

# STATES OF JERSEY



## DRAFT REGULATION OF CARE (REGULATED ACTIVITIES) (JERSEY) REGULATIONS 201-

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

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STATES GREFFE





Jersey

# DRAFT REGULATION OF CARE (REGULATED ACTIVITIES) (JERSEY) REGULATIONS 201-

## REPORT

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### SECTION 1: INTRODUCTION

1. The [Regulation of Care \(Jersey\) Law 2014](#) (the “2014 Law”) provides a legislative framework for the independent regulation of health and social care in Jersey. It is a single enabling Law which will be underpinned by a series of Regulations, each focusing on a distinct type of health and social care provision.

Those Regulations will, as each set comes into force, replace Jersey’s existing legislation which is inadequate and fragmented, and which allows for high-risk services to operate with minimal independent monitoring of safety or quality of care, including States of Jersey (“SoJ”) delivered services.

The 2014 Law brings Jersey into line with other UK jurisdictions which have had independent inspection and regulation regimes for many years.

2. Some Articles of the 2014 Law were brought into force in 2014, in order to allow for the establishment of an independent Care Commission to prepare for the implementation of the Regulations and development of standards. It is envisaged that the remaining Articles of the 2014 Law will come into force on 1 January 2019 subject to the States Assembly approving the following –
  - (a) Draft Regulation of Care (Jersey) Law 2014 (Appointed Day) Act 201- (P.125/2018): This will bring into force, on 1 January 2019, those Articles of the 2014 Law which are not yet in force.

- (b) Draft Regulation of Care (Regulated Activities) (Jersey) Regulations 201- (this Project): Regulations that describe the types of health and social care to be regulated in the first instance. This includes care home services, home care services<sup>1</sup> and adults' day care services.
  - (c) Draft Regulation of Care (Standards and Requirements) (Jersey) Regulations 201- (P.127/2018): Regulations that set out the requirements imposed on registered care providers and applicants for registration.
  - (d) Draft Regulation of Care (Transfer of Functions) (Jersey) Regulations 201- (P.128/2018): Regulations that transfer a range of registration, inspection and regulation functions from the Minister for Health and Social Services to the Care Commission.
  - (e) Draft Regulation of Care (Transitional and Transfer) (Jersey) Regulations 201- (P.129/2018): Regulations that set out the transitional arrangements with regard to services that are already regulated under the Nursing Agencies (Jersey) Law 1978 and the Nursing Homes (Jersey) Law 1994 (*formerly known as the Nursing and Residential Homes (Jersey) Law 2004*).
3. This report, which should be read alongside the reports relating to the other draft Regulations and draft Appointed Day Act referred to above, is intended to –
- (a) provide background information about the 2014 Law, including matters relating to the fees to be paid by the providers of all regulated services. Those fees will be set by Order and, whilst they do not form part of the proposition, full details are included in this report in order to ensure that the Assembly are fully informed.
  - (b) describe the effects of the Draft Regulation of Care (Regulated Activities) (Jersey) Regulations 201- which the Assembly are asked to adopt.

## SECTION 2: REGULATION OF CARE (JERSEY) LAW 2014

### Background

4. The 2014 Law was adopted by the States Assembly on 3 July 2014 following debate on the draft Law as lodged *au Greffe* on 20th May 2014 ([P.95/2014](#)). It is a single enabling Law which will be underpinned by a series of Regulations, each focusing on a distinct type of health and social care provision.
- In adopting the 2014 Law, the Assembly acknowledged that Jersey's existing legislation is fragmented and inadequate. It allows high-risk health and social care services to operate with minimal independent monitoring of safety or quality of care. This includes SoJ delivered services and services delivered to potentially very vulnerable clients.
5. Independent, high quality regulation is needed for 2 key reasons –
- (a) Protecting people: Care services need to be regulated in order to help keep people safe and to ensure they receive good quality care that meets their needs. Unregulated services place people at risk of harm or abuse (whether that be physical, emotional or financial abuse or at

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<sup>1</sup> Home care is also known as domiciliary care.

risk of neglect). In an aging society, increasingly more people will need care, in a wider variety of care settings. It is therefore essential that the right mechanisms are in place to set and enforce standards.

- (b) Ongoing provision of services: Locally registered healthcare professionals, including doctors, nurses and midwives, social workers and other allied health professionals, cannot work in Jersey unless they are registered with a statutory regulator in the UK (for example, the General Medical Council, Nursing and Midwifery Council, Health and Care Professions Council). Many of those registration bodies increasingly expect their members to be working within regulated services. Without an appropriate regulatory framework for health and social care services in Jersey, there is a very real risk that professional regulators will refuse to allow the validation, supervision or registration of healthcare professionals in Jersey.

6. The 2014 Law brings Jersey into line with other UK jurisdictions, which have had independent inspection and regulation regimes for many years. The Law provides for –

- (a) Independent regulatory oversight: an independent Care Commission has already been established under those Articles of the 2014 Law that are already in force. The Care Commission will, subject to the Assembly approving the Draft Regulations and Appointed Day Act, fulfil all the regulatory functions set out in the 2014 Law.

This includes regulating SoJ delivered care home services which currently fall outside the Nursing Homes (Jersey) Law 1994 (“the 1994 Law”), which provides for regulating independent residential care homes, nursing homes and mental nursing homes, but not SoJ services.

- (b) Registration of regulated activities: providers and managers of all regulated services (registered persons) are required by law to be registered with the Care Commission. The Care Commission will apply conditions on registration and may refuse or cancel any registration where those conditions are not met.
- (c) Requirements related to regulated activities: registered persons will have a legal obligation to ensure that services are well conducted, provide good care and protect clients from harm. This includes proper facilities, a safe and appropriate environment, and appropriately qualified and competent staff in sufficient numbers to meet clients’ needs. The Care Commission will publish detailed standards, setting out what providers must do to meet their requirements.
- (d) Inspection: the 2014 Law provides comprehensive powers for inspections, in order to monitor the quality and standards of care. The purpose of inspections is not just about monitoring compliance, but supporting and facilitating service improvement. Where local expertise is not available, the Care Commission will engage external agencies to carry out specialised inspections.

The frequency and type of inspection will be set out in Regulations and will be determined on a risk basis. Following an inspection, a provider will be informed of any action required to comply with

standards. Failure to comply with Regulations is an offence that can ultimately result in de-registration.

7. Article 2 of the 2014 Law provides for the States to determine, by Regulations, the types of health and social care services to be subject to the provisions of the Law. Article 14 of the 2014 Law provides for the States to determine the standards and requirements to be imposed on those regulated activities.

As it stands at the moment, no Regulations have been brought forward and only a limited number of Articles are in effect<sup>2</sup>. In order for the Care Commission to commence independent regulation against established standards and requirements, the Assembly must approve draft Regulations under Articles 2 and 14, plus all transitional arrangements, and an Appointed Day Act.

