were held on 9th and 23rd April 2014. Meetings with individual stakeholders or organisations were held on request.
- 2.5 Nine written responses were received from the consultation comprising –
- 7 from providers/managers/staff of various health and social care services including private and voluntary sector
 - 1 from a States department
 - 1 from a charitable organisation.
- 2.6 Three meetings were held, comprising –
- 2 briefing sessions with a total of 24 attendees
 - 1 briefing with a representative of a stakeholder group.
- 2.7 Three telephone enquiries about the proposals in the Law were received, and an article with comments from a representative of a stakeholder group was reported in the local press.

3. Overview and Summary of Consultation Responses

- 3.1 Generally the response to the draft Law was positive with most respondents fully supporting the need for new legislation. Written comments included –
- “At the outset may I confirm that we warmly welcome the proposed Law and the charity commends the Minister for Health and Social Services for introducing this legislation... We applaud the fact that all domiciliary care providers will also be subject to this new legislation, in addition to all States-run care homes and activities”
 - “The need for modernisation of existing legislation was fully accepted and the segregation of supervisory functions fully understood so there

¹⁰ Draft Regulation of Care (Jersey) Law 201- Consultation on Draft Law Report
[http://www.gov.je/SiteCollectionDocuments/Government%20and%20administration/R%20Regulation%20of%20Care%20\(Jersey\)%20Law%20201%20consultation%20on%20draft%20law%20report%2020140325%20MM%20v1.pdf](http://www.gov.je/SiteCollectionDocuments/Government%20and%20administration/R%20Regulation%20of%20Care%20(Jersey)%20Law%20201%20consultation%20on%20draft%20law%20report%2020140325%20MM%20v1.pdf)

was no dissenting views on overall framework, indeed the intended law would provide, over time, a level playing field both at States and Private Sector for the first time, which was a welcome move”

- “The chairman... has welcomed the Health Department’s proposals to introduce a new Law... says that she is 100 per cent behind the proposals and described the changes as ‘desperately needed’ ”
- “I am so glad to see this legislation. It is truly frightening to see the vulnerability of many of our clients and to see this is being addressed to improve their safety is very welcome news”
- “Trust agrees with the sponsors of the new law that the existing Laws are ‘inadequate, fragmented and out of date. In particular the Trust supports the transfer of responsibility for regulating Health and Social Care from the Minister for Health and Social Care to an Independent Commission... agrees that there exists and inherent ‘conflict’ under the present arrangements manifest in the dual role of the Minister both commissioning services and delivering services... Consequently the Trust supports the creation and appointment of an Independent Commission to undertake the development of the regulatory framework for care services... In relation to the inspection of activities the Trust also supports the proposal that where possible and prudent, the inspection reports are accessible by the public, thereby encouraging a greater degree of transparency for the work the Trust undertakes than at present”

3.2 A number of issues about aspects of the proposed legislation were raised and several themes emerged.

3.3 Inspectors’ skills and competence

- The first, raised by several consultees, concerns the competence and qualification of people appointed to inspect services regulated under the Law and in particular that there is no requirement in the Law to ensure that inspectors have appropriate skills, knowledge and experience.

Comment

This point is accepted and the draft Law amended to ensure that people inspecting services have the necessary qualifications and skills to undertake the role.

3.4 Inspection Powers

- A number of issues about the proposed inspection powers were raised by one consultee and that the powers may not be human rights compliant.

Comment

A proper regime of inspection of regulated services is essential if the regulatory regime is to be successful. Careful consideration has been given during the development of the draft Law to ensuring that the powers of inspectors appointed under the Law are comprehensive, but are subject to safeguards and limits that ensure they will be exercised in a proportionate manner. All new legislation is required to be human rights compliant; the draft Law has been the subject of a human rights audit by

the Law Officers' Department, who are satisfied that a statement of compatibility can be made by the Minister when the Law is lodged.

- A further point raised by this consultee referred to inspectors' proposed powers of entry into an individual's own home where the person being cared for did not have capacity to consent to the inspection and specifically in cases where there was more than one individual living at the premises. This consultee also made reference for a need to define 'capacity' in the Law and ensure that appropriately qualified clinicians would determine capacity.

Comment

Where a person is being cared for in their own home, the inspection powers may sometimes need to be exercised, even though the person being cared for can't consent to that. In circumstances where there is cause for concern about an individual's welfare, but where a premises is occupied by more than one person, this must be taken into consideration. The relevant section of the proposed Law therefore is amended to apply only in situations where the individual receiving care is the 'sole' occupant, with the exception of excluding as a co-occupier anyone who is registered to provide a Regulated Activity.

The draft Law is not the appropriate legislation to set out definitively how to determine whether a person has capacity to make a particular decision. The Health and Social Services Department is developing proposals for a Capacity Law in Jersey that would cover this issue, and it is expected that a public consultation will take place on those proposals later this year.

Until any new legislation is brought forward, the Health Department has adopted a mental capacity policy, which is based on best practice from the UK and elsewhere. The Department expects that inspectors would be versed in best practice with regard to the assessment of mental capacity, and the amendment requiring inspectors to be appropriately qualified and skilled (see above) may cover provide some assurance in that inspectors will be competent to assess capacity.

- This consultee further raised concerns about the right for a police officer without a warrant to accompany an inspector.

Comment

This power is consistent with the UK Health and Safety at Work legislation and is necessary in cases where there is the possibility of obstruction to an inspector carrying out his or her duties under the Law.

- Another consultee suggested that inspectors should speak to next of kin as part of the inspection process.

Comment

The range of people consulted with as part of an inspection will be further strengthened in policy drawn up by the Commission, and it is envisaged will include next of kin, other family members, friends, other agencies involved in the person's care, e.g. social worker, G.P., District Nurse, Advocacy Worker.

The reason for including a statutory power to interview individuals receiving care (with their consent) within the legal inspection framework is to ensure that any obstruction of this power by a registered person

would be an offence. This is to make certain that providers and managers cannot conceal poor practice and prevent individuals receiving care reporting to inspectors concerns or complaints about the service.

- Three consultees raised issues about the inspection powers to access and remove documents. One consultee was concerned that inspectors have the right to remove any documents or records and other items and could enter an individual's private room and 'take away just about all their personal possessions'. Other comments related to inspectors seeing personal information and the proposed powers conflicting with professional guidance issued to health care professionals about sharing confidential information.

Comment

The draft Law does not give inspectors an unfettered power to remove people's personal possessions. While a number of different things can be done in accordance with these powers, the powers are limited by the requirement that the purpose of exercising them must be to check compliance with the requirements imposed by the draft Law and the meeting of standards set in relation to the legal requirements.

There is no conflict between the provisions of the draft Law and the professional guidance issued to health professionals about sharing information. In some cases an inspector will require access to medical records in order to assess whether the registered person is complying with statutory requirements and meeting standards, and this is consistent with General Medical Council (GMC) guidance. The GMC advise that various regulatory bodies have statutory powers to access patients' records and the duty on the doctor is to ensure that any disclosure is required by Law.

The draft Law also contains safeguards relating to any personal and confidential information obtained by the Commission that relates to and identifies an individual. It is an offence under the draft Law for a person knowingly or recklessly to disclose any confidential information except in specific circumstances where there is a legitimate reason for doing so.

- Two consultees made positive reference to the current inspection process, one written and one in a briefing session. Both expressed the hope that the new regime would follow the same ethos. The following was stated about the benefits of inspection:

"The Trust hopes that the broad thrust of the present inspection regime may be retained and developed. It is our experience that the present arrangements afford providers opportunities to both pause and reflect on the provision of service, as well as being able to harness through the inspection mechanism, expert information and advice from the regulatory authorities. It is in the discussions (between the provider and the inspector) on how to overcome identified deficiencies in the provision of service where the real value of the present inspection regime is to be found".

Comment

It is part of the underpinning legislation policy that the proposed Commission will undertake its regulatory functions with the same ethos as the current inspection process, which will include supporting and

encouraging service improvement rather than being limited to compliance monitoring.

3.5 Essential Services operated by Health and Social Services

- One respondent believed that essential services included all services provided by H&SSD and that the regulatory regime is fundamentally different for equivalent H&SSD and private or voluntary providers.

Comment

The respondent misread the draft Law. An essential service is one that is only provided by H&SSD in Jersey, for example A&E or the Ambulance Services. Care homes are operated by a range of providers therefore those provided by H&SSD are not defined as essential services.

3.6 Appeals Process

- Two consultees raised the proposed appeals process, in particular that the only route to challenge a decision of the Commission is by appeal to the Royal Court with no 'less formal' intermediate stage where appellants can argue their case, for example to a sub-committee of the Commission.

Comment

The draft Law includes a right of representation to the Commission about any decision the Commission intends to take with reference to registration, application or varying of conditions, suspension or cancellation of registration. Only once this representation has been made (or in the absence of any representation) does the decision take effect, and there is a right of appeal against the decision to the Royal Court. In this context, it would add unnecessary delay and expense to introduce a tribunal or other adjudicative step before an appeal can be taken to the Royal Court against the decision of the Commission.

3.7 Appointment of Commissioners from places other than Jersey

- One consultee questioned the disqualification for appointment to the Commission of anyone connected with health and social care provision from Jersey, Guernsey and the Isle of Man (IoM) and suggested that the Commission needs to have an understanding of the local primary care provision.

Comment

This restriction is based on the need for the Commission to be (and seen to be) independent, technically competent and accountable which best practice indicates is achieved by prohibiting any potential conflicts of interest and ensuring that the Commission includes a high level of specialist expertise. The reason for inclusion of Guernsey and the IoM is to ensure this independence and accountability is maintained in the event that in future a joint Commission with Guernsey and IOM may be established.

The draft Law does not preclude the Commission seeking advice from local providers and expertise (it has the power to 'appoint such officers, servants and agents as it considers necessary for the discharge of its functions') to inform decision-making; however, the important issue is

that final decisions by the Commission will be by individuals who are independent of any undue conflicts of interest.

3.8 Issues relating to future Regulations

A number of issues were raised relating to the content of future Regulations resulting from the draft Law, and comments made that respondents would like to be consulted on these before they are lodged with the States. These included –

- “We appreciate that the Primary Law must be ratified first and that the Regulations will themselves be defined as the second stage of the legal process. Indeed we believe that the Regulations will ultimately determine the quality of the Law as a whole (and we) very much look forward to playing an active part in helping to define the Regulations”
- “the passage of the Law is to be seen as a first step in the development of the new regulatory framework. In this context the Trust would ask that the consultations with regard to the follow on regulations, standards, fee structures etc. be lengthier than the present consultation process”.

Comment

Regulations under the draft Law will contain the details of what constitutes a regulated activity and requirements with which providers and managers will be required to comply. It is recognized that stakeholders will be important participants in commenting on all proposed future Regulations, and accepted that they will also be involved in the development of the Standards.

3.9 Fees

Four respondents mentioned fees that the Commission can apply to registered providers, in particular the following comments were made –

- “The Management Committee were enquiring as to how this affects our registration fee”
- “Fees must be set at levels that will ensure the long term sustainability of the Commission and its work”
- “one issue, pending the release of presumably more detailed regulation in due course, was the cost of regulation and fees. Whilst we can see that there is a wish to introduce more of a sliding scale relative to size of business, any business based tariff for a charity such as ours which has to raise donations for capital costs... just about keeps pace with day to day running costs, would be hard to bear... Given all the circumstances therefore, whilst the principles one is trying to achieve are commendable, indeed necessary, we would ask that charitable organisations... are exempted from an additional regulatory fees as might be intended, as we would regard the imposition of such to be inequitable.
- The issue of fees was raised at the first briefing session again in the context of exemption for voluntary sector providers.

Comment

The fees charged in due course by the Commission will be those published by the Commission or prescribed by Chief Minister by Order. Before fees

are published by the Commission, they will be required to consult the Chief Minister and to publish a report explaining what the fees will be.

It is not anticipated that voluntary sector providers will be exempt from the need to pay fees. Although their continued contribution to health and social care provision is very important, it also has to be recognised that they charge fees themselves and operate in a commercial marketplace alongside other private providers who would be required to pay fees. Further, both voluntary and private providers of care give rise to the same need for proper regulation and inspection.

3.10 Individual providers of a Regulated Activity

- One consultee at a briefing meeting raised the matter of an individual caring for a person in their own home, whether this carer would fall within the definition of providing a Regulated Activity and if so what training would be required.
- This issue was also raised in a written response: “It is important to enable an individual who is well known to a person with dementia, but who is not a healthcare professional, to become an approved provider. Fair and reasonable standards need to be set concerning training and qualifications required.

Comment

The details of what will be defined as a Regulated Activity will be set out in future Regulations and there will an opportunity for further consultation on this matter. However, it is intended that Regulated Activities will include a person who is employed and paid to provide nursing or personal care to an individual in his or her own home. The standards and training requirements will also be subject to further consultation; however, it is anticipated that a minimum level of training will be required. There is provision within the draft Law to set a timeframe for the carer to achieve the required qualifications and skills.

3.11 Whistle-blowing

- One respondent stated: “The Regulations should enable an individual to be a ‘whistle-blower’, without fear of recrimination”.

Comment

This will be addressed in the Regulations and Standards, as these will set out in more detail what will be required of the provider and manager.