### **Fees**

8. The 2014 Law provides for a number of different fees to be set, including –
  - (a) fees associated with making an initial application for registration as a provider or a manager;
  - (b) an annual fee for continued registration;
  - (c) fees associated with applying for a variation on conditions of registration; and
  - (d) miscellaneous fees such as replacement registration certificates.

The Law provides that the fees may be prescribed by the Chief Minister or by the Care Commission. It has been determined, in consultation with the Chief Minister and the Care Commission that fees will, in the first instance, be prescribed by the Chief Minister via an Order.

9. That Order will be developed after the States debates on the draft Regulations and Appointed Day Act, with the fees coming into force on 1 January 2019. Details relating to the fees are set out in this report to ensure that the Assembly is fully aware of the financial implications of the 2014 Law to services providers and the States of Jersey.

### **Developing the fee framework**

10. A number of different factors were taken into account when determining the fee structure. These included –
  - fee income as a proportion of the total Care Commission expenditure
  - the levying of fees proportion to the size of the provider
  - comparison with other jurisdictions.
11. Fee income as a proportion of total expenditure: The 2014 Law was adopted by the States Assembly on the understanding that the existing inspection team's budget would be grant-funded to the Care Commission, and that this would represent approximately 45% of the total cost of administering the Law (i.e. fees should generate approximately 55% of total Care Commission expenditure). 45% is part-way between 34% funding provided to the Care

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<sup>2</sup> On 15 November 2014, a limited number of key Articles and Schedules were brought into force to allow for the establishment of the independent Care Commission. This included Articles 1, 2, 3(6), 10, 11, 14 to 16, 30(3), 35 to 43, 49 and 50 and Schedules 1 and 2. The remaining Articles still, however, have to be brought into force, hence an Appointed Day Act has been lodged alongside these draft Regulations.

Quality Commission (“CQC”) in England and the 65% provided to the Scottish Care Inspectorate.

The fees set out in paragraphs 24–27 below will generate approximately 50%, albeit the total fee income is based on a range of assumptions which may not prove to be accurate (for example, numbers of new providers entering the market on an annual basis, or the total number of full-time equivalent staff employed by individual care providers). The other 50% of the Care Commission’s budget will be provided via public funds, this being equivalent to the existing inspection team’s budget.

12. Fees proportion to size of providers: The fees charged under current legislation<sup>3</sup> are ‘flat’ fees paid by all providers regardless of business size. If the flat fee structure were to be replicated under the new Law, smaller providers would be cross-subsidising the larger providers, which is inherently unfair. As a general rule, larger providers absorb a larger proportion of the inspection and regulation resources.

Under the new fee structure all providers will pay an initial registration fee. The level of registration fee will depend on the type of regulated activity, with care homes attracting the highest level of fees and care at home services the lowest. This is because the pre-registration work for care providers with premises is more onerous than for those without premises.

13. The registration fee for managers will be the same across all types of regulated activities, as the resources required in supporting the initial registration processes are broadly the same regardless of business size.
14. Individually employed carers<sup>4</sup> will pay an annual registration fee only. This will be the same as the annual fee paid under professional registration schemes (see Section 3 below). The 2014 Law will see individually employed carers (i.e. a person directly employed by a care recipient to provide care services) registered for the first time.
15. Annual fees will be based on business size, as the resources required in relation to annual inspections – plus the provision of ongoing monitoring and support during the year – vary relating to business size. The larger the business, the greater the resource requirement. All annual fees will be prorated for providers that register part way through a year.
16. Business size is measured in different ways, with a different fee being levied for different size providers –
- care home size and adult day care centre size is based on number of client places
  - home care is based on staff numbers, or more precisely, the total number of staff hours.

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<sup>3</sup> The [Residential Homes \(General Provisions\) \(Jersey\) Order 1995](#); the [Nursing Homes and Mental Nursing Homes \(General Provisions\) \(Jersey\) Order 1995](#); and the [Nursing Agencies \(Jersey\) Law 1978](#).

<sup>4</sup> All home care staff who are individually employed, as opposed to employed by an agency or other body, will be required to have an enhanced DBS check when first registered. The Care Commission will request that check on behalf of individual home care provider and will invoice each provider for each check undertaken. Checks are currently £50 per person and there is likely to be a requirement for the check to be repeated every 2–3 years. Please note, the cost of the checks is not a matter for the Minister or the States of Jersey.

17. Different provider sizes in relation to home care include –
- small providers: 112 staff hours per week or less (equivalent to less than 3 full-time equivalent staff)
  - medium providers: from 112.5 staff hours per week up to 599.5 (equivalent to 3 or more, but less than 16 full-time equivalent staff)
  - medium plus providers: from 600 to 2,249.5 staff hours per week (equivalent to 16 or more, but less than 60 full-time equivalent staff)
  - large providers: 2,250 staff hours per week or more (equivalent to more than 60 full-time equivalent staff).
18. It is important to note that staff hours are not the same as care hours provided. For example, one member of staff may in any one hour simultaneously be providing care to multiple clients. (For example, one member of staff may, in one hour, be caring for 4 clients. This is one staff hour, but 4 care hours.) It will be a legal requirement for registered providers to supply information about the agency's staffing levels to the Care Commission on application, in their annual return, and at any time the provider applies to vary the registration conditions. This information can be checked at inspection through either pay-roll or duty rosters.
19. In determining which band (e.g.: small, medium, large, etc.) that a home care provider falls into, consideration will be given to natural fluctuations in staffing levels. For example, a provider at the upper of the medium band may, for a limited period of time, provide additional staff hours without being pushed into a higher band if there is a rational for temporary provision of additional hours.
20. Comparison with other jurisdictions: Direct comparisons with other jurisdictions are difficult, given that the fee structures in England and Wales, Scotland and Northern Ireland vary considerably. That said, the proposed Jersey fee structure is intended to help ensure that Jersey providers will pay in the region of that paid by providers based in mainland UK. Jersey fees will, however, be higher than those charged by the Regulation and Quality Improvement Authority in Northern Ireland, due to the higher levels of public subsidy in Northern Ireland (see paragraph 31).
21. Costs of compliance: In addition to paying fees, providers are also required to meet costs that arise from compliance with care standards. Given that a significant proportion of providers are already regulated, they will already meet standards, or will have an existing development programme or improvement plan in place and will, therefore, be able to meet standards with little or no extra cost.
- Where high levels of investment are required in order to ensure compliance, this will usually indicate that care standards are poor and must be addressed in order to protect the well-being of clients.
22. Staggered introduction of fees: It is proposed that the proportion of fees to be paid in 2019 will be staggered to help providers who are already regulated, and already paying fees, to plan for and manage the increase. The process of staggering is being introduced in response to stakeholder feedback during the consultation process (see paragraph 40).