3.12 Workforce demands versus population restriction

- One consultee raised a concern about the projected increased demand for care workers and the limitations placed on population increase by the States.

Comment

The projected increase in the demand for care workers is a consequence of the predicted demographic changes. The demand is already apparent and growing; the draft Law and subsequent Regulations are a necessary safeguard to ensure that these carers are safe and competent.

ANNEX TO APPENDIX 1

List of Stakeholder Consultees

All States Members
Health, Social Security and Housing Scrutiny Panel Members
Care home providers
Care home managers
Nursing agency providers
Domiciliary care providers
General Practitioners
Independent Medical Practitioners
All Dentists
H&SSD Corporate Directors
FNHC
Laser Therapy Providers
Cosmetic Techniques providers
Jersey Fire Service
States of Jersey Police
Jersey Vetting Bureau
Employment and Social Security
Chief Officer Home Affairs
Prison Governor
Independent Safeguarding Partnership Board
MENCAP
Self-Advocacy Jersey
MIND Jersey
Independent Mental Health Advocate
Jersey Autism
Jersey Association of Carers
Age Concern
Alzheimer's Society
Headway
Jersey Stroke Society
Motor Neurone Disease Association
Jersey Society for the Disabled
Jersey Parkinson's Disease Society
Cystic Fibrosis Trust
Jersey Association for Spina Bifida
Jersey Asthma and Respiratory Society

Jersey Epilepsy Association
Jersey Kidney Patients Association
Jersey Women's Refuge
Macmillan Cancer Support
Meningitis Trust
Multiple Sclerosis Society

APPENDIX 2 TO REPORT

Human Rights Notes on the Draft Regulation of Care (Jersey) Law 201-

These Notes have been prepared in respect of the Draft Regulation of Care (Jersey) Law 201- (the “**draft Law**”) by the Law Officers’ Department. They summarise the principal human rights issues arising from the contents of the draft Law and explain why, in the Law Officers’ opinion, the draft Law is compatible with the European Convention on Human Rights (“**ECHR**”).

These notes are included for the information of States Members. They are not, and should not be taken as, legal advice.

The draft Law will make new provision for the regulation of health and social care in Jersey. Its provisions cover various regulatory aspects intended to be of general application across the range of activities ultimately to be regulated pursuant to the draft Law: for example, a system of registration for providers, and managers of, regulated activities, inspection powers and the establishment of a Health and Social Services Commission (the “**Commission**”).

The draft Law engages various Articles of the ECHR, which are addressed in turn.

Article 6 ECHR – The right to a fair trial

Right of appeal against a decision of the Commission (Article 44)

Article 6(1) ECHR requires that those who face a determination of their ‘civil rights and obligations’ must be entitled to a ‘fair and public hearing... by an independent and impartial tribunal’. The guarantees afforded by Article 6 ECHR will only be relevant to the extent that an act or a decision is determinative of a ‘civil right’ or ‘obligation’.

The draft Law contains a number of provisions that require the Commission to make decisions affecting a person’s ability to carry on or manage a health or social care service. For example, the draft Law requires that those who wish to carry on, or act as manager in relation to, a regulated activity are registered to do so (Article 3) and, under Part 4 of the draft Law, the Commission has the power to vary conditions applied to a registration (Articles 17 and 18) and to suspend and cancel registrations (Articles 19 – 21).

The right to engage in a business is a civil right and, *inter alia*, a power to grant or refuse an application for registration to carry on, or to act as a manager in relation to, a regulated activity will attract Article 6(1) ECHR protection. Similarly, it is well established that civil rights will be determined where registrations or licences to carry out particular acts are suspended or cancelled, or conditions attaching to them are varied. Aspects of the Commission’s regulatory oversight in these decisions will also require a judgement as to whether a person is fit or competent to perform a certain regulated activity and such decisions may also, ultimately, be determinative of a ‘civil right’.

Article 6(1) ECHR requires that civil rights be determined by an ‘independent and impartial tribunal’. It will be compatible with Article 6 ECHR for the Commission to make decisions that will determine a civil right if that decision is “subject to subsequent control by a judicial body that has full jurisdiction and does provide the guarantees of Article 6(1)” and “has the ability to quash the impugned decision or to remit the case for a new decision by an impartial body”. The body in question here is the Royal Court, who will hear appeals against the Commission’s decisions under Article 44.

In this case, the ability to appeal to the Royal Court is sufficient to make the process of determining civil rights and obligations under the draft Law compatible, as a whole, with Article 6 ECHR. In this regard it is relevant to note that Article 44 of the draft Law does not seek to restrict the nature of an appeal and that, in practice, an appeal might perhaps be brought on a point of law, due to an alleged mistake as to relevant facts or for the reason that the Commission's decision was considered unreasonable. The flexibility ensures that the draft Law is compatible with Article 6 ECHR without any further analysis of the nature of the decision and the scope of the appeal ground required to render the decision-making process as a whole compatible with Article 6 ECHR.

Article 44(2) provides that an appeal should be brought within the period of 28 days following the day the person having the right of appeal receives notice of the decision of the Commission. Limiting the period within which a complaint can be brought in this manner is, in principle, compatible with Article 6 ECHR; however, any limitation period must pursue a legitimate aim and meet the test of proportionality. The rationale for a time limit in the current context is to ensure that complaints are introduced within a reasonable time and to protect against long periods of uncertainty, and should be considered compatible with Article 6 ECHR principles.

The protections afforded by Article 6 ECHR may also apply to decisions concerning the appointment and termination of appointment of commissioners and of the chairman of the Commission (see paragraphs 2, 3 and 7 of Schedule 2 to the draft Law). The draft Law does not provide for an express means of appealing a decision of the Chief Minister or the Chairman of the Commission in this regard, so it appears that the only means of challenging such decisions would be by way of judicial review. In this context, the availability of judicial review as a means of challenging a decision is sufficient to ensure compliance with Article 6 ECHR. Such decisions are, on balance, properly characterised as matters of administrative discretion (as opposed to adjudicatory decisions) in respect of which the application of judicial review ensures the determination of any relevant civil rights is achieved in a manner compatible with Article 6(1) ECHR.

Article 8 – The right to respect for private life

Article 8 ECHR is engaged by numerous provisions in the draft Law: the power for inspectors to enter and inspect premises (Article 26); the requirement to provide to the Commission certain documents, information and records when requested (Article 28) and the power to inspect and take copies of any documents or other records (Article 26(6)(b)); and the examination of persons receiving care by inspectors (Article 26(10)).

Power to require documents (Article 28)/Power to inspect documents and take copies of any documents or other records (Article 26)

Personal data is protected under Article 8(1) ECHR as part of the subject's private life and it has been held that information contained within medical records and correspondence will attract Article 8(1) ECHR protection. The information, documents and records covered by the draft Law will in many cases be medical in nature, particularly where linked to the investigation of care standards, so the Article 28 requirement to provide such items, and the power in Article 26(6)(b) of the draft Law for the inspection of these items, will engage the Article 8(1) ECHR right to privacy.

Any interference with the Article 8(1) ECHR right must be justified under Article 8(2) ECHR, meaning it must be (a) in accordance with the law; (b) in pursuit of one of the legitimate aims set out in Article 8(2) ECHR; and (c) necessary in a democratic

society. ‘Necessity’ requires the identification of a pressing social need and the existence of “relevant and sufficient” reasons to justify the interference at issue. A measure will only be proportionate to the legitimate aim if supported by sufficiently persuasive reasons.

The nature of interference constituted by the inspection powers in the draft Law would be deemed to be ‘in accordance with the law’; those provisions will have a basis in domestic law and can be viewed as sufficiently precise and accessible, therefore being foreseeable. The rationale for that interference is, clearly, to ensure that the Commission is better able to regulate those who provide health and social care in Jersey and that objective directly corresponds to the ‘protection of health’ objective in Article 8(2) ECHR.

‘Necessary in a democratic society’ requires there to be a pressing social need for the interference in question. In the present case, it is fair to conclude generally that powers to requisition information, documents and records and to inspect such items are ‘necessary’ for ensuring compliance with the draft Law and standards of care and, in turn, for ensuring proper regulation of the care sector. The importance of such regulation is without doubt, it is a ‘pressing social need’. Given the legitimate aims concerned and the necessity for regulation, the interference with the Article 8 ECHR right is proportionate, in principle. There will be an obvious practical obligation on inspectors and the Commission to exercise the requisition and inspection powers in a proportionate manner.

An important aspect in determining what is ‘necessary in a democratic society’ is the identification of procedural safeguards which mitigate the exercise of powers interfering with private life and ensure that a state remains within its margin of appreciation in fixing the applicable regulatory framework. In the draft Law, the purpose for the exercise of inspection powers, including the inspection of documents containing personal data is stated. That is to check compliance with requirements and the meeting of standards and, specifically in relation to document requisition powers, where the Commission considers it “necessary and expedient” for the purposes of any of its regulatory functions. Linking inspection powers to such objectives should in theory temper any frivolous or unnecessary exercise of the powers. In addition, there is a requirement in Article 25(2)(b) of the draft Law for an inventory of any documents, records or other items seized by an inspector to be submitted to the person concerned, which amounts to a further safeguard against abuse.

Entry onto premises (Article 26)

Article 26 provides inspectors with the power to enter onto premises in order to carry out inspections. It is clear that the Article 8 ECHR right to home life applies to private dwellings. However, it has also been held to extend to business premises in certain circumstances and in some cases a company may rely on Article 8 ECHR to establish a right of respect for its business premises. In Jersey, health and social care is provided from a variety of premises and by a range of entities so we might assume that the exercise of these powers will in most cases engage the right in Article 8 of the ECHR.

The Article 26 power to enter and inspect premises has a clear rationale that would come within the legitimate ‘protection of health’ objective expressed in Article 8(2) ECHR. The fact that the power to enter and inspect premises may be exercised at any time, and without notice where necessary, is balanced by safeguards within Article 26. For example, the purpose for the exercise of the entry and inspection power is defined in Article 26(1); inspections on private dwellings must be with consent or where it is in the best interests of the occupant; evidence of the authority of the inspector must be produced if requested; and the specific powers that may be exercised by the inspector

once access to the premises has been obtained are set out in Article 26(6)–(11). In terms of proportionality, the necessity for carrying out inspections in view of the need to protect against abuse and poor care standards presents a persuasive rationale for interference with the Article 8 right here. Overall, the inspection powers in Article 26 should be deemed compatible.

Examination of persons receiving care (Article 26(10))

Article 26(10) provides that an inspector conducting an inspection of premises may examine in private any person receiving care at, or accommodated on, the premises being inspected. The rationale for this power is to enable inspectors to determine, by regard to the condition of persons being cared for, if requirements and standards under the draft Law, and attaching to a registration, are being complied with. Generally speaking, medical examinations engage the Article 8 ECHR right to privacy and associated principles of dignity. There are clear sensitivities that go with providing a power to conduct such examinations and the Article 26(10) power is hedged by safeguards: the inspector must be a medical practitioner or nurse, there must be reason to believe that the person is not receiving proper care or is not properly accommodated and the person consents (or is incapable of doing so). Examinations with the consent of the person should cause no issues. Those operated within the remit of the Article 26(10) on a proportionate basis, in cases where consent is not provided, should also remain justifiable and compatible with the ECHR.

Article 1 of the First Protocol of the ECHR (“A1P1”) – Right to Property

There are a number of provisions and features of the draft Law that engage A1P1: the requirement for a registration to carry on, or act as a manager in relation to, regulated activity (Part 2), the imposition of conditions and requirements of registration (Part 3) and powers to vary conditions and suspend and cancel registrations; and the power for inspectors to seize items (Article 26).

Requirement for registration, imposition of conditions, variation, suspension and cancellation of registration

Part 2 of the draft Law provides that those who carry on, or who act as a manager in relation to, a regulated activity must be registered under the draft Law. It goes without saying that the types of activities that are to be regulated pursuant to the draft Law will be services that are pursued as some form of employment or economic activity by providers in Jersey. In the context of the ECHR, the economic benefit deriving from a registration, and other forms of regulatory approval, to carry on a particular economic activity constitutes a ‘possession’ for the purposes of A1P1. So, to the extent that an economic benefit derives from a registration issued under the draft Law, there is potential for A1P1 to be engaged.

A ‘possession’ in the context of A1P1 has been given an expansive scope and has been held to cover the form and value of a firm’s client base and the economic interests connected with the running of an establishment. Companies or individuals providing health and social care services in Jersey, from which an economic benefit is obtained, may be able to establish this as a ‘possession’ for the purposes of A1P1. Accordingly, powers in Parts 2–4 of the draft Law to require registration, to impose conditions on the nature of that registration and powers to suspend or cancel a registration may amount to an interference with the identified possession.

In terms of interference, a regime for the registration, cancellation and suspension of health and social care services will amount to a ‘control of use’ of any economic benefit associated with that service. For a measure constituting a control of use to be justified, it must be in accordance with law and for ‘the general interest’. The measure

must also be proportionate to the aim pursued. In the context of A1P1, a general interest has been found in measures taken for health reasons, social welfare reasons and legality, such that compliance by an entity with certain laws has been held to constitute a legitimate general interest objective. Broadly speaking, the registration regime provided in the draft Law is imposed to meet objectives that can be aligned closely to these recognised interests. The registration of providers and managers is required to ensure that the provision of health and social care in Jersey is done so by appropriate persons and in accordance with standards and requirements designed to protect those receiving care. Equally, for these reasons, there is a necessity for such registrations to be suspended or cancelled. It should be appreciated that, where property rights are concerned, states have a considerable margin of appreciation in determining the existence of a general public concern and in implementing measures designed to meet it, so in imposing a registration system that interferes with certain property rights but is required for an identifiable public interest, the States would be afforded a substantial degree of deference.

A further strand of justification for a ‘control of use’ under A1P1 is the need for measures to be in ‘accordance with the law’. This requires the law to be sufficiently precise and foreseeable, and it is fair to conclude that the draft Law would satisfy this requirement.

In terms of proportionality, the implementation of a registration and cancellation system for health and social care providers and managers is entirely proportionate to the general interest of ensuring the safe provision of those services. Expedited processes for the variation of conditions and the immediate cancellation of a registration are also justifiable given the public interest issues concerned. A variation of a condition will take place only where there is a particularly urgent and serious risk to the life, health or well-being of an individual. In the case of an immediate cancellation, a provisional order is required from the Bailiff with subsequent consideration by the Royal Court, which should guard against any unduly arbitrary cases for cancellation. Overall, the draft Law does not propose anything radical in terms of requiring registration (rather it makes the reach of regulation more comprehensive). Even if any aspect of such regulation were to be challenged, it would be difficult to maintain that it amounted to an ‘excessive’ regime or was without due cause.

Seizure of goods (Article 26(6)(e))

Article 26(6)(e) of the draft Law permits inspectors to “seize and remove from the premises any documents, records and other items”. In the context of the draft Law, an inspector may decide it necessary to seize certain equipment belonging to a provider. In A1P1 terms, the seizure of property ancillary to the enforcement of domestic legislation, such as the draft Law, has generally been treated as a control of use of property.

In terms of justification, the general interest here is, again, the protection of those in receipt of health and social care. That general interest would encapsulate the requirement that inspectors should be able to seize items, including property, if that is required in order to check compliance with standards and requirements set pursuant to the draft Law. The power to seize items is, in principle, proportionate to the legitimate aim identified here. Abuse of the power is safeguarded against by Article 26(1) setting out explicitly that the inspection power, including the power to seize, is to be used for checking compliance with the draft Law and whether standards are being met. There is also a requirement to provide an inventory of items removed, which is an additional safeguard against excessive interference with the A1P1 right. Overall, the seizure power in the draft Law is justifiable in principle; however, as with the inspection

powers in the draft Law generally, these are powers that must be exercised in a proportionate manner in practice, based on the nature of the inspection and the specific public interest being pursued.

Re-issue Note

This Project is re-issued because the departmental report included within the original publication was not the correct version.

Explanatory Note

This Law makes new provision for the regulation of health and social care.

Part 1 – Preliminary

Article 1 is the interpretation provision. In particular, it defines “health care” and “social care”. These definitions set the scope of what may be regulated under the Law, although not all descriptions of care will be regulated under the Law when the requirement to register under the Law is first brought into force. The scope of the regulatory regime will be expanded over a number of years, and the States are given a power to amend the definitions “health care” and “social care” and definitions associated with them. The descriptions of health care and social care that are regulated under the Law, and the services connected with them, are defined as “regulated activities”, specifically, in Article 2.

Article 1 also defines “Commission” as the Health and Social Care Commission established under Article 35.

Article 2 gives effect to Schedule 1 in which a range of descriptions of regulated activities will be set out. These will be added, over time, by amending Regulations.

Part 2 – Requirement and procedure for registration

Article 3 creates the requirement for a provider to be registered in order to carry on a regulated activity and for a manager of a regulated activity to be registered in order to act as such. Carrying on the activity or acting as manager when not registered is an offence liable to imprisonment for up to 12 months and/or an unlimited fine. It is also made an offence for a person to hold himself or herself out as registered when he or she is not, or to hold out premises as premises on which a regulated activity may be carried out, when they are not. The penalty for the offence is a fine up to level 4 on the standard scale (currently £5,000).

Article 3 also empowers the States to make Regulations for determining which of 2 or more persons is the provider of an activity, in a case where the activity is carried on by them, acting in different capacities. In addition, it provides that, where an activity is carried on by a Minister, the officer who is the accounting officer for that Ministry is the person who is required to register as the provider of the activity unless the States by Regulations, provide otherwise.

Article 4 sets out the process for applying for registration in relation to a regulated activity, whether as the provider or as the manager.

Article 5 requires the Commission to register a provider in relation to a regulated activity if the Commission is satisfied that the provider is a fit person to carry on that activity, has a registered manager in relation to the activity and will comply with requirements imposed by Regulations made under Article 14. The same criteria apply to the registration of a manager.

Article 6 requires the Commission to notify an applicant if it intends to refuse an application or grant it on conditions other than those sought by the applicant. In such a case, the applicant has 14 days to make representations to the Commission, and the Commission must have regard to the representations in reaching its final decision. However, if the applicant signifies that he or she accepts the Commission's proposed decision, there is no need to wait 14 days before it becomes final.

Article 7 requires the Commission to register a successful applicant and, in the case of a provider, issue a certificate. An unsuccessful applicant must be informed of the reasons for refusal of his or her application and how he may appeal against the refusal.

Article 8 requires the Commission to keep a register under the Law, enter specific information in it, and make it available to the public. Article 8 also provides for the information to be contained in a certificate issued to a registered provider.

Article 9 requires a registered provider or a registered manager to pay an annual fee for his or her continued registration. A surcharge will be imposed for late payment, and a failure to pay could lead to cancellation of registration.

Part 3 – Conditions and requirements of registration

Article 10 empowers the States, by Regulations, to set criteria to be applied by the Commission when determining whether a person is a fit person to be a provider or manager in relation to any regulated activity. The Regulations may further require the Commission to take certain steps in making such a decision – for example, requiring the Commission to obtain an up-to-date criminal record check from an applicant for registration.

Article 11 makes it a condition of the registration of every provider, in relation to a regulated activity, that there is also a manager registered in relation to the activity.

Article 11 also empowers the States to make Regulations specifying the circumstances in which the registered provider and registered manager in relation to an activity may be one and the same person. Regulations may specify further mandatory conditions of registration. For example, if a person is registered to carry on the provision of personal care combined with accommodation, there would be a mandatory condition that the registration would specify the numbers and descriptions of persons for whom the care may be provided at a given location. The requirement to impose a condition as to the number of persons cared for would be mandatory, but it would be for the Commission to fix the number.

Article 12 gives the Commission a discretion to impose conditions on registration. For example, a condition might be imposed requiring a manager to complete certain training by a given date, or a condition might set a ratio for the number of workers required in relation to a specified number of persons being cared for. Discretionary conditions may be imposed indefinitely, for a specified period of time or until the occurrence of a particular event.

Article 13 makes it an offence for a registered provider or registered manager to fail, without reasonable excuse, to comply with a condition of his or her registration. The penalty for the offence is a fine of up to £50,000. (Article 46 creates a defence to an offence under this Law where the contravention is due to the act of another person and the provider or manager took all reasonable steps to prevent the commission of the offence.)

Article 14 empowers the States, by Regulations, to specify requirements that must be complied with in the conduct of a regulated activity. The Regulations may require that either or both of the provider and manager comply with the requirements. Paragraphs (2) to (5) describe in detail, the kind of requirements that may, in particular, be imposed. A failure to comply with a requirement may be made an offence (paragraph (6)). Further, the Commission may be empowered to serve improvement notices allowing a provider and/or manager a period of time to rectify shortcomings. The Regulations may provide that an offence may not be prosecuted unless an improvement notice has been served first, and the provider or manager given the opportunity to rectify a shortcoming, as described.

Before lodging Regulations under this Article, a Minister must consult with interested parties. Article 39 imposes a general duty for a Minister to consult the Commission

whenever he or she is considering proposals for any legislation relating to health or social care.

Article 15 provides that the Commission may, after consultation with interested parties, publish standards for compliance with requirements imposed by Regulations made under Article 14. Non-compliance with the standards does not, of itself, make a person liable for an offence or in any civil proceedings. However, the standards must be taken into account by the Commission when making decisions under this Law, by the Bailiff and Royal Court when deciding whether to cancel a person's registration with immediate effect, by a court when hearing an appeal against a decision of the Commission, and in any proceedings for an offence under this Law. In addition, standards may be admitted in evidence in any criminal or civil proceedings that do not arise under this Law.

Article 16 empowers the States to make Regulations regarding what happens if, for any reason, there ceases, at short notice, to be a registered manager, or that person is not able, for any reason, to carry out the duties of that role. The Regulations may permit a person to act as temporary manager without being registered. However, if a person acts in that capacity, he or she may be made liable under the Law as if he or she were registered.

Part 4 – Variation of conditions, suspension and cancellation

Article 17 provides for the variation of conditions imposed on a registered person (being either a registered provider or registered manager). The registered person may apply for a variation of a condition or the Commission may, itself, decide to vary a condition. A variation may be permanent or temporary. The Commission must notify the registered person of the variation it is proposing to make, and the registered person is allowed 14 days in which to make representations regarding the variation. The Commission must have regard to any representations, in reaching its final decision. However, there will be occasions where the registered person applies for a variation and the Commission is prepared to grant it on the terms requested. In such a case, there is no need for the Commission to give advance notice of its decision, and await the registered person's representations, before the variation takes effect. A variation will not take effect until the registered person's rights of appeal are exhausted, unless he or she agrees otherwise.

Article 18 provides for a case where the need to vary the conditions of a person's registration is so urgent that the procedures in Article 17 should not be followed. The case is one where any delay would be a serious risk to the life, health or well-being of an individual. In serving notice of the variation, the Commission must give its reasons for relying on this Article to impose the variation with immediate effect.

Article 19 gives the Commission power to suspend a registered manager. The grounds for suspension are described in paragraph (1). The Commission may only decide to suspend a manager for up to 3 months, but may make further decisions to extend a period of suspension by up to 3 months at a time. The manager has a right of appeal against each decision. Ordinarily, the Commission must give the manager and the registered provider 14 days in which to make representations before the manager is suspended. However, there is an exception if there is a serious risk to the life, health or well-being of an individual which justifies immediate suspension. Immediate suspension can only be imposed for up to 21 days, and the manager and the registered provider have 14 days, after being notified of the suspension, to make representations. The Commission must, in deciding whether to extend the suspension, have regard to those representations. It may also terminate an immediate suspension after considering the representations.

Article 20 gives the Commission a discretion to cancel a registered manager's or registered provider's registration. The grounds for doing so are set out in paragraphs (1) and (2). The Commission must notify both the person whose registration is to be cancelled and the registered provider or registered manager, as the case requires. Both persons notified have 14 days in which to make representations regarding the cancellation. A cancellation cannot take effect until the person's rights of appeal are exhausted, unless he or she agrees otherwise.

Article 21 allows the Commission to apply to the Bailiff for a provisional order for the immediate cancellation of a person's registration, whether as a provider or manager. An application is made without the person being notified of it. The Bailiff make a provisional order to cancel the person's registration with immediate effect if he or she is satisfied that there are grounds for cancellation and that there is prima facie evidence that there will be serious risk to the life, health or well-being of an individual if the cancellation does not have immediate effect. The order takes immediate effect, but the matter is then referred to the Royal Court for consideration. The Royal Court may cancel, vary or confirm the order. It also has power to make such other order as it thinks appropriate in the interests of users of the regulated activity to which the cancellation relates.

Article 22 applies only to "essential services". These are regulated activities which have only one provider, being a Minister. An example would be the provision of the acute hospital service by the Minister for Health and Social Services. If the Commission considers that there are grounds for cancellation of either the registered provider or registered manager in relation to the essential service, the Commission may, as an alternative to cancellation, prepare a report under this Article. The draft report must be sent to the Minister in question, the registered provider and the registered manager, each of whom has 28 days to make representations regarding the report. The Commission, in preparing the final draft, must have regard to any representations made. The final report is then sent to the Council of Ministers, and must make recommendations as to actions that should be taken in relation to the essential service. The Commission must also publish the report.

Article 23 allows a registered provider or registered manager to apply for his or her registration to be cancelled. The Commission may refuse or defer granting an application pending any investigation of a suspected failure to comply with any conditions of registration or requirements imposed by Regulations under Article 14.

Part 5 – Inspections, investigations and complaints

Article 24 provides for the Commission to appoint inspectors. The Commission may only appoint a person as an inspector if satisfied that he or she has the appropriate qualifications and knowledge to conduct inspections.

Article 25 provides that inspectors carry out inspections as directed by the Commission, for the purposes of the discharge of its functions under the Law or under Regulations made under Article 30 (for example, a requirement to inspect a regulated activity at least twice a year, whether or not any non-compliance is suspected).

An inspector submits his or her findings to the Commission.

Article 26 defines an inspector's powers of inspection. The purpose of an inspection is to check whether the conditions and mandatory requirements of registration are or being will be complied with and whether any associated standards published by the Commission under Article 15 are being or will be met.

An inspector cannot enter a private dwelling without the consent of one of the occupiers. However, there is an exception to this rule if a sole occupier is incapable of

giving consent and the inspector believes that it is in the best interests of that occupier that an inspection is made.

An inspector must produce proof of his or her authority to conduct an inspection, if requested.