Proportion of fees that will apply in 2019

	<b>Provider initial application</b>	<b>Manager initial application</b>	<b>Annual fee treatment in 2019</b>
<b>Existing provider – already regulated</b>	0%	0%	50% of current annual fee + 50% new annual fee
<b>Existing provider – not already regulated</b> – must apply to Care Commission within 6 months of the Law coming into force) Home care providers’ fees will be offset in part by GST exemption (see paragraph 61)	100%	100%	On registration as opposed to application: Jan – March: 100% <sup>5</sup> April – June: 75% July – Sept: 50% Oct – Dec: 25%
<b>New provider entering the market</b>	100%	100%	On registration as opposed to application (2019 and all subsequent years): Jan – March: 100% April – June: 75% July – Sept: 50% Oct – Dec: 25%

Proportion of fees that will apply from 1 January 2020 onwards

	<b>Provider initial application</b>	<b>Manager initial application</b>	<b>Annual fee</b>
<b>Provider – already regulated</b>	0%	0%	100%
<b>New provider entering the market</b>	100%	100%	Registration approved (as opposed to application received): Jan – March: 100% April – June: 75% July – Sept: 50% Oct – Dec: 25%

<sup>5</sup> There is a 6-month registration window after the Law comes into force. It is therefore unlikely that any existing non-regulated providers will pay more than 50% of the annual fee in year 1.

## The fees framework

23. As referenced in paragraph 3 above, the fees set out below will be introduced by Order and will come into force on 1 January 2019, subject to the States Assembly adopting the Appointed Day Act. Details of existing fees are also provided for comparative purposes.

24. Proposed care home fees

Fee	Proposed amount	Notes	Existing fees (flat fee as opposed to per bed basis)
Provider initial application	£1,500	Per new application in respect of each premises	£727.75
Manager initial application	£260	Per new manager	£256.25
Annual fee	£160	Per bed	£370.02 or £740.04 if residential home and nursing home

25. Proposed home care fees (domiciliary care)

Fee	Proposed amount	Notes	Existing fees
Provider initial application	£750	Per new application	Domiciliary care agencies do not currently pay fees.  Nursing agencies pay £727.75 for initial application; £370.02 for annual renewal; and £205 to transfer their registration to different premises.
Manager initial application	£260	Per new manager	
Annual fee: Small provider	£600	Total staff hours provided per week = 112 hours or less <sup>6</sup>	
Annual fee: Medium provider	£1,100	Total staff hours provided per week = 112.5 hours per week up to 599.5 hours per week <sup>7</sup>	
Annual fee: Medium plus provider	£2,200	Total staff hours provided per week = 600 hours per week up to 2,249.5 hours per week <sup>8</sup>	
Annual fee: Large provider	£4,200	Total staff hours provided per week = 2,250 hours per week or over <sup>9</sup> .	

<sup>6</sup> 112 hours is equivalent to just less than 3 staff members each working 37.5 hours per week.

<sup>7</sup> Over 112.5 hours to up to 599.5 hours is equivalent to 3 or more but less than 16 staff members each working 37.5 hours per week.

<sup>8</sup> Over 600 hours per week up to 2,249.5 hours is equivalent to 16 or more but less than 60 staff members each working 37.5 hours per week.

<sup>9</sup> 2,250 hours per week is equivalent to 60 or more staff members each working 37.5 hours per week.

26. Proposed adult day care centre fees

Fee	Proposed amount	Notes	Existing fees
Provider initial application	£1,100	Per new application in respect of each premises	N/A
Manager initial application	£260	Per new manager	N/A
Annual fee	£80	Per place <sup>10</sup>	N/A

27. Miscellaneous fees

Fee	Proposed amount	Notes	Existing fees
Replacement registration certificates	£10	Per certificate	N/A
Paper copies of report	To be determined on ad hoc basis depending on size of report		N/A
Variation to registration	£30	Per variation	N/A
Late payment surcharge	10% of fees due up to 6 months. 20% of fees due over 6 months	Purpose of the surcharge is to cover costs incurred by the Care Commission and encourage payment on time	N/A

**Fees as a percentage of income**

28. Consideration has been given to the amount of the fees in relation to the providers' income. These comparisons are based on income via the Long-Term Care ("LTC") Fund, and do not include an additional income generated by providers whose fees are more than the LTC Fund contribution.

<sup>10</sup> One place may be used by different clients, but the fee is based on place numbers, not client numbers. For example, a place is used by 3 clients each attending for 2 hours each in any one day. The fee is £80 for the place, not £80 x 3 for the clients.

29. Registration fee as a percentage of care home fees

Care Home level under Long-Term Care (“LTC”) scheme	Weekly LTC fee and co-payment paid by care recipient <sup>11</sup>	Annual LTC fee and co-payment paid by care recipient	£160 annual registration fee as % of care fee
Level 1	£695.15	£36,147.80	0.4%
Level 2	£890.47	£46,304.44	0.3%
Level 3	£1,141.49	£59,357.48	0.3%
Level 4	£1,351.14	£70,259.28	0.2%

30. Registration fee as a percentage of home care fees

Home Care under Long-Term Care (“LTC”) scheme	Weekly income from LTC hourly rate <sup>12</sup> (£18.34 per hour of client care)	Annual income from LTC hourly rate	Annual registration fee as % of annual income
<u>Small</u> Total staff hours provided per week = 112 hours or less <sup>13</sup>	Up to £2,054	£106,812	0.56%
<u>Medium</u> Total staff hours provided per week = over 112.5 hours per week up to 599.5 hours per week <sup>14</sup>	Over £2,063 up to £10,995	£107,289 £571,731	0.93% 0.17%
<u>Medium plus</u> Total staff hours provided per week = 600 hours per week up to 2,24.5 hours per week <sup>15</sup>	£11,004 up to £41,944	£572,208 £2,181,066	0.35% 0.09%
<u>Large</u> Total staff hours provided per week = 2,250 or more hours per week <sup>16</sup>	£41,953	£2,181,543	0.18%

<sup>11</sup> This is the minimum charge; care homes usually charge higher fees for service users paying privately.

<sup>12</sup> This is the minimum fee paid by LTC benefit; home care providers usually charge a higher fee for service users paying privately.

<sup>13</sup> 112 hours is equivalent to just less than 3 staff members each working 37.5 hours per week.

<sup>14</sup> Over 112.5 hours to up to 599.5 hours is equivalent to 3 or more but less than 16 staff members each working 37.5 hours per week.

<sup>15</sup> Over 600 hours per week up to 2,249.5 hours is equivalent to 16 or more but less than 60 staff members each working 37.5 hours per week.

<sup>16</sup> 2,250 hours per week is equivalent to 60 or more staff members each working 37.5 hours per week.

## Comparison with other jurisdictions

### 31. Overview of fees in other jurisdictions compared to Jersey

	Scotland	England	Northern Ireland	Jersey
	Care Inspectorate	Care Quality Care Commission (“CQC”)	Regulation & Quality Improvement Authority	Care Commission (proposed fee)
<b>Care Home</b>				
Provider Application	£3,849	£0	£261 – 952	£1,500
Manager Application	£0	£0	£261	£260
Annual Fee	£157 per bed	Less than 4 bed = £321 (i.e. up to £321 per place) 81 to 90 bed = £14,415 (i.e. up to £178 per bed)	£34 – £46 per bed	£150
Variation	£0	£0	£25 (minor) £50 (small home) £100 (large home)	£30
<b>Home Care</b>				
Provider Application	Small = £1,261 <sup>17</sup> Medium = £2,050 Large = £4,510	£0	£952 <sup>18</sup> (proposed)	£750
Manager Application	£0	£0	£261 (proposed)	£260
Annual Fee	Small = £676 Medium = £1,476 Large = £2,255	1 office location = £2192 (1 location) 25 or more office locations = £97,476 (up to £3,899 per location)	£215 (proposed)	Small = £600 Medium = £1,000 Medium plus = £2,000 Large = £4,000
Variation	£0	£0	£25, £100 (proposed)	£30

<sup>17</sup> Care home providers: Small = employing no more than 3 full-time equivalent staff.  
Medium = employing between 4–15 full-time equivalent staff.  
Large = employing more than 15 whole time equivalent staff.

<sup>18</sup> Consultation on Proposed amendment to the Regulation and Improvement Authority (Fees and Frequency of Inspection) Regulations (Northern Ireland) 2005 (October 2016).

Adult Day Care				
Provider Application	Small = £1,711 <sup>19</sup> Other = £3,422	£0 not currently regulated	£952 (proposed)	£1,000
Manager Application	£0	£0 not currently regulated	£261 (proposed)	£260
Annual Fee	Small = £856 Other = £1,711	£0 not currently regulated	£215 (proposed)	£80 per place
Variation	£0		£25 (minor) £100	£30

32. When comparing inspection and regulation fees to be paid by care providers in Jersey and the UK, it is also helpful to consider the fees charged by care providers in Jersey and the UK. Nursing home care fees vary between different regions of the UK<sup>20</sup>, for example –

- in the North-East of England, care home fees are approximately £666 per week and around £949 in Greater London;
- in the North-East of England, a provider's annual registration fee is equivalent between 0.51% to 0.92% of the provider's annual income per client or, in Greater London, it is equivalent to 0.36% to 0.65% of annual income per client.

This compares to 0.21% of the annual income per client paid under level 4 of Jersey's Long-Term Care Scheme (as set out above). The proposed annual registration fee for care home providers in Jersey is, therefore, smaller than the UK's as % of income<sup>21</sup>.

### Professional Registration Fees

33. At the point at which the 2014 Law comes into force, the Care Commission will also become responsible for the registration, regulation and inspection functions provided for under the following legislation<sup>22</sup>;

- (a) [Piercing and Tattooing \(Jersey\) Law 2002](#);
- (b) [Medical Practitioners \(Registration\) \(Jersey\) Law 1960](#);
- (c) [Health Care \(Registration\) \(Jersey\) Law 1995](#);
- (d) [Dentistry \(Jersey\) Law 2015](#).

<sup>19</sup> Day care providers: Small = employing no more than 3 full-time equivalent staff.

Other = employing more than 3 full-time equivalent staff.

<sup>20</sup> <https://www.which.co.uk/elderly-care/financing-care/financing-a-care-home/381597-care-home-fees>

<sup>21</sup> Due to the lack of consistent data about home care fees in the UK it is not possible to develop a comparison of Jersey registration fees and UK registrations fees as a % of home care income.

<sup>22</sup> The Care Commission will also be responsible for the inspection of Yellow Fever vaccination clinics. The annual fee associated with inspection, whilst not currently provided for in law, will also form part of that review.

34. As it stands at the moment, the fees charged under each of those pieces of legislation varies in an inconsistent manner, for example, medication practitioners are only charged an initial application fee, whereas piercing and tattooing practitioners are charged an annual fee.
35. These fees will remain the same in 2019 as they were in 2018, except for the standard annual increase which is an anticipated 2.5%. It is intended, however, that they will be reviewed at some point during 2019 with a view to ensuring consistency and fairness across the board.

## CONSULTATION PROCESS

36. There has been ongoing consultation with key providers and stakeholders at each stage of development of the 2014 Law and associated draft Regulations.
37. Consultation on the 2014 Law: A stakeholders' consultation on principles of a new regulatory framework for health and social care was first issued to key stakeholders in November 2007. Only 6% of respondents stated that existing legislation did not need to be updated. The Health and Social Services Department issued a feedback report in 2010.

A report setting out proposals relating to the Regulation of Care Law was then issued to stakeholders and the States Assembly in 2013 (see [R.42/2013](#)) prior to work starting on the drafting of the Law.

A further stakeholder consultation was held in respect of the 2014 Law between 25 March and 30 April 2014. This included a series of stakeholder meetings. Issues arising from the consultation resulted in minor amendments to the draft Law, which was then adopted by the Assembly in July 2014.

38. Consultation on Regulations: in March 2015, stakeholders attended a workshop and were invited to provide feedback that informed the initial development of the Regulations. In February 2017, draft Regulations relating to activities and standards and requirements were issued for consultation (27 February to 24 April 2017). The consultation process included a stakeholder briefing.

This consultation process did not include the 2 sets of Regulations relating to the transfer of functions or the associated transitional arrangements, as these are technical Regulations which do not define or determine policy. The prime purpose of these Regulations is to bring forward the arrangements necessary to support the administration of the 2014 Law and associated functions.

39. Secondary consultation on draft Regulations: The draft Regulations relating to activities and standards and requirements – which has been amended to reflect the feedback received during the 2017 consultation – were re-issued in July 2018 for a secondary round of consultation. No additional comments were received from any stakeholders.

40. Consultation on the fees: Stakeholders were informed during the 2014 and 2017 consultations that new fees would be introduced, and that those fees would be more than those charged under the existing Nursing Agencies (Jersey) Law 1978 and the Nursing Homes (Jersey) Law 1994.

Details of the proposed fees were issued for consultation from 26 June to 21 August 2018. This included circulation to relevant SoJ officials as some of the fee burden falls to SoJ services. A consultation meeting was held, a press release was distributed, and information was sent directly to all care providers.