An inspector may be accompanied by other persons when making an inspection, including a police officer, and may take any equipment needed to conduct the inspection.

Paragraphs (6) to (8) describe the sort of investigation and enquiry that an inspector may make during the course of an inspection.

In addition, if the inspector is a doctor or a nurse, the inspector may examine a person who receives care, or is accommodated, on the premises, if the inspector has reason to believe that the person is not being cared for properly. The person's consent is required for the examination, if he or she is capable of giving such consent.

Article 27 requires the Commission to prepare a report following an inspection that is carried out pursuant to a requirement imposed by Regulations made under Article 30. The report shall include the Commission's conclusions as to whether conditions imposed on registration and the requirements of the Law are being complied with and any standards issued by the Commission being met. The Commission must send a draft of the report to the registered provider and register manager, each of whom has 28 days to submit a response to the draft report. The Commission then prepares and publishes the report and sends a copy to the registered provider and registered manager. The obligation to publish a report does not apply to a report that is carried out for the purposes of considering an application for registration.

Article 28 gives the Commission power to require a registered provider or registered manager to provide documents or information that the Commission needs to discharge its functions as the regulator.

Article 29 makes it an offence for a person, without reasonable excuse, to obstruct an inspection or to fail to comply with a requirement imposed by an inspector conducting an inspection or by the Commission, under Article 28. The penalty for the offence is a fine of up to level 4 on the standard scale (£5,000).

Article 30 requires the Commission to ensure that complaints about the carrying on of regulated activities are dealt with and, as appropriate, investigated, whether it is the Commission itself that deals with and investigates the complaint, or another person. The Commission is also required to publish its procedures for handling complaints. The States may make Regulations requiring the Commission to conduct inspections, whether at specified intervals or upon the occurrence of specified events.

Part 6 – Use of information

Article 31 is concerned with the disclosure of confidential personal information. Such information is defined as information which has been obtained by the Commission and which must be held in confidence, and which relates to and identifies an individual. Any person who knowingly or recklessly discloses the information during the individual's lifetime is guilty of an offence. The penalty for the offence is a fine of up to level 4 on the standard scale (£5,000).

Article 32 provides 2 defences to the offence in Article 31. The first defence is that either one of the circumstances described in paragraph (2) applies or that the defendant reasonably believes that one of them applies. The second defence is described in paragraph (3).

Article 33 allows the Commission, having obtained information in connection with a function under this Law, to use it in connection with another of its functions.

Article 34 allows the Commission to disclose information that it has obtained in connection with any of its functions. Information that identifies an individual may be disclosed with the individual's consent. Otherwise, any information may be disclosed as permitted by paragraph (3).

Part 7 – Establishment and general functions of Commission

Article 35 establishes the Health and Social Care Commission as a body corporate with perpetual succession. The Commission must have at least 4, but not more than 8, Commissioners. The States may, by Regulations, amend these minimum and maximum figures. Article 35 also gives effect to Schedule 2, which makes further provision as to the Commission.

Article 36 declares the Commission's independence from the Minister for Health and Social Services, the Chief Minister (who appoints the Commissioners) and the States.

Article 37 requires the Commission to discharge the functions conferred on it, whether by this Law or any other enactment. In addition, the Chief Minister may lodge Regulations transferring a function of regulating health or social care from a Minister to the Commission.

Article 38 requires the Commission to prepare a report on health and social care, as and when requested by the Chief Minister or the Minister for Health and Social Services. The Commission may prepare and publish a report on any aspect of health and social care, as it sees fit. The Commission is also required to publish information and advise the public regarding this Law and other matters relevant to the functions of the Commission.

Article 39 requires a Minister to consult the Commission upon proposals for the preparation of Regulations under this Law and any other legislation concerning health or social care. The Minister may also consult the Commission on any other matter relating to the provision of social care.

Article 40 limits the liability of the Commission, the Commissioners, its employees and other appointees for acts done in the discharge of the Commission's functions. There is no limitation of liability if the act is done in bad faith. Nor is there any avoidance of liability for an award of damages if the act was in breach of the European Convention on Human Rights.

Article 41 gives the Chief Minister the power to prescribe fees and any surcharge payable to the Commission under this Law. If no fees or surcharge are prescribed, the Commission may set them, having first published its proposals and then consulted with the Chief Minister.

Article 42 makes the Commission's income exempt from income tax.

Article 43 requires the Commission to produce an annual report, which must include its accounts. The Commission must publish the report and send a copy to the Chief Minister.

Part 8 – Appeals, general offences and closing

Article 44 confers a right of appeal against any decision of the Commission under the Law. Any appeal must be made within 28 days of being notified of the decision in question.

Article 45 makes it an offence to provide false or misleading information in connection with an application under this Law or when required by the Commission or

an inspector to provide information. The penalty for the offence is imprisonment for up to 12 months and/or an unlimited fine.

Article 46 makes the standard provision as to the liability of the officers of a body corporate, or of the partners of a partnership that has separate legal personality for offences committed by the body corporate or partnership.

Article 47 provides a defence in proceedings for an offence under the Law. The defence is available where the defendant can prove that the commission of the offence was due to the act or omission of another person, or an accident or other cause beyond the defendant's control, and that the defendant took reasonable precautions and exercised due diligence to avoid the commission of the offence.

Article 48 makes provision for the manner in which documents may be served under the Law.

Article 49 gives the States power to make Regulations which make transitional provisions for the commencement of the Law and provision for the transfer of staff to the Commission, once established.

Article 50 provides for the citation and commencement of the Law. Once the Law is registered in the Royal Court, the Regulation making powers in it will come into force straight away. The Commission will also be established but, initially, only for the purpose of preparing any standards required under Article 15. The remaining provisions of the Law will subsequently be commenced by Appointed Day Act.

Schedule 1 will describe regulated activities. Regulated activities will be added to Schedule 1, over time, by Regulations made under Article 2.

Schedule 2 makes provision as to the appointment of Commissioners, the resources of the Commission and the manner in which its business is conducted.



Jersey

DRAFT REGULATION OF CARE (JERSEY) LAW 201-

Arrangement

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Jersey

DRAFT REGULATION OF CARE (JERSEY) LAW 201-

A LAW to establish a Health and Social Care Commission; to provide for the regulation of activities involving or connected with the provision of health or social care; and for connected purposes

Adopted by the States	[date to be inserted]
Sanctioned by Order of Her Majesty in Council	[date to be inserted]
Registered by the Royal Court	[date to be inserted]

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

PART 1

PRELIMINARY

1 Interpretation

- (1) In this Law, unless the context otherwise requires –
- “certificate” shall be construed in accordance with Article 8;
 - “Chairman” means the Chairman of the Commission;
 - “Commission” means the Health and Social Care Commission established by Article 35;
 - “discretionary condition” means a condition imposed under Article 12;
 - “fit person”, in relation to a provider or manager, shall be construed in accordance with Article 10;
 - “health care” includes all forms of health care (including nursing care) provided for individuals, whether relating to physical or mental health, and also includes procedures that are similar to forms of medical or surgical care but are not provided in connection with a medical condition;
 - “health or social care” means health care or social care;

“health care associated infection” means any infection to which an individual may be exposed or made susceptible (or more susceptible) in circumstances where –

- (a) health or social care is being, or has been, provided to that or any other individual; and
- (b) the risk of exposure to the infection, or of susceptibility (or increased susceptibility) to it, is directly or in-directly attributable to the provision of that care,

but does not include an infection to which the individual is deliberately exposed as part of any health care;

“inspection” means an inspection under Part 5;

“inspector” means a person appointed as such under Article 24;

“mandatory condition” means the condition in Article 11(1) or any condition imposed in accordance with Regulations made under Article 11(3);

“medical practitioner” means a person registered as a medical practitioner under the Medical Practitioners (Registration) (Jersey) Law 1960¹;

“nurse” means a person registered as a nurse under the Health Care (Registration) (Jersey) Law 1995²;

“nursing care” means services that, by reason of their nature and circumstances, including the need for clinical judgement, should be provided by a nurse, including –

- (a) providing care;
- (b) assessing, planning and evaluating care needs or the provision of care; and
- (c) supervising or delegating the provision of care;

“personal care” means assistance in daily living that does not need to be provided by a nurse, being –

- (a) practical assistance with daily tasks, such as eating, washing and dressing; or
- (b) prompting a person to perform daily tasks;

“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;

“premises” includes any vehicle or vessel;

“registered” means registered under this Law in relation to a regulated activity;

“registered person” means a registered provider or registered manager;

“regulated activity” has the meaning given in Article 2;

“social care” includes all forms of personal care and other practical assistance, and all forms of personal support, provided for individuals who, by reason of their age, illness, disability, pregnancy, childbirth,

dependence on alcohol or drugs, or by any other reason, are in need of such care, assistance or support;

“States’ employee” has the same meaning as in the Employment of States of Jersey Employees (Jersey) Law 2005³;

“worker” means –

- (a) an employee;
 - (b) a person working under a contract for services (whether entered into with that person or another person);
 - (c) a person working on a work experience placement; or
 - (d) a volunteer.
- (2) The States may, by Regulations, amend, in paragraph (1), the definitions “health care”, “nursing care”, “personal care”, “personal support” and “social care”.

2 Regulated activities

- (1) Schedule 1 has effect to describe activities that are regulated activities and circumstances in which any activity is excepted from being a regulated activity.
- (2) The States may by Regulations amend Schedule 1.
- (3) Regulations under paragraph (2) may add or amend activities only if the activity involves or is connected with the provision of health or social care.
- (4) For the purposes of paragraph (3), the following activities are examples of activities connected with the provision of health or social care –
 - (a) the supply of workers who are to provide such care;
 - (b) the provision of transport or accommodation for those who require such care; and
 - (c) the provision of advice in respect of such care.
- (5) Regulations under paragraph (2) may repeal or amend any other enactment consequentially upon the addition of an activity to, or variation of an activity in, Schedule 1.

PART 2

REQUIREMENT AND PROCEDURE FOR REGISTRATION

3 Requirement to be registered to carry on, or act as manager in relation to, regulated activity

- (1) A person must not carry on a regulated activity unless he or she is registered as the provider of the activity.

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- (2) A person must not act as the manager in relation to a regulated activity unless he or she is an individual registered as the manager in relation to that activity.
 - (3) A person must not –
 - (a) hold himself or herself out as being registered as a provider of a regulated activity, when he or she is not so registered;
 - (b) by his or her omission, allow another person to believe that he or she is registered as the provider of a regulated activity, when he or she is not so registered;
 - (c) hold himself or herself out as being registered as the manager in relation to a regulated activity, when he or she is not so registered;
 - (d) by his or her omission, allow another person to believe that he or she is registered as the manager in relation to a regulated activity, when he or she is not;
 - (e) hold out premises as being premises on which a person is permitted, by virtue of the conditions of his or her registration in relation to a regulated activity, to carry on the regulated activity, when the use of the premises is not so permitted; or
 - (f) by his or her omission, allow another person to believe that premises are premises on which a person is permitted, by virtue of the conditions of his or her registration in relation to a regulated activity, to carry on the regulated activity, when the use of the premises is not so permitted.
 - (4) A person who contravenes paragraph (1) or (2) is guilty of an offence and liable to imprisonment for a term of 12 months and to a fine.
 - (5) A person who contravenes paragraph (3) is guilty of an offence and liable to a fine of level 4 on the standard scale.
 - (6) The States may by Regulations make provision for the purposes of this Law for determining, in relation to a regulated activity carried on by 2 or more persons acting in different capacities, which of them is to be regarded as the person who carries on the regulated activity.
 - (7) Where a regulated activity is carried on by a Minister, the following person, instead of the Minister, shall be treated, for the purposes of this Law, as the person carrying on the activity –
 - (a) such person as is specified, in relation to the activity, by Regulations made by the States; or
 - (b) if no-one is specified under sub-paragraph (a) in relation to the activity, the person who, in accordance with Article 37 of the Public Finances (Jersey) Law 2005⁴, is the accounting officer for the Ministry.

4 Application for registration as provider or manager

- (1) A person who wishes to carry on a regulated activity must apply to the Commission to be registered as a provider in respect of that activity.

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- (2) An application for registration of an individual as the manager in relation to the carrying on of a regulated activity must be made by the person who is or wishes to be registered as the provider in respect of that activity.
 - (3) An application under paragraph (1) or (2) must –
 - (a) be in the form required by the Commission;
 - (b) contain the information required by the Commission in order to determine the application;
 - (c) be accompanied by the documents required by the Commission in order to determine the application;
 - (d) be accompanied by the application fee; and
 - (e) contain a declaration, signed by the person wishing to carry on the regulated activity and, if the application is for registration of a manager, by that individual, that the information contained in the application is, and the documents accompanying the application are, true and complete, to the best of the declarant's knowledge and belief.
 - (4) An application may, with the permission of the Commission, be made for registration of a person as the provider of, or the manager in relation to –
 - (a) 2 or more regulated activities; or
 - (b) a regulated activity carried on at 2 or more premises.
 - (5) The Commission shall publish application forms for use under this Article, or otherwise make them available to prospective applicants.
 - (6) The Commission may, for the purposes of deciding an application –
 - (a) request that an applicant provide further information and documents; and
 - (b) arrange an inspection.
 - (7) The Commission is not required to make a decision in respect of an application until –
 - (a) all the information and documents required by the Commission have been provided;
 - (b) the application fee has been paid; and
 - (c) any inspection required by the Commission under paragraph (6) has been carried out.