Approximately 12 organisations attended the consultation meeting, and one written response was received from a home care provider which simply stated that they thought the fees were too high. Issues raised at the fees consultation meeting included –

- (a) Charitable organisations: One charitable care home provider stated that charities should be exempt from fees. The rationale for their argument was that SoJ exempts charities from tax, fees are a form of tax, therefore charities should be exempt. Policy response was that charities should not be exempt from fees on the basis that –
- charities receive the same Long-Term Care contribution as commercial providers;
  - SoJ providers are not exempt;
  - if charities were to be exempt from fees, an increased fees burden would fall on commercial providers and SoJ providers (i.e. they would be cross-subsiding charities);
  - charities are permitted to raise funds through other means (public appeals, fund raising activities, etc.) not available to non-charitable organisations;
  - fees are levied for the provision of a regulation and inspection service which supports providers in the delivery of high-quality services. Charities are not automatically exempt from paying for all other regulatory services provided to them; although it should be noted that there are no fees associated with the Charity Care Commissioner’s functions.
- (b) Date of commencement of new fees: Existing providers raised concerns about increased fees being introduced on 1 January 2019; marginally less than 6 months after they were provided detailed information about the proposed fees. This has been addressed via the staggered introduction set out in paragraph 22 above.
- (c) Basis of calculation for day care fees: The fees consultation document proposed that day care centre fees would be calculated on number of staff hours, as opposed to number of places. This was challenged during the consultation, as it is more complex to calculate. Day Centre fees have therefore been restructured and are now based on client places (albeit noting that one place could be used by a numerous clients as day centres often have separate morning and afternoon sessions).

#### **NEXT STEPS IN DEVELOPMENT OF REGULATORY FRAMEWORK**

41. The 2014 Law is a framework law. As set out in Section 3 below, the Draft Regulation of Care (Regulated Activities) (Jersey) Regulations 201- only relates to: care home services, which includes residential children’s homes; home care services; adults’ day care services. These represent Phase 1 Regulations.
42. It is envisaged that, over time, further Regulations will be brought forward for consideration by the Assembly, extending independent regulation and inspection to other health and social care services, which may include, for example –



- (a) social work services;
  - (b) hospitals and hospital services including medical, surgical, psychiatric and rehabilitation services;
  - (c) dental services;
  - (d) cosmetic procedures;
  - (e) paramedic services;
  - (f) general medical practice.
43. Children’s social work services: It is anticipated that children’s social work services will be a Phase 2 priority (looked after children and care leavers; adoption and foster care; children who are subject to a child protection plan, or who were previously subject to child protection plan but who are in need to continuing help and support, etc.). This is in accordance with recommendations from the Independent Jersey Care Inquiry (July 2017) and paragraphs 66–67 of the Jersey Care Commission’s inspection of children’s social work services (September 2018).
44. Other children’s environments: In addition to children’s social work services, consideration is being given to the potential regulation of all children’s environments. As it stands at the moment, the 2014 Law provides for the regulation of health and social care services, whilst the [Day Care of Children \(Jersey\) Law 2002](#) provides for the regulation of the care of children for short periods of 2 or more hours per day.
- There are, however, notable gaps in the interface between the 2 Laws, including –
- some crèches, nannies, single activity provision (for example, sports, music, uniform provision)
  - childminding of less than 2 hours a day
  - ‘Foreign National Schools’ and language schools not currently within the remit of the Children, Young People, Education and Skills Department, including ‘host family’ vetting.
45. Work has commenced on mapping providers, but further work is required to develop an overarching and comprehensive regulatory framework which incorporates all children’s environments that fall outside other current regulatory systems. That framework would need to provide assurance of independence and help drive both safeguarding practice and quality of provision.
- In the event that the Assembly was to determine that the remit of the Care Commission should be extended to early years’ settings and other children’s settings (potentially through the commissioning of third party inspectors and/or secondment of existing SoJ staff to the Commission), some minor amendments would be required to the 2014 Law. The Care Commissioners were recruited on the understanding that their remit may be extended to other environments.
46. Pan-Island Care Commission: Options are also being considered for a pan-Island Jersey/Guernsey Care Commission. Current discussions focus on –
- joint pan-Island Care Commission; and
  - joint pan-Island Chief Inspector.

It should be noted, however, that there are a number of issues to be resolved in relation to the pan-Island Care Commission proposals, including matters relating to legislative approach and service provision in both Islands.

**Section 3: Draft Regulation of Care (Regulated Activities) (Jersey) Regulations 201-**

47. The Draft Regulation of Care (Regulated Activities) (Jersey) Regulations 201- will be made under Article 2 of the 2014 Law. Schedule 1 of the draft Regulations provides that regulated activities will include –

- (a) care home service;
- (b) home care service; and
- (c) adult day care service.

This includes long- or short-term services, and also includes transitional, respite, rehabilitation and re-enablement care.

48. Care home services are defined as nursing, personal care or personal support, provided together with accommodation (including children’s residential care).

<p><u>Includes:</u></p> <ul style="list-style-type: none"> <li>● a hospice</li> <li>● long-term nursing care</li> <li>● respite nursing care</li> <li>● residential services for learning difficulties or mental health problems, even if operated from a hospital.</li> </ul>	<p><u>Does not include:</u></p> <ul style="list-style-type: none"> <li>● foster care</li> <li>● hospital services</li> <li>● school</li> <li>● young offenders’ institute (but may include a secure children’s home)</li> <li>● babysitting.</li> </ul>
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49. Home care services are defined as nursing, personal care or personal support provided to people who live in their own accommodation, be that owner-occupied, leased or rented.

<p><u>Includes:</u></p> <ul style="list-style-type: none"> <li>● care delivered for reward (money, in kind, even if relative or friend)</li> <li>● professional service offered free of charge</li> </ul>	<p><u>Does not include:</u></p> <p>Family members, good neighbours, friend, etc., as characterised by:</p> <ul style="list-style-type: none"> <li>● miscellaneous reward (e.g.: birthday gifts, reimbursement of expenses; costs of shared meals)</li> <li>● receipt of home carer’s allowance and special components under Income Support or LTC payment to a relative for respite care</li> <li>● employment agencies which provide an ‘introduction’ service only.</li> </ul>
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50. Adult day care services.

<p><u>Includes:</u></p> <ul style="list-style-type: none"><li>● nursing, personal care or personal support provided in premises other than a private home</li><li>● during daytime hours</li></ul>	<p><u>Does not include:</u></p> <ul style="list-style-type: none"><li>● care limited only to social activities, self-help or advice</li></ul>
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51. Schedule 2 of the draft Regulations sets out consequential amendments to other legislation necessitated by the coming into force of the draft Regulations. This includes, for example –

- (a) amending the references to ‘voluntary homes’ under the [Adoption \(Jersey\) Law 1961](#) and the [Children \(Jersey\) Law 2002](#). These are substituted with references to “care home service that is exclusively or mainly for children”;
- (b) repealing the [Nursing Agencies \(Jersey\) Law 1978](#) which provides for the licensing of businesses that supply nurses, midwives and auxiliary nurses, as this activity will be provided for in Schedule 1;
- (c) amending the [Nursing Homes \(Jersey\) Law 1994](#), so that services provided for in Schedule 1 will not continue to be regulated under the 1994 Law, whilst retaining those parts of the 1994 Law which relate to services not yet covered by Schedule 1;
- (d) aligning the treatment of a home care service with a care home service for the purpose of approval under the [Long-Term Care \(Jersey\) Law 2012](#).