5 Grant or refusal of application

- (1) The Commission must grant an application made under Article 4 for the registration of a person as the provider in relation to a regulated activity if the Commission is satisfied –
 - (a) that the person is a fit person to carry on the regulated activity;
 - (b) that the condition in Article 11(1) is complied with; and
 - (c) as to the matter in paragraph (3).
- (2) The Commission must grant an application made under Article 4 for the registration of an individual as the manager in relation to the carrying on

of a regulated activity by a registered provider if the Commission is satisfied –

- (a) that the individual is a fit person to be a manager in relation to the carrying on of the regulated activity; and
 - (b) as to the matter in paragraph (3).
- (3) The requirements specified in Regulations under Article 14 must be, and must continue to be, complied with, to the extent that they apply to the carrying on of the regulated activity.
 - (4) In deciding whether paragraph (3) is satisfied, the Commission shall have regard to any standards for compliance issued under Article 15, to the extent that they apply to the carrying on of the regulated activity.
 - (5) The Commission must refuse an application made under Article 4 if it is not satisfied as to the matters described in this Article.

6 Notice of intention to refuse application or impose conditions

- (1) This Article applies where the Commission proposes to –
 - (a) refuse an application;
 - (b) impose mandatory conditions on registration on terms that differ from those (if any) proposed in the application; or
 - (c) impose discretionary conditions.
- (2) The Commission must notify the applicant, in writing, of its proposal and the reasons for it.
- (3) Where the proposal relates to the registration of a manager, the Commission must also notify that individual, in writing, of its proposal and the reasons for it.
- (4) A person notified under this Article may make representations, in writing, to the Commission in respect of the proposal.
- (5) The representations must be made no later than 14 days after the notice is given.
- (6) The Commission, in reaching its decision, must have regard to any representations made in accordance with paragraph (4) and (5).
- (7) If the person notified under this Article or, if more than one, each of the persons notified under this Article, informs the Commission that he or she does not intend to make any representations, or that he or she accepts the Commission's proposal, the Commission need not wait until the expiry of the period described in paragraph (5) before reaching its decision.

7 Notification of grant or refusal of application

- (1) The Commission must, upon granting an application, enter the particulars in the register in accordance with Article 8.
- (2) Where the application is for the registration of a provider, the Commission must also issue a certificate to the provider.

- (3) The Commission must, upon refusing an application, give written notice of the refusal, and the reasons for it, to the applicant.
- (4) The Commission must also, when issuing a certificate to an applicant or notifying an applicant of the refusal of his or her application, notify the applicant, in writing, of his or her rights of appeal under this Law against, as the case requires –
 - (a) the terms upon which any conditions are imposed upon the registration; or
 - (b) the refusal of registration.

8 Keeping of register and issue of certificates

- (1) The Commission shall keep a register of persons registered under this Law.
- (2) The following particulars shall be entered in the register in respect of a provider registered to carry on a regulated activity and the manager registered in relation to that activity –
 - (a) the name and business address of the registered provider and the date the provider was registered;
 - (b) the names of –
 - (i) if the registered provider is a body corporate, its secretary, directors and any other officers,
 - (ii) if the registered provider is a partnership, the names of its partners,
 - (iii) if the registered provider is a trust, the names of the trustees,
 - (iv) if the registered provider is a foundation, the name of its guardian and council members,
 - (v) if the registered provider is an unincorporated association, the members of its management committee or, if none, its members;
 - (c) the name of the registered manager and the date he or she was registered;
 - (d) the regulated activity; and
 - (e) the mandatory conditions and any discretionary conditions imposed upon the registration of the provider to carry on the activity and upon the registration of the manager in relation to the activity, and the date the conditions were imposed.
- (3) The Commission shall –
 - (a) make the register available for inspection, at reasonable hours, by members of the public; and
 - (b) upon payment of the relevant fee, provide a person with a copy of an entry in the register.
- (4) A certificate issued to a registered provider must state –
 - (a) the regulated activity or activities to which the registration relates;

- (b) the name of the registered provider;
 - (c) the name of the registered manager;
 - (d) the mandatory conditions imposed upon the carrying on of a regulated activity; and
 - (e) the date the certificate takes effect.
- (5) A certificate issued to a registered provider may also state any discretionary condition imposed upon the carrying on of a regulated activity.
- (6) If, at any time, there is a change in the particulars described in paragraph (4) or stated in a certificate under paragraph (5), the Commission shall issue a fresh certificate to the registered provider.
- (7) The Commission shall, if satisfied that a certificate has been lost or destroyed, and upon payment of the relevant fee, issue a replacement certificate to the registered provider.

9 Annual fee

- (1) A registered person must, each year, by such date as is specified in Regulations, pay a fee to the Commission for the person's name to be kept on the register.
- (2) A registered person who does not pay the fee by the date specified must also pay a surcharge to the Commission.
- (3) A failure to pay the fee and any surcharge is a ground for cancellation of the person's registration.

PART 3

CONDITIONS AND REQUIREMENTS OF REGISTRATION

10 Provider and manager must be fit persons

The States may, by Regulations, specify criteria to be applied and requirements to be complied with by the Commission in determining, for the purposes of this Law –

- (a) whether a person is a fit person to be registered as the provider of a regulated activity;
- (b) whether a person is a fit person to be registered as a manager in relation to a regulated activity.

11 Mandatory conditions of registration

- (1) It shall be a condition of registration of a provider in relation to a regulated activity that there is –
- (a) an individual who is registered as the manager in relation to the carrying on of that activity by the provider; or

- (b) in a case where Regulations under paragraph (2)(b) require more than one manager to be registered, such numbers of individuals registered as managers in relation to the carrying on of that activity by the provider as the Regulations require.
- (2) The States may by Regulations specify, for the purposes of paragraph (1), circumstances –
 - (a) in which an individual who is a registered provider in relation to a regulated activity may also be the registered manager in relation to the carrying on of that activity;
 - (b) in which a registered provider must have more than one registered manager in relation to a regulated activity.
- (3) The States may by Regulations specify, in relation to any regulated activity, further conditions that the Commission must impose upon the registration of a provider or manager in relation to the activity.
- (4) The conditions that may be specified by Regulations made under paragraph (3) include but are not limited to –
 - (a) a restriction on the numbers and descriptions of individuals for whom a regulated activity may be provided at any place or premises or otherwise, whether individuals are described by age, physical or mental health or otherwise; and
 - (b) the premises at which any regulated activity may be provided.

12 Discretionary conditions of registration

- (1) The Commission may impose such conditions upon the registration of a provider or manager as it thinks appropriate to ensure that the needs of users of the regulated activity to which the registration relates are met.
- (2) The conditions that the Commission may impose under this Article include, but are not limited to –
 - (a) a requirement that a registered manager must complete specified training or obtain a specified qualification;
 - (b) a requirement that alterations are made to any premises on which the regulated activity is to be carried on; and
 - (c) the imposition of minimum requirements as to the numbers, qualifications and training of the workers used to deliver the regulated activity.
- (3) A condition may be expressed –
 - (a) to apply indefinitely or until a specified date or occurrence;
 - (b) so as to require that any action required by the condition is completed by a specified date or occurrence.

13 Offence of failure to comply with conditions of registration

A registered person who fails without reasonable excuse to comply with any discretionary condition or mandatory condition imposed on his or her registration is guilty of an offence and liable to a fine of £50,000.

14 Requirements in respect of regulated activities

- (1) The States may by Regulations specify requirements that must be complied with by either or both of the registered provider and registered manager in relation to all regulated activities or specified regulated activities.
- (2) Regulations under this Article may in particular make provision with a view to –
 - (a) securing that any service provided in the carrying on of a regulated activity is of appropriate quality;
 - (b) securing the health, safety and welfare of persons for whom any such service is provided;
 - (c) securing –
 - (i) that the particular needs (whether educational, treatment, supervisory or otherwise) of each person for whom any such service is provided are identified, and
 - (ii) that the service provided meets each person's particular needs; and
 - (d) securing that workers and premises used to provide such service and that any care and treatment (including assessment of a person's care and treatment needs) administered as part of such service are of an appropriate quality, fit for purpose and safe.
- (3) Regulations under this Article may in particular –
 - (a) make provision as to the manner in which a regulated activity is carried on;
 - (b) make provision as to who is a fit person to be a worker in any service provided in the carrying on of a regulated activity;
 - (c) make provision as to the recruitment, management and training of workers who work in any service provided in the carrying on of a regulated activity;
 - (d) make provision as to the fitness of premises;
 - (e) impose requirements as to the financial position of a registered provider;
 - (f) impose requirements as to the keeping of records and accounts;
 - (g) impose requirements for the display or making available of a certificate issued to a registered provider;
 - (h) impose requirements as to the provision of information –
 - (i) whether periodically or upon the occurrence of any specified event, and
 - (ii) whether to the Commission, to persons to whom any service is provided or to any other persons;
 - (i) impose requirements as to the publication of information as to any charges made for the provision of any service provided in the carrying on of a regulated activity;
 - (j) impose requirements as to the review of the quality of any service provided in the carrying on of a regulated activity, as to the

-
- preparation of reports of such reviews, and as to the publication of such reports; and
- (k) impose requirements as to the handling of complaints and disputes and the application of lessons learnt from them.
- (4) Regulations made under this Article by virtue of paragraph (3)(a) may in particular include provision as to the control and restraint, in appropriate cases, of persons receiving health or social care or other services in connection with the carrying on of a regulated activity.
- (5) Regulations made under this Article may make provision for the prevention and control of health care associated infections and may include such provision as the States consider appropriate for the purpose of safeguarding individuals (whether receiving health or social care or otherwise) from the risk, or any increased risk, of being exposed to health care associated infections or of being made susceptible, or more susceptible, to them.
- (6) Regulations under this Article may provide for a failure to comply with any requirement in the Regulations to be an offence liable to a fine up to £50,000.
- (7) Regulations under this Article may –
- (a) empower the Commission to serve a notice (an “improvement notice”) on either or both of a registered provider and registered manager in relation to a regulated activity;
- (b) specify the circumstances in which an improvement notice may be served;
- (c) specify the requirements that may be imposed on either or both of a registered provider and registered manager by an improvement notice;
- (d) specify a procedure for the preparation, completion and service of an improvement notice;
- (e) confer a right of appeal against an improvement notice on a person on whom a notice is served; and
- (f) specify the consequences of a failure to comply with an improvement notice.
- (8) Regulations under this Article may provide that a person cannot be prosecuted for a failure to comply with any requirement in the Regulations unless –
- (a) an improvement notice has been served in respect of the failure;
- (b) the time by which that notice must be complied with has passed; and
- (c) the improvements required by that notice have not been effected.
- (9) Before lodging Regulations under this Article, a Minister, in addition to consulting in accordance with Article 39, must consult with such persons or bodies as appear to the Minister to be representative of persons who would be affected by the proposed Regulations.

15 Standards for compliance with requirements

- (1) The Commission may –
 - (a) prepare and publish standards for compliance with requirements imposed by Regulations made under Article 14; and
 - (b) keep standards for such compliance under review and, as necessary, replace, revoke or amend them.
- (2) The Commission must, before publishing a standard for compliance or an amendment of a standard for compliance, or before revoking a standard for compliance, consult with such persons or bodies as appear to the Commission to be representative of persons who would be affected by the proposal.
- (3) Standards for compliance published under paragraph (1) shall be taken into account –
 - (a) by the Commission, when making any decision under this Law;
 - (b) by the Bailiff and the Royal Court, when making a decision under Article 21;
 - (c) by a court, when hearing any appeal against such a decision; and
 - (d) in any proceedings for an offence under this Law.
- (4) A standard for compliance is admissible in evidence in any criminal or civil proceedings that do not arise under this Law.
- (5) A failure to observe a standard for compliance does not, of itself, make a person liable to any criminal or civil proceedings.

16 Arrangements during absence of manager

- (1) The States may by Regulations make provision as to the carrying on of a regulated activity by a registered provider –
 - (a) when the registered manager is absent or incapacitated or has died;
 - (b) when the registration of the manager in relation to the activity is suspended or has been cancelled;
 - (c) when the registered manager has been dismissed by the registered provider; or
 - (d) in any other circumstance when the individual who is or was the registered manager is no longer discharging the duties of that role.
- (2) The Regulations may further make provision as to circumstances in which another person may discharge the duties of the registered manager –
 - (a) without that person committing an offence under Article 3(2); and
 - (b) without the registered provider being in breach of Article 11(1).
- (3) The Regulations may further provide that this Law and Regulations made under it shall apply to a person discharging the duties of a registered manager in accordance with provision made under paragraph (2) as if the person was registered.