52. Schedule 2 also amends the [Goods and Services Tax \(Jersey\) Law 2007](#) (“the 2007 Law”). The 2007 Law currently makes provision for GST exemptions on goods and services provided by certain categories of provider (for example, doctor, dentist, residential care home). This does not currently include home care providers. Given that the services delivered by home care and care home services are broadly the same, it is the location that differs. This is a disparity which is addressed via consequential amendments, as it currently penalises individuals who stay in their own homes. The estimated cost of GST loss is **£203,000**.

**Section 4: Financial and manpower implications**

53. The 2014 Law has a number of financial and resource implications, including –

- (a) cost of Care Commission
- (b) fees to be paid by all service providers
- (c) SoJ direct service provider and commissioner of services
- (d) Long-Term Care Scheme
- (e) GST
- (f) development of Phase 2 Regulations.

### Cost of Care Commission

54. As set out above, it is anticipated that the proposed fees will generate approximately 50% of the Care Commission's annual budget<sup>23 24</sup>. The other 50% will comprise of the existing SoJ inspection budget, which will be allocated to the Care Commission.
55. Whilst the Care Commission is a corporate sole, SoJ will be providing a range of core services to keep down the Care Commission's overhead cost. This will include financial management, HR and IT services, which can be disproportionately expensive for small entities. The budget, including the fee income and core inspection budget, will be allocated to an SoJ business unit – i.e. there is no direct grant or transfer of funds to the Care Commission.

<b>Care Commission Income</b>	<b>£</b>
Projected fee income	310,000
Core inspection budget, as per existing MTFP2	280,000
Transfer from Long-Term Care Fund	60,000 <sup>25</sup>
<b>Total income</b>	<b>650,000</b>
<b>Care Commission Expenditure</b>	
Care Commissioner's expenses	40,000
Staffing costs	560,000
Premises and maintenance	15,000
Administrative costs	25,000
<b>Total expenditure</b>	<b>640,000</b>

### Fees to be paid by all service providers

56. As set out above, a range of new fees will be provided for under the 2014 Law. Those fees will be paid by all providers of regulated services. The projected fee income per year is £310,000, subject to staggered fees being introduced in 2019.

### SoJ direct service provider and commissioner of services

57. SoJ will pay fees for the first time in relation to its residential and day care services. The cost of those fees will need to be factored into relevant departmental budgets. The total estimated SoJ fees are £76,960 per year

<sup>23</sup> The proportion will be less in 2019 due to proposed staggered introduction of fees in year 1.

<sup>24</sup> 50% income projections based on assumptions about numbers of new and/or unregulated providers being liable to pay fees + assumptions about existing providers' total staff hours/client places. These assumptions may not be correct and fees may need to be adjusted accordingly at the end of year 1. If income is lower than expenditure this represents a risk that needs to be mitigated through control of spending and potential use of underspends.

<sup>25</sup> This is transfer of monies previously used by the Social Security Department to manage approved provider framework (AFT: providers of home care under Long-Term Care Scheme). This transfer is time-limited and due to finish at end of MTFP2.

(£62,000 for adults and children’s residential care homes + £14,960 for adults’ day care services).

58. In the event that SoJ service provision fails to meet regulatory standards, those services also will incur costs associated with service improvements. It is not possible to predict what, if any, these costs may be.
59. Under the 2014 Law, all regulated services will pay fees, which will have multiple implications for SoJ –
- as a direct service provider (for example, as a provider of children’s care homes and adults day care),
  - as a holder of SLAs with external service providers (for example, Family Nursing and Home Care are a provider of home care service),
  - in relation to Long-Term Care Scheme (increased fees may impact client costs).
60. Service level agreements with external service providers: SoJ holds a number of service level agreements with external service providers, a number of whom receive a significant proportion of their revenues from public funds. Departments will be engaging with those providers to consider whether there is a need to review their overall financial position and operational efficiency in order to make an assessment as to whether any changes are needed to their SLA.
61. Long-Term Care Scheme: Most care providers will see an increase in registration fees, which will include home care providers paying fees for the first time. Providers may choose to pass those fees onto clients, which could in turn have implications for the Long-Term Care Scheme. LTC rates have been set for 2018 and 2019, but may be subject to review in 2019. It is envisaged that the LTC charge levied from taxpayers will increase from 1% to 1.5% from 2020.
62. GST income: As set out above, the Goods and Services Tax (Jersey) Law 2007 is amended to provide GST exemptions on goods and services provided by home care providers. The estimated cost of GST loss is £203,000.
63. Development of Phase 2 Regulations: as set out above, care home, home care and adults’ day care services are Phase 1 of the 2014 Law. Phase 2 will include, as a priority, the regulation of children’s social work services. The costs associated with regulation of children’s social work services will ultimately be met via provider fees but, in the interim period, whilst the necessary Regulations are developed, the Care Commission may determine that it is necessary to commission ongoing external inspectors. The annual associated costs which will fall to SoJ are –

Development of Regulations and associated standards	£25,000	One-off
Specialist inspection services	£63,000	Annual
Care Commission administration, management and overhead costs	£7,000	Annual

64. Summary of known financial implications to SoJ

	<b>Annual</b>	<b>One-off</b>
Fees to be paid by SoJ services	£76,960	–
GST loss	£203,000	–
Children’s work inspection	£70,000	£25,000
<b>Total</b>	<b>£349,960</b>	<b>£25,000</b>

## Explanatory Note

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These Regulations (*Regulation 1* and *Schedule 1*) amend Schedule 1 of the Regulation of Care (Jersey) Law 2014 so as to describe as regulated activities for the purpose of that Law –

- (a) the provision of a care home service;
- (b) the provision of a home care service; and
- (c) the provision of an adult day care service.

As a consequence of those changes *Schedule 2* makes a number of consequential amendments and repeals to other legislation (along with a few minor amendments to bring other provisions up to date).







Jersey

## DRAFT REGULATION OF CARE (REGULATED ACTIVITIES) (JERSEY) REGULATIONS 201-

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Jersey

## **DRAFT REGULATION OF CARE (REGULATED ACTIVITIES) (JERSEY) REGULATIONS 201-**

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

**THE STATES**, in pursuance of Article 2 of the Regulation of Care (Jersey) Law 2014<sup>1</sup> and Article 10(3)(b) of the Rehabilitation of Offenders (Jersey) Law 2001<sup>2</sup> have made the following Regulations –

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### **1 Schedule 1 of Law substituted**

For Schedule 1 to the Regulation of Care (Jersey) Law 2014<sup>3</sup> there shall be substituted the Schedule set out in Schedule 1 to these Regulations.

### **2 Repeals and amendments consequential on Regulation 1 and related provisions**

Schedule 2 has effect.

### **3 Citation and commencement**

These Regulations may be cited as the Regulation of Care (Regulated Activities) (Jersey) Regulations 201- and shall come into force on 1st January 2019.