PART 4**VARIATION OF CONDITIONS, SUSPENSION AND CANCELLATION****17 Variation of conditions**

- (1) The Commission may, of its own volition or upon the written application of a registered person under paragraph (2), decide to –
 - (a) vary the terms of a mandatory condition; or
 - (b) vary, add to or remove discretionary conditions, applicable to that person's registration in relation to a regulated activity.
- (2) A registered person may apply to Commission for –
 - (a) the terms of a mandatory condition to be varied; or
 - (b) any discretionary condition to be varied or removed, in relation to his or her registration in relation to a regulated activity.
- (3) A variation of the terms of a mandatory condition or the variation, addition or removal of a discretionary condition may be expressed –
 - (a) to apply indefinitely or until a specified date or occurrence;
 - (b) so as to require that any action required by the terms of the mandatory condition or by the discretionary condition is completed by a specified date or occurrence.
- (4) An application under paragraph (2) must be –
 - (a) in such form and provide, or be accompanied by, such information and documents as the Commission may require; and
 - (b) accompanied by the application fee.
- (5) Paragraph (4)(a) does not prevent the Commission requesting that the registered person provide further information or documents in support of the application.
- (6) The Commission is not required to consider an application under paragraph (2) until –
 - (a) all the information and the documents required or requested have been provided;
 - (b) any inspection required by the Commission for the purpose of considering the application has been completed; and
 - (c) the application fee has been paid.
- (7) Before making a decision under paragraph (1) Commission must notify the registered person, in writing, of its proposal and the reasons for it.
- (8) A person notified under paragraph (7) may make representations, in writing, to the Commission in respect of the proposal.
- (9) The representations must be made no later than 14 days after the notice is given under paragraph (7).
- (10) The Commission, in reaching its decision, must have regard to any representations made in accordance with paragraphs (8) and (9).

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- (11) Paragraphs (7) to (10) do not apply where the alteration, variation or removal is made upon the application of the registered person and as requested in the application.
 - (12) If a registered person notified under paragraph (7) informs the Commission that he or she does not intend to make any representations, or that he or she accepts the Commission's proposal, the Commission need not wait until the expiry of the period described in paragraph (9) before reaching its decision.
 - (13) The Commission must –
 - (a) notify the registered person of a decision under this Article and the date it takes effect; and
 - (b) if the decision is made otherwise than upon the application of the registered person and as requested in the decision, notify the registered person of his or her rights of appeal against the decision.
 - (14) A decision under this Article cannot, without the agreement of the registered person, take effect earlier than the day on which the right to appeal against the decision is exhausted.
 - (15) In this Article "mandatory condition" means a condition imposed in accordance with Regulations made under Article 11(3).

18 Expedited procedure for variation of conditions

- (1) Where the Commission is of the opinion that to delay the imposition or variation of a condition under Article 17 would be a serious risk to the life, health or well-being of an individual, the Commission may impose or vary the condition –
 - (a) without following the procedure in paragraphs (7) to (10) of that Article; and
 - (b) notwithstanding Article 17(14), with immediate effect.
- (2) A notice of a decision under Article 17 that is made in accordance with paragraph (1) of this Article must, in addition to stating the reasons for the decision, state the Commission's reasons for making the decision in accordance with this Article.

19 Suspension of registration of manager

- (1) The Commission may suspend the registration of a manager in relation to a regulated activity, for a period of up to 3 months, if the Commission has reason to suspect that –
 - (a) the manager is not a fit person;
 - (b) any condition imposed upon the registration of the manager or the provider in relation to a regulated activity has not been complied with; or
 - (c) the manager has not complied with any requirement relating to the regulated activity that he or she is required by Regulations under Article 14 to comply with.

- (2) The Commission may further decide, on one or more occasions, to extend the period of a person's suspension under paragraph (1) by up to 3 months.
- (3) Before making a decision to suspend the registration of a manager, or to extend the period of a person's suspension, the Commission must notify, in writing, both the manager and the registered provider of its proposal and the reasons for it.
- (4) A person notified under paragraph (3) may make representations, in writing, to the Commission in respect of the proposal.
- (5) The representations must be made no later than 14 days after the notice is given.
- (6) The Commission, in reaching its decision, must have regard to any representations made in accordance with paragraphs (4) and (5).
- (7) If each of the registered persons notified under paragraph (3) informs the Commission that he or she does not intend to make any representations, or that he or she accepts the Commission's proposal, the Commission need not wait until the expiry of the period described in paragraph (5) before reaching its decision.
- (8) The Commission shall give the registered manager and the registered provider notice of a decision under paragraph (1) or (2).
- (9) A notice under paragraph (8) must –
 - (a) give reasons for the decision;
 - (b) state when the decision takes effect; and
 - (c) explain the provider and manager's rights of appeal.
- (10) Notwithstanding paragraphs (3) to (6) but subject to paragraph (11), the Commission may decide, under paragraph (1), to suspend a registered manager with immediate effect, for an initial period not exceeding 21 days, where it appears to the Commission that there will be serious risk to the life, health or well-being of an individual if such suspension does not have immediate effect.
- (11) Where the Commission has suspended a registered manager with immediate effect –
 - (a) the persons notified in accordance with paragraph (10) may, no later than 14 days after being notified, make representations, in writing, to the Commission in respect of the decision; and
 - (b) the Commission, in reaching a decision whether to extend the period of suspension or whether to terminate it under paragraph (12), must have regard to any representations made in accordance with sub-paragraph (a).
- (12) The Commission may terminate an initial period of suspension that was imposed, under paragraphs (1) and (10), with immediate effect.
- (13) During the period for which an individual's registration as a manager is suspended, this Law shall apply as if the individual were not so registered, even though his or her name remains on the register.

20 Cancellation of registration

- (1) The Commission may cancel the registration of a registered person in relation to a regulated activity if –
 - (a) the person has failed to comply with any mandatory condition imposed upon his or her registration in relation to the activity;
 - (b) the person has failed to comply with any discretionary condition imposed upon his or her registration in relation to the activity;
 - (c) the person is not a fit person;
 - (d) the person has failed to comply with any requirement in Regulations made under Article 14, whether in relation to the regulated activity in question or in relation to another regulated activity, and whether or not the person has been convicted of an offence for such failure;
 - (e) the person has been convicted of an offence under this Law or Regulations made under Article 14, whether or not in relation to the regulated activity; or
 - (f) the person has failed to pay an annual fee and any surcharge due in respect of his or her registration under Article 9.
- (2) The Commission may cancel the registration of a manager in relation to a regulated activity if there ceases to be a provider registered to carry on that activity.
- (3) Before making a decision to cancel the registration of registered person in relation to a regulated activity, Commission must notify, in writing, both the provider and the manager in relation to that activity of its proposal and the reasons for it.
- (4) A person notified under paragraph (3) may make representations, in writing, to the Commission in respect of the proposal.
- (5) The representations must be made no later than 14 days after the notice is given.
- (6) The Commission, in reaching its decision, must have regard to any representations made in accordance with paragraph (4) and (5).
- (7) If each of the registered persons notified under paragraph (3) informs the Commission that he or she does not intend to make any representations, or that he or she accepts the Commission's proposal, the Commission need not wait until the expiry of the period described in paragraph (5) before reaching its decision.
- (8) The Commission must give the registered person written notice of the cancellation of his or her registration in relation to a regulated activity.
- (9) A notice under paragraph (8) must –
 - (a) give the reasons for the decision;
 - (b) state when the decision takes effect; and
 - (c) explain the provider or manager's rights of appeal.
- (10) The cancellation of a person's registration cannot, without his or her agreement, take effect before his or her rights of appeal are exhausted.

- (11) If the Commission gives notice of cancellation to a provider in respect of the carrying on of a regulated activity, the Commission must, at the same time, give a copy of the notice to the manager registered in relation to that activity.
- (12) If the Commission gives notice of cancellation to a manager in relation to a regulated activity, the Commission must, at the same time, give a copy of the notice to the provider registered to carry on that activity.
- (13) Paragraphs (11) and (12) do not apply if the same individual is both the provider and the manager.

21 Immediate cancellation of registration

- (1) The Commission may apply to the Bailiff for a provisional order for the immediate cancellation of the registration of a registered person in relation to a regulated activity.
- (2) An application under paragraph (1) shall be made ex parte and shall be supported by an affidavit made on behalf of the Commission, stating the reasons for the application.
- (3) The Bailiff may grant an application under paragraph (1) if –
 - (a) he or she is satisfied that there are grounds for such cancellation under Article 20; and
 - (b) it appears to him or her that there is prima facie evidence that there will be serious risk to the life, health or well-being of an individual if such cancellation does not have immediate effect.
- (4) A provisional order made by the Bailiff under this Article shall be of immediate effect.
- (5) If the Bailiff makes a provisional order under this Article –
 - (a) the Bailiff must refer the provisional order to the Royal Court for consideration; and
 - (b) both the registered provider of, and the registered manager in relation to, the regulated activity must be served with –
 - (i) notice of the making of the order and of its terms,
 - (ii) a copy of the affidavit referred to in paragraph (2), and
 - (iii) notice of the date on which the provisional order shall be considered by the Royal Court.
- (6) On considering the provisional order for cancellation of registration, the Royal Court may –
 - (a) confirm, vary or cancel the order; and
 - (b) make such other order as it think in the interests of any user of the regulated activity to which the cancellation of registration relates.

22 Report on essential services

- (1) In this Article “essential service” means a regulated activity –

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- (a) which is carried on by a Minister; and
 - (b) which is not carried on by any other person.
 - (2) Where the Commission considers that there are grounds for cancellation of registration of the provider in relation to an essential service the Commission may prepare a report under this Article.
 - (3) Before making a report under paragraph (8), the Commission must send a draft of the report to the Minister, the registered provider and the registered manager.
 - (4) A person notified under paragraph (3) may make representations, in writing, to the Commissioner, in respect of the draft report.
 - (5) The representations must be made no later than 28 days after the draft report is sent under paragraph (3).
 - (6) The Commission, in completing the report, must have regard to any representations made in accordance with paragraphs (4) and (5).
 - (7) If each of the persons notified under paragraph (3) informs the Commission that he or she does not intend to make any representations, the Commission need not wait until the expiry of the period described in paragraph (5) before completing the report.
 - (8) A report under this Article in relation to an essential service –
 - (a) shall be made to the Council of Ministers;
 - (b) shall specify the grounds on which the report is made;
 - (c) shall recommend actions that should be taken in relation to the essential service.
 - (9) The Commission shall publish the report, subject to the restrictions in Part 6.

23 Cancellation of registration upon request

- (1) A registered person may apply, in writing, to the Commission for his or her registration in relation to a regulated activity to be cancelled.
- (2) A registered provider who makes an application under paragraph (1) must give a copy of the application to the manager registered in relation to the activity.
- (3) A registered manager who makes an application under paragraph (1) must give a copy of the application to the registered provider who carries on the activity.
- (4) Paragraphs (2) and (3) do not apply if the same individual is both the provider and the manager in relation to the activity.
- (5) The Commission may decide to refuse an application under paragraph (1) or defer granting such an application if, at the time it is made, the Commission suspects that the person making the application may have failed to comply with any mandatory or discretionary condition imposed on his or her registration or any requirement imposed by Regulations under Article 14.

PART 5**INSPECTIONS, INVESTIGATIONS AND COMPLAINTS****24 Inspectors**

- (1) The Commission may appoint one or more persons as inspectors for the purposes of this Law.
- (2) The Commission may only appoint a person as an inspector if the Commission is satisfied that the person has the appropriate qualifications and knowledge to conduct inspections under this Part.

25 Requirements for inspection of premises

- (1) The Commission may, for the purposes of the discharge of its functions under this Law or Regulations made under Article 30(3), direct an inspector to conduct an inspection of premises on which a regulated activity is, or is believed to be, carried on.
- (2) An inspector shall, as directed by the Commission under paragraph (1) –
 - (a) conduct inspections of premises on which a regulated activity is, or is believed to be, carried on; and
 - (b) submit his or her findings upon any inspection to the Commission together with an inventory of any documents, records or other items seized by him or her in exercise of the powers conferred by Article 26.

26 Powers of inspection

- (1) An inspector directed under Article 25 to conduct an inspection of premises may enter and inspect those premises, in accordance with this Article for the purpose of checking –
 - (a) compliance with the requirements imposed by or under this Law in relation to any regulated activity carried on on premises; and
 - (b) the meeting of standards set under Article 15 in relation to such requirements.
- (2) An inspector shall not enter a private dwelling without the prior consent of an occupier.
- (3) Notwithstanding paragraph (2), if the sole occupier of a private dwelling is unable to give his or her consent, by reason of mental or physical incapacity, an inspector may enter the dwelling if he or she is of the opinion that it is in the best interests of the occupier that the inspection is conducted.
- (4) An inspector shall, if requested by an owner or occupier of premises, produce proof of his or her authority to conduct an inspection of those premises.
- (5) An inspector conducting an inspection of premises –

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- (a) may be accompanied by a police officer and such other persons as he or she considers necessary for the purposes of the inspection; and
 - (b) may have with him or her such equipment as he or she considers necessary for the conduct of the inspection.
- (6) An inspector conducting an inspection of premises may –
- (a) make any examination into –
 - (i) the state of the premises,
 - (ii) the management of the premises,
 - (iii) the treatment of persons receiving care at, or accommodated on, the premises;
 - (b) inspect and take copies of any documents or other records;
 - (c) have access to, and check the operation of, any computer, and any associated apparatus or material which is or has been in use in connection with any documents or records;
 - (d) inspect any other item; and
 - (e) seize and remove from the premises any documents, records and other items.
- (7) The power of inspection in paragraph (6)(b) includes the power –
- (a) to require any person holding or accountable for documents or records (whether or not kept at the premises) to produce them for inspection at the premises; and
 - (b) to require any records which are kept by means of a computer to be produced in a form in which they are legible and can be taken away.
- (8) An inspector conducting an inspection of premises may interview, in private –
- (a) the provider of any regulated activity carried on, or believed to be carried on, on the premises;
 - (b) the manager in relation to any regulated activity carried on, or believed to be carried on, on the premises;
 - (c) any worker working on the premises;
 - (d) any person receiving care at, or accommodated on, the premises, if he or she consents to the interview.
- (9) The power under paragraph (8)(a) to interview a registered provider includes, in the case of a body corporate, limited liability partnership or separate limited partnership, the power to interview, in private, any director, manager, secretary, partner or other similar officer of the body corporate or partnership.
- (10) An inspector conducting an inspection of premises may examine in private any person receiving care at, or accommodated on, the premises if –
- (a) the inspector is a medical practitioner or nurse;

- (b) the inspector has reason to believe that the person to be examined is not receiving proper care or, as the case requires, is not properly accommodated, at the premises; and
 - (c) the person to be examined –
 - (i) is capable of giving consent to the examination, and does so, or
 - (ii) is incapable of giving consent to the examination.
- (11) An inspector may –
- (a) require any person to afford the inspector such facilities and assistance with respect to matters within the person’s control as are necessary to enable the inspector to conduct the inspection; and
 - (b) take such measurements and photographs, and make such recordings, as the inspector considers necessary for the purposes of the inspection.
- (12) In this Article, “documents or records” includes a reference to personal and medical records.
- (13) For the purposes of paragraph (3), in determining whether a property is in sole occupation, there shall be disregarded any person who resides at the property for the purpose of providing a regulated activity to the occupier of the property.

27 Report following inspection

- (1) The Commission shall prepare a report following an inspection that is carried out pursuant to a requirement imposed by Regulations under Article 30(3).
- (2) The report shall include the Commission’s conclusions as to whether there has been any failure to comply with mandatory conditions, discretionary conditions or requirements imposed by or under this Law and as to whether standards set under Article 15 have been met.
- (3) The Commission shall, before finalizing a report, send a copy of the draft report to the registered provider carrying on the regulated activity under inspection and the registered manager in relation to that activity.
- (4) The registered provider and the registered manager may each, within the period of 28 days, submit a response to the draft.
- (5) If a response submitted under paragraph (4) identifies an error of fact in the draft report, and the inspector accepts the error, the inspector must correct the error before finalizing the report.
- (6) Once the report is finalized, the Commission shall –
 - (a) send a copy of the report and the inventory to the registered provider and registered manager; and
 - (b) make arrangements for the publication of the report in such manner as the Commission thinks fit.
- (7) The Commission may, before complying with paragraph (6)(b), omit from the report any confidential information.

- (8) The Commission shall not publish any report prepared following an inspection carried out under Article 4(6)(b) or 17(6)(b).

28 Power to require documents and information

- (1) The Commission may require a registered provider or registered manager to provide the Commission with such documents, information and records as the Commission considers it necessary or expedient to have for the purpose of the discharge of its functions under this Law or Regulations made under Article 30(3).
- (2) The power in paragraph (1) to require the provision of information, documents or records includes, in relation to information, documents or records kept by means of a computer or other electronic device for the storage of information, power to require the provision of the information, documents or records in legible form.
- (3) In this Article, “documents or records” includes a reference to personal and medical records.

29 Offence of obstruction or non-compliance

A person who, without reasonable excuse –

- (a) obstructs the conduct of an inspection under this Part; or
- (b) fails, without reasonable excuse, to comply with a requirement imposed under Article 26 or Article 28,

is guilty of an offence and liable to a fine of level 4 on the standard scale.

30 Complaints and further requirements as to inspections

- (1) The Commission shall ensure that complaints concerning the carrying on of a regulated activity are dealt with and, if appropriate, investigated, whether by the Commission itself or by another person.
- (2) The Commission shall decide and publish its procedures for dealing with and investigating complaints.
- (3) The States may by Regulations require that the Commission carries out inspections of any regulated activity at such intervals, for such purposes, or upon the occurrence of such events, as are specified in the Regulations.

PART 6

USE OF INFORMATION

31 Offence of disclosing confidential personal information

- (1) This Article applies to personal confidential information, being information which –

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- (a) has been obtained by the Commission on terms, or in circumstances, requiring it to be held in confidence; and
 - (b) relates to and identifies an individual.
- (2) A person is guilty of an offence under this Article if, during the lifetime of an individual, the person knowingly or recklessly discloses personal confidential information that relates to that individual.
- (3) A person guilty of an offence under this Article is liable to a fine of level 4 on the standard scale.
- (4) For the purposes of paragraph (1)(b), information obtained by the Commission is to be treated as identifying an individual if the individual can be identified from a combination of –
- (a) that information; and
 - (b) other information obtained by the Commission.
- (5) References in this Article to information obtained by the Commission include references to information obtained by an inspector.

32 Defence to Article 31

- (1) It shall be a defence for a person charged with an offence under Article 31 to prove that, at the time of the alleged offence –
- (a) any of the circumstances in paragraph (2) applied in relation to the disclosure; or
 - (b) the person reasonably believed that any of them so applied.
- (2) The circumstances are –
- (a) that the disclosure was made in a form in which the individual to whom the information relates is not identified;
 - (b) that the disclosure was made with the consent of that individual;
 - (c) that the information disclosed had previously been lawfully disclosed to the public;
 - (d) that the disclosure was made in accordance with any enactment or order of a court;
 - (e) that the disclosure was necessary or expedient for the purposes of protecting the welfare of any individual; or
 - (f) that the disclosure was made to any person or body in circumstances where it was necessary or expedient for the person or body to have the information for the purpose of exercising functions of that person or body under any enactment.
- (3) It shall also be a defence for a person charged with an offence under Article 31 to prove that the disclosure was made –
- (a) for the purpose of facilitating the exercise of any of the Commission's functions;
 - (b) in connection with the investigation of a criminal offence (whether in Jersey or elsewhere); or

- (c) for the purpose of criminal proceedings (whether in Jersey or elsewhere).
- (4) If a person charged with an offence under Article 31 relies on a defence in paragraph (1) or (3), and evidence is adduced which is sufficient to raise an issue with respect to that defence, the court must assume that the defence is satisfied unless the prosecution proves beyond reasonable doubt that it is not.
- (5) For the purposes of paragraph (2)(a), information disclosed by a person is to be treated as being in a form in which an individual is identified if the individual can be identified from a combination of –
 - (a) the information; and
 - (b) other information disclosed by the person or by the Commission.

33 Use of information by Commission

- (1) Information obtained by, or documents or records produced to, the Commission in connection with any of its functions under this Law may be used by the Commission in connection with any of its other functions.
- (2) The reference in paragraph (1) to information obtained by, or documents or records produced to, the Commission includes a reference to information obtained by, or documents or records produced to, an inspector.

34 Permitted disclosure of information by Commission

- (1) Paragraphs (2) and (3) apply to information obtained by the Commission in the course of discharging any of its functions.
- (2) The Commission may disclose information that relates to an individual if –
 - (a) the disclosure is made in a form in which the individual is not identified; or
 - (b) the disclosure is made with the consent of the individual.
- (3) The Commission may disclose information (whether or not related to an individual) if –
 - (a) the information has previously been lawfully disclosed to the public;
 - (b) the disclosure is made in accordance with any enactment or order of a court;
 - (c) the disclosure is necessary or expedient for the purpose of protecting the welfare of any individual;
 - (d) the disclosure is made to any person or body in circumstances where it is necessary or expedient for the person or body to have the information for the purpose of exercising functions of that person or body under any enactment;
 - (e) the disclosure is made for the purpose of facilitating the exercise of any of the Commission's functions;

- (f) the disclosure is made in connection with the investigation of a criminal offence (whether in Jersey or elsewhere); or
 - (g) the disclosure is made for the purposes of criminal proceedings (whether in Jersey or elsewhere).
- (4) Paragraphs (2) and (3) have effect notwithstanding any rule of customary law which would otherwise prohibit or restrict the disclosure.
- (5) For the purposes of paragraph (2)(a), information disclosed by the Commission shall be treated as being in a form in which an individual is identified if the individual can be identified from a combination of –
- (a) the information; and
 - (b) other information disclosed by the Commission.
- (6) The reference in paragraph (1) to information obtained by the Commission includes a reference to information obtained by an inspector.

PART 7

ESTABLISHMENT AND GENERAL FUNCTIONS OF COMMISSION

35 Establishment of Health and Social Care Commission

- (1) There shall be a Health and Social Care Commission.
- (2) The Commission shall be a body corporate with perpetual succession.
- (3) The Commission shall consist of not less than 4 and not more than 8 Commissioners.
- (4) The States may by Regulations amend, in paragraph (3), the minimum and maximum number of Commissioners.
- (5) Schedule 2 has effect regarding the appointment of the Commissioners, the discharge of the functions of the Commission, and the resources and funding of the Commission.

36 Independence of Commission

The Commission is independent of the Minister for Health and Social Services, the Chief Minister and the States.

37 Functions of Commission

- (1) The Commission shall discharge the functions conferred on it by or under this Law and any other enactment.
- (2) The States may by Regulations transfer, from a Minister to the Commission, any function of regulating the provision of any description of health or social care.
- (3) Regulations under paragraph (2) may contain such incidental, consequential, supplemental and transitional provisions as may be

necessary or expedient for the purpose of giving full effect to the Regulations, including provisions –

- (a) for the transfer of any movable property held, any rights enjoyed and any liabilities (whether civil or criminal) incurred by the Minister in connection with any function transferred, including any such rights and liabilities in respect of which, at the time of transfer, no claim has been made or no proceedings have been commenced;
 - (b) for the carrying on and completion by or under the authority of the Commission of anything commenced, before the Regulations have effect, by or under authority of the Minister;
 - (c) for the amendment of enactments relating to any functions transferred;
 - (d) for the construction of enactments of the United Kingdom having effect in Jersey relating to any functions transferred;
 - (e) for the construction and adaptation of any instrument, contract or legal proceedings made or commenced before the Regulations have effect.
- (4) Only the Chief Minister may lodge Regulations under this Article.

38 Reports, information and advice

- (1) The Commission shall, when requested by the Chief Minister or the Minister for Health and Social Services –
 - (a) prepare a report upon an aspect of health and social care, as requested by that Minister; and
 - (b) submit the report to that Minister.
- (2) The Commission may prepare and publish report on aspects of health and social care, as it thinks fit.
- (3) The Commission shall publish information and give such advice to the public as the Commission considers appropriate regarding –
 - (a) the operation of this Law;
 - (b) any matters relating to the functions of the Commission under this Law or any other enactment.
- (4) The Commission may offer for sale information published under paragraph (3).
- (5) The Commission may, if it thinks fit, make a reasonable charge for advice given under paragraph (3) at the request of a member of the public.
- (6) The Commission may charge a member of the public a fee for the provision of a paper copy of a report published by it under this Law or any other enactment.

39 Minister's duty to consult Commission

- (1) A Minister –

- (a) shall consult the Commission upon any proposals for the preparation of Regulations under this Law or any other enactment concerning health or social care;
 - (b) may consult the Commission upon any other matter relating to the provision of health or social care.
- (2) The Commission shall advise a Minister when so consulted.

40 Limitations of liability

- (1) The Commission, the Commissioners, its employees and other appointees are not liable in damages for any act done in the discharge, or purported discharge, of any function of the Commission.
- (2) Paragraph (1) does not apply –
 - (a) if it was shown that the act was done in bad faith; or
 - (b) so as to prevent an award of damages made in respect of an act on the ground that the act was unlawful as a result of Article 7(1) of the Human Rights (Jersey) Law 2000⁵.
- (3) Except as any enactment or contract provides to the contrary, the Chief Minister, the Minister for Health and Social Services and the States are not liable for any act or omission, or debt or other obligation, of the Commission.

41 Fees and surcharge chargeable by Commission

- (1) Where a provision of this Law or any enactment made under it provides for the payment to the Commission of a fee, the fee that may be charged shall be the fee related to the provision that is for the time being –
 - (a) prescribed by Order made by the Chief Minister; or
 - (b) if a fee is not prescribed under sub-paragraph (a), published by the Commission in accordance with this Article.
- (2) The Chief Minister may prescribe fees, or the Commission may set fees, that are calculated by reference to any factor that is relevant to the carrying on of a regulated activity, including, but not limited to –
 - (a) the number and classes of persons for whom a service is provided; and
 - (b) the number and size of premises on which a service is provided.
- (3) The amount of the surcharge due under Article 9(2) shall be the amount for the time being –
 - (a) prescribed by Order made by the Chief Minister; or
 - (b) if the amount is not prescribed under sub-paragraph (a), published by the Commission in accordance with this Article.
- (4) The Commission must, at least 28 days before publishing a fee under paragraph (1)(b) or surcharge under paragraph (3)(b), publish a report that must include –

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- (a) details of the duty or power for or in respect of which any fee is to be determined;
 - (b) details of the proposed fee or surcharge.
 - (5) The Commission must, before publishing a fee under paragraph (1)(b) or a surcharge under paragraph (3)(b), consult the Chief Minister on the proposed fee or surcharge.
 - (6) A fee or surcharge determined by the Commission cannot take effect before it is published in accordance with this Article.
 - (7) In this Article “publish” means publish in a manner that is likely to bring it to the attention of those affected.
 - (8) Except as provided by this Article, nothing in this Article otherwise limits any right or power the Commission has to charge, recover and receive any fees, charges, costs, proceeds and other amounts.