**SCHEDULE 1**

(Regulation 1)

**SCHEDULE AMENDED****“SCHEDULE 1**

(Article 2(1))

**REGULATED ACTIVITIES****1 Provision of care home service**

- (1) The provision of a care home service is a regulated activity.
- (2) In this paragraph a “care home service” is a service providing residential accommodation together with care, whether on a temporary or permanent basis, to adults or children where residents have no choice as to the provider of the care, other than foster care or a service provided in –
  - (a) a hospital;
  - (b) a school;
  - (c) a prison or young offender institution; or
  - (d) private accommodation (not being accommodation provided purely in the context of the provision of a care home service by the same person who provides that accommodation) occupied exclusively by the care receiver and his or her family.
- (3) For clarity, nothing in sub-paragraph (2)(c) prevents any service provided in a secure children’s home being a care home service.
- (4) For the purposes of this paragraph the following services are not treated as services provided in a hospital even if they are operated from a hospital –
  - (a) hospice services;
  - (b) long-term or respite nursing care services;
  - (c) residential or respite services for people with learning difficulties or mental health problems; or
  - (d) services provided in a children’s home within the meaning of Article 1(1) of the Children (Jersey) Law 2002<sup>4</sup>.

**2 Provision of home care service**

- (1) The provision of a home care service is a regulated activity.
- (2) In this paragraph a “home care service” is a service consisting of the provision of care by any person to an individual in private accommodation (not being accommodation provided purely in the

context of the provision of a care home service by the same person who provides that accommodation) –

- (a) for reward (whether in money or in kind and whether or not that person is a relative or friend of the care receiver); or
- (b) as part of a professional service offered to the individual free of charge,

other than a service that is carried on exclusively by a Minister.

(3) However, the following do not constitute reward –

- (a) the giving of birthday, Christmas and other celebratory or thank-you gifts, the reimbursement of expenses or the payment of, or a contribution towards, the cost of shared meals or travel by a care receiver to or for the benefit of the person providing care;
- (b) receipt of the special component of income support under Article 5(3)(d) of the Income Support (Jersey) Law 2007<sup>5</sup> (the carer’s component) or the home carer’s allowance under Article 18A of the Social Security (Jersey) Law 1974<sup>6</sup>;
- (c) any part of the value of an approved care package within the meaning of Article 7 of the Long-Term Care (Jersey) Law 2012<sup>7</sup> that is paid directly to an unpaid carer who is caring otherwise than as the person’s employment to provide respite for the carer instead of being used to provide alternative care to the care receiver.

(4) The services provided by an employment agency through which an individual is introduced to a care receiver without the care provided by the individual’s being subject to any ongoing management or control, do not constitute the provision of a home care service by that agency.

### **3 Provision of adult day care service**

- (1) The provision of an adult day care service is a regulated activity.
- (2) In this paragraph “adult day care service” means a service providing premises other than private accommodation –
  - (a) for adult persons only;
  - (b) for a limited number of hours in any one day without overnight accommodation; and
  - (c) for care that is not limited to social activities, self-help or advice.

### **4 Interpretation for Schedule**

In this Schedule –

“care” means nursing care or social care;

“care receiver” means a person in receipt of care.”.

**SCHEDULE 2**

(Regulation 2)

**REPEALS AND CONSEQUENTIAL AMENDMENTS****1 Lodging Houses (General Provisions (Jersey) Order 1962**

For Article 2(e) of the Lodging Houses (General Provisions) (Jersey) Order 1962<sup>8</sup> there is substituted the following paragraph –

“(e) any nursing home to which the Nursing Homes (Jersey) Law 1994 applies, and any care home service within the meaning of paragraph 1(2) of Schedule 1 to the Regulation of Care (Jersey) Law 2014<sup>9</sup>”.

**2 Inquests and Post-Mortem Examinations (Jersey) Law 1995**

For Article 2(4)(b) of the Inquests and Post-Mortem Examinations (Jersey) Law 1995<sup>10</sup> there is substituted the following sub-paragraph and continuation paragraph –

“(b) a child accommodated in a children’s home within the meaning of the Children (Jersey) Law 2002<sup>11</sup> or a home consisting of a care home service within the meaning of paragraph 1(2) of Schedule 1 to the Regulation of Care (Jersey) Law 2014<sup>12</sup>”.

**3 Rehabilitation of Offenders (Exceptions) (Jersey) Regulations 2002**

(1) The Rehabilitation of Offenders (Exceptions) (Jersey) Regulations 2002<sup>13</sup> are amended as follows.

(2) In Regulation 17(1) –

(a) for sub-paragraph (a)(iv) there is substituted the following clause –

“(iv) a children’s home within the meaning of the Children (Jersey) Law 2002<sup>14</sup> or a home consisting of a care home service within the meaning of Schedule 1 paragraph 1(2) of the Regulation of Care (Jersey) Law 2014<sup>15</sup> which is exclusively or mainly for children”;

(b) in sub-paragraph (b) for the words “as a nursery under Article 42(1)(a) of the Children (Jersey) Law 1969” there are substituted the words “as day care accommodation under the Day Care of Children (Jersey) Law 2002<sup>16</sup>”;

(c) for sub-paragraph (d)(iii) and (iv) there are substituted the following clauses –

“(iii) a person whose premises are registered as day care accommodation under the Day Care of Children (Jersey) Law 2002,

- (iv) a person who is registered as a day carer under that Law.”.
- (3) In Regulation 17(3)(d) for the words “child minding, being the reception of children as mentioned in Article 42(1)(b) of the Children (Jersey) Law 1969” there are substituted the words “work as a day carer under the Day Care of Children (Jersey) Law 2002” and for the words “child minding” there are substituted the words “day care”.
- (4) In Regulation 17(5) for sub-paragraphs (a) and (b) there are substituted the following sub-paragraphs –
  - “(a) to have premises registered as day care accommodation under the Day Care of Children (Jersey) Law 2002; or
  - (b) to be registered as a day carer under that Law.”.
- (5) In Regulation 18(2) and (4) for the words “Nursing and Residential Homes (Jersey) Law 1994” there are substituted the words “Nursing Homes (Jersey) Law 1994<sup>17</sup> or the Regulation of Care (Jersey) Law 2014<sup>18</sup>”.

#### 4 Sexual Offences (Jersey) Law 2018

In Article 20(2) of the Sexual Offences (Jersey) Law 2018<sup>19</sup> –

- (a) for paragraph (b) of the definition of “children’s home” there is substituted the following paragraph –
  - “(b) a care home service within the meaning of paragraph 1(2) of Schedule 1 to the Regulation of Care (Jersey) Law 2014<sup>20</sup> that is exclusively or mainly for children;”;
- (b) for the definition of “nursing home” there is substituted the following definition –
  - “ “nursing home” means a nursing home within the meaning of Article 1A of the Nursing Homes (Jersey) Law 1994<sup>21</sup>;”.