42 Exemption from income tax

The income of the Commission is not liable to income tax under the Income Tax (Jersey) Law 1961⁶.

43 Requirement to prepare annual accounts and reports

- (1) The Commission shall, as soon as possible after the end of a year, prepare a report –
 - (a) providing information regarding the discharge of the Commission’s functions during the year; and
 - (b) containing a copy of the Commission’s accounts for the year.
- (2) The Commission shall –
 - (a) publish the report; and
 - (b) submit a copy of the report to the Chief Minister.
- (3) The Chief Minister shall present to the States a report submitted under paragraph (2)(b).

PART 8

APPEALS, GENERAL OFFENCES AND CLOSING

44 Rights of appeal

- (1) The following persons have a right of appeal to the Royal Court against a decision of the Commission under this Law –
 - (a) the provider and the manager, in relation to the refusal of any application under Article 5;
 - (b) the registered provider and the registered manager, in relation to –
 - (i) the terms on which any mandatory conditions imposed in accordance with Regulations made under Article 11(3) are

- imposed, or the terms on which any such conditions are varied under Article 17 (whether or not in accordance with Article 18),
- (ii) any discretionary conditions imposed or varied under Article 12 or under Article 17 (whether or not in accordance with Article 18),
 - (iii) a suspension under Article 19,
 - (iv) the cancellation of the provider's or manager's registration in relation to a regulated activity under Article 20,
 - (v) a refusal to remove the provider or manager from the register under Article 23 in relation to a regulated activity, or a decision to defer such removal.
- (2) An appeal under paragraph (1) must be made within the period of 28 days following the day the person having the right of appeal receives notice of the decision of the Commission.
 - (3) On hearing an appeal, the Royal Court may –
 - (a) confirm the decision of the Commission; or
 - (b) direct that the decision of the Commission shall not have effect.
 - (4) For the purposes of this Law, a person's rights of appeal are exhausted upon whichever is the earlier of –
 - (a) the expiry of the period within which an appeal must be made, without an appeal being made;
 - (b) the withdrawal of an appeal;
 - (c) the dismissal of the appeal without any further right of appeal.

45 Offence of providing false or misleading information, etc.

A person –

- (a) who, in connection with any application under this Law; or
- (b) who, when required by the Commission or an inspector under this Law to provide information, documents or records,

provides any information, document or record knowing or reckless as to whether it is false or misleading in a material particular is guilty of an offence and liable to imprisonment for a term of 12 months and a fine.

46 General provisions as to offences

- (1) Where an offence under this Law or Regulations made under it, committed by a body corporate, limited liability partnership or separate limited partnership, is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of –
 - (a) a person who is a partner of the partnership, or director, manager, secretary or other similar officer of the company; or
 - (b) any person purporting to act in any such capacity,

the person shall also be guilty of the offence and liable in the same manner as the partnership or body corporate to the penalty provided for that offence.

- (2) Where the affairs of a body corporate are managed by its members, paragraph (1) shall apply in relation to acts and defaults of a member in connection with his or her functions of management as if the member were a director of the body corporate.

47 Defence – due diligence

- (1) In any proceedings for an offence under this Law, subject to paragraph (2), it shall be a defence for the person charged to prove –
 - (a) that the commission of the offence was due to a mistake or to reliance on information supplied to him or her or to the act or default of another person, an accident or some other cause beyond his or her control; and
 - (b) that he or she took all reasonable precautions and exercised all due diligence to avoid the commission of such an offence by himself or herself or any person under his or her control.
- (2) If in any such case the defence provided by paragraph (1) involves the allegation that the commission of the offence was due to the act or default of another person or to reliance on information supplied by another person, the person charged shall not, without leave of the court, be entitled to rely on that defence unless, within a period ending 7 clear days before the hearing, he or she has served on the prosecution a notice in writing giving such information identifying or assisting in the identification of that other person as was then in his or her possession.

48 Service of documents

- (1) Any decision, notice or other document to be given or sent to person may be given or sent to the person by delivering it personally to him or her or by posting it to his or her proper address.
- (2) The proper address of a person in respect of whom an application has been made is the address given for the person in the application.
- (3) The proper address of a registered provider or registered manager is the address recorded in the register for that person.

49 Transitional and transfer Regulations

- (1) The States may by Regulations make such transitional and supplementary provisions as may be expedient for the purposes of the commencement of any provision of this Law or of any amendment to this Law.
- (2) The States may by Regulations provide for the employment of specified States' employees to be transferred to the Commission, on such terms and subject to such conditions as are imposed (which may include conditions imposed on the Commission) as ensure continuity of the employees'

conditions of employment and rights, including membership of any pension scheme.

- (3) The States may by Regulations provide for any description of information held by a Minister in connection with any function discharged by the Minister under an enactment amended or repealed by Regulations under Article 2, or amended by Regulations under Article 37, to be transferred to the Commission.

50 Citation and commencement

- (1) This Law may be cited as the Regulation of Care (Jersey) Law 201-.
- (2) The following provisions of this Law shall come into force on the day after this Law is registered –
 - (a) Article 1;
 - (b) Article 2 and Schedule 1;
 - (c) Article 3(6);
 - (d) Articles 10 and 11;
 - (e) Articles 14 to 16;
 - (f) Article 30(3);
 - (g) Part 7 and Schedule 2;
 - (h) Article 49; and
 - (i) this Article.
- (3) The remaining provisions of this Law shall come into force on such day or days as the States appoint by Act.

SCHEDULE 1

(Article 2(1))

REGULATED ACTIVITIES

SCHEDULE 2

(Article 35(5))

APPOINTMENT, RESOURCES AND FUNDING OF COMMISSION**1 Interpretation of Schedule 2**

In this Schedule, “JAC” means the Jersey Appointments Commission established by Article 17 of the Employment of States of Jersey Employees (Jersey) Law 2005⁷.

2 Appointment of Chairman of Commission

- (1) One of the Commissioners shall be the Chairman of the Commission.
- (2) The Chief Minister shall, after consulting with the Council of Ministers –
 - (a) select and appoint, by instrument in writing, a person to be a Commissioner and the Chairman of the Commission; and
 - (b) decide the duration of that person’s appointment as a Commissioner and Chairman.
- (3) The JAC shall oversee the selection.
- (4) The Chief Minister shall, at least 2 weeks before making the appointment under sub-paragraph (2), present to the States a notice of his or her selection and the intention to make the appointment.
- (5) A person may be appointed under this paragraph more than once.

3 Appointment of other Commissioners

- (1) The Chairman shall –
 - (a) subject to Article 35(3), decide the number of other Commissioners; and
 - (b) select and nominate persons to be the other Commissioners.
- (2) The Chairman must select and nominate persons who have such skills, knowledge or experience as he or she considers to be relevant to the Commission’s functions and, in particular, must select and nominate –
 - (a) at least one person who has proven capability in the delivery of health care;
 - (b) at least one person who has proven capability in the delivery of social care; and
 - (c) at least one person who has experience as a recipient of health or social care, whether personally or as a person who is connected with or responsible for, another person who receives such care or as a person who has been connected with or responsible for another person whilst that other person was receiving such care.
- (3) The JAC shall oversee the selections.

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- (4) The Chief Minister shall, by instruments in writing –
 - (a) appoint the persons so nominated as Commissioners; and
 - (b) specify the term of appointment of each Commissioner, which shall be not less than 3 and not more than 5 years.
 - (5) A person may be appointed under this paragraph more than once.

4 Disqualification for appointment

- (1) A person cannot be a Commissioner if he or she is a member of the States of Jersey or of the States of Guernsey or Tynwald.
- (2) A person cannot be a Commissioner if the person –
 - (a) is working or has worked, whether as a States' employee or pursuant to a contract for services, in any administration of the States for which the Minister for Health and Social Services is responsible;
 - (b) is working or has worked, whether as an employee or pursuant to a contract for services, for any public authority in Guernsey or the Isle of Man that provides substantially the same services as any administration described in clause (a);
 - (c) has, or has had, any other interest in the provision of health or social care in Jersey, Guernsey or the Isle of Man, whether that interest is or was financial, or as an officer, member, trustee, employee or associate or otherwise.
- (3) A person is not precluded from being a Commissioner by reason only that he or she is or has been a user of any service provided by an administration or public authority described in sub-paragraph (2)(a) or (b) or any regulated activity.

5 Term of office of Commissioner

A Commissioner's appointment shall end upon whichever is the earlier of –

- (a) the expiry of the period for which he or she was appointed (unless his or her appointment is renewed);
- (b) the expiry of the period of notice following his or her resignation, in accordance with paragraph 6;
- (c) the termination of his or her appointment under paragraph 7.

6 Resignation

- (1) A Commissioner may resign by giving between one and 3 months' notice in writing to the Chief Minister.
- (2) The Chief Minister, on receiving the Chairman's resignation, may, with that person's agreement reduce or waive the period of notice.
- (3) The Chief Minister, on receiving any other Commissioner's resignation, may, with the agreement of that Commissioner and the Chairman, reduce or waive the period of notice.

7 Termination of appointment

- (1) The Chief Minister may terminate the appointment of a Commissioner if the Commissioner –
 - (a) becomes, by virtue of paragraph 4, disqualified for appointment;
 - (b) has been absent from 3 consecutive meetings of the Commission, without the permission of the Commission;
 - (c) becomes bankrupt;
 - (d) is unfit to discharge his or her functions as the Chairman or other Commissioner;
 - (e) is incapacitated by physical or mental illness or otherwise unable to discharge his or her functions as the Chairman or other Commissioner; or
 - (f) for any other reason, does not discharge his or her functions as the Chairman or other Commissioner.
- (2) The Chief Minister shall consult the Chairman before terminating the appointment of a Commissioner other than the Chairman,
- (3) The Chief Minister shall report to the States following the termination of a Commissioner's appointment.

8 Remuneration and expenses of Commissioners

- (1) The Commission shall pay to the Commissioners –
 - (a) such remuneration as the Commission may determine, subject to any maximum directed by the Chief Minister;
 - (b) reasonable out of pocket expenses incurred in the course of carrying out their duties.
- (2) Any maximum remuneration directed under sub-paragraph (1)(a) after the appointment of a Commissioner does not operate to reduce the remuneration determined by the Commission on the appointment of that Commissioner, but does limit any subsequent increase.

9 Employees and agents of Commission

- (1) Without prejudice to the generality of the Commission's powers as a body corporate, the Commission may employ or appoint such officers servants and agents as it considers necessary for the discharge of its functions.
- (2) The Commission may not enter into, or offer to enter into, a contract of employment or for services with a person who was a Commissioner immediately before the contract is entered into or offered.
- (3) A person cannot be, at the same time, a Commissioner and an employee or other appointee of the Commission.

10 Other expenses of Commission

- (1) The Chief Minister may, by Order, permit or require the JAC to charge the Commission a fee for the provision of all or any of the services it is required to provide under this Schedule.
- (2) An Order under sub-paragraph (1) may specify how any fee is to be calculated and specify a maximum fee that may be charged.

11 Financial resources of Commission

The financial resources of the Commission are –

- (a) the fees charged by and paid to the Commission under this Law and any other enactment; and
- (b) any grant paid to the Commission by the States.

12 Accounts and audits

- (1) The Commission must –
 - (a) keep proper accounts and proper records in relation to the accounts; and
 - (b) prepare accounts in respect of each financial year and a report on its operations during the year.
- (2) The Commission must submit a copy of its accounts and report to Chief Minister no later than 6 months after the end of the financial year.
- (3) The Chief Minister must lay a copy of the accounts and report before the States.
- (4) The accounts of the Commission must –
 - (a) be audited by auditors appointed in respect of each financial year by the Minister for Treasury and Resources and qualified for appointment as auditors of a company by virtue of Article 113 of the Companies (Jersey) Law 1991⁸; and
 - (b) be prepared in accordance with generally accepted accounting principles and show a true and fair view of the profit or loss of the Commission for the period and of the state of the Commission's affairs at the end of the period.
- (5) The Minister for Treasury and Resources may, by Order, make additional provision as to the Commission's accounts.
- (6) This Article is without prejudice to any additional accounting requirements –
 - (a) imposed by any enactment; or
 - (b) agreed as a condition lawfully attached to any funding accepted by the Commission from the States.

13 Conduct of business by committee or delegate

- (1) The Commission may delegate any of its functions under this Law or any other enactment to –
 - (a) the Chairman;
 - (b) one or more Commissioners;
 - (c) a committee comprised of at least one Commissioner and one or more employees or other persons appointed by the Commission; or
 - (d) an employee or other person appointed by the Commission.
- (2) The Commission cannot delegate the power of delegation in paragraph (1).
- (3) The delegation of a function does not prevent the exercise of the function by the Commission itself.

14 Procedures

The Commission shall, subject to this Law and any other enactment, determine its own procedures.

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- 1 *chapter 20.600*
 - 2 *chapter 20.300*
 - 3 *chapter 16.325*
 - 4 *chapter 24.900*
 - 5 *chapter 15.350*
 - 6 *chapter 24.750*
 - 7 *chapter 16.325*
 - 8 *chapter 13.125*