#### 5 Adoption (Jersey) Law 1961

In Article 33 of the Adoption (Jersey) Law 1961<sup>22</sup> –

- (a) in paragraph (2)(a)(i) the words “voluntary home or” are deleted;
- (b) for paragraph (2)(b)(ii) there is substituted the following clause –
  - “(ii) resident in accommodation provided as part of a care home service within the meaning of paragraph 1(2) of Schedule 1 to the Regulation of Care (Jersey) Law 2014<sup>23</sup>”;
- (c) in paragraph (3) for the words ““hospital”, “residential care home”, “school” and “voluntary home”” there are substituted the words ““hospital” and “school””.

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**6 Children (Jersey) Law 2002**

- (1) The Children (Jersey) Law 2002<sup>24</sup> is amended as follows.
- (2) In Article 1(1) for the definitions “mental nursing home”, “nursing home” and “residential care home” there are substituted the following definitions in the correct alphabetical order –
  - “ “care home service” has the same meaning as in paragraph 1(2) of Schedule 1 to the Regulation of Care (Jersey) Law 2014<sup>25</sup>;
  - “nursing home” has the same meaning as in Article 1A of the Nursing Homes (Jersey) Law 1994<sup>26</sup>.”.
- (3) In Article 20(1)(b) for the words “voluntary home” there are substituted the words “home consisting of a care home service that is exclusively or mainly for children”.
- (4) In Article 21(2)(c) and (6)(b) and Article 58(2)(g) for the words “any residential care home, nursing home or mental nursing home” there are substituted the words “any home consisting of a care home service or any nursing home”.
- (5) In Article 46(1)(a) for the words “voluntary home” there are substituted the words “care home service that is exclusively or mainly for children”.
- (6) Part 7 is repealed.
- (7) Article 58(2)(d) and paragraph 9 of Schedule 5 are deleted.
- (8) In Schedule 4, in paragraph 1(f) after the words “financial interest in,” there are inserted the words “a care home service that is exclusively or mainly for children which the Commission has refused to registered under Article 5 of the Regulation of Care (Jersey) Law 2014<sup>27</sup> or the registration of which the Commission has cancelled under Article 20 of that Law or”.

**7 Children (Placement) (Jersey) Regulations 2005**

In the Children (Placement) (Jersey) Regulations 2005<sup>28</sup> –

- (a) in Regulation 14(4) for the words “carrying on a voluntary home or for fostering a child privately under Schedule 4 of the Law” there are substituted the words “fostering a child privately under Schedule 4 of the Law or carrying on a care home service”;
- (b) in paragraph 1(f) of Schedule 3 for the words “in a voluntary home or children’s home” there are substituted the words “in a children’s home or as part of a care home service”.

**8 Children (Regulation of Employment) (Jersey) Order 2011**

For Article 7(2)(l) of the Children (Regulation of Employment) (Jersey) Order 2011<sup>29</sup> there is substituted the following sub-paragraph –

- “(l) undertake any work administering personal care to residents of a nursing home within the meaning of Article 1A of the Nursing Homes (Jersey) Law 1994<sup>30</sup> or a care home service, home care



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service or adult day care service within the meaning of Schedule 1 to the Regulation of Care (Jersey) Law 2014<sup>31</sup>; or”.

**9 Children (Secure Accommodation) (Jersey) Order 2005**

In Article 7(1)(b) and (3) of the Children (Secure Accommodation) (Jersey) Order 2005<sup>32</sup> for the words “in any class of premises to which the Nursing and Residential Homes (Jersey) Law 1994 applies” there are substituted the words “in premises that are provided as part of a care home service within the meaning of paragraph 1(2) of Schedule 1 to the Regulation of Care (Jersey) Law 2014<sup>33</sup>”.

**10 Children (Voluntary Homes) (Jersey) Order 2005**

The Children (Voluntary Homes) (Jersey) Order 2005<sup>34</sup> is revoked.

**11 Day Care of Children (Jersey) Law 2002**

In Article 1(1) of the Day Care of Children (Jersey) Law 2002<sup>35</sup>, for paragraph (c) of the definition of “day care accommodation” there is substituted the following paragraph –

“(c) a place which, in respect of those children, is operating as a school, hospital, nursing home, or a home consisting of a care home service;”.

**12 Control of Housing and Work (Jersey) Law 2012**

In the Control of Housing and Work (Jersey) Law 2012<sup>36</sup> –

- (a) in Article 1(2) for the words “Nursing and Residential Homes (Jersey) Law 1994” there are substituted the words “Nursing Homes (Jersey) Law 1994<sup>37</sup>” and after the words “Lodging Houses (Registration) (Jersey) Law 1962” there are inserted the words “, or a home consisting of a care home service within the meaning of paragraph 1(2) of Schedule 1 to the Regulation of Care (Jersey) Law 2014<sup>38</sup>”;
- (b) in Article 14(1) for the words “Nursing and Residential Homes (Jersey) Law 1994” there are substituted the words “Nursing Homes (Jersey) Law 1994”.

**13 Control of Housing and Work (Exemptions) (Jersey) Order 2013**

In Article 3(1) of the Control of Housing and Work (Exemptions) (Jersey) Order 2013<sup>39</sup> –

- (a) for sub-paragraph (f)(iii)(C) there is substituted the following sub-clause –
  - “(C) an undertaking registered under the Nursing Homes (Jersey) Law 1994 or the Regulation of Care (Jersey) Law 2014;”;

- (b) in sub-paragraph (g)(ii) for the words “Nursing and Residential Homes (Jersey) Law 1994” there are substituted the words “Nursing Homes (Jersey) Law 1994<sup>40</sup>, the Regulation of Care (Jersey) Law 2014<sup>41</sup>”.

**14 Nursing Agencies (Jersey) Law 1978**

The Nursing Agencies (Jersey) Law 1978<sup>42</sup> is repealed.

**15 Nursing and Residential Homes (Jersey) Law 1994**

- (1) The Nursing and Residential Homes (Jersey) Law 1994<sup>43</sup> is amended as follows.
- (2) In the short title and in Article 22 (citation) the words “and Residential” are deleted and in the long title the words “and residential care homes” are deleted.
- (3) Before the heading “INTRODUCTORY” before Article 1 there is inserted the heading “PART 1”.
- (4) In Article 1(1) –
- (a) the definitions “appropriate register”, “disabled”, “personal care” and “residential care home” are deleted;
- (b) for the definition “mental nursing home” there is substituted the following definition –
- “ “mental nursing home” means any premises used or intended to be used for the reception of, and the provision of nursing or other medical treatment (including care, habilitation or rehabilitation under medical supervision) for, one or more mentally disordered persons, (meaning persons suffering, or appearing to be suffering, from mental disorder) whether exclusively or in common with other persons;”;
- (c) in the definition of “maternity home” for the words “Article 3(1)(c)” there are substituted the words “Article 1A(1)(b)”;
- (d) in the definition of “nursing home” for the words “Article 3(1)(c)” there are substituted the words “Article 1A”.
- (5) After Article 1 there is inserted the following Article –

**“1A Meaning of “nursing home”**

- (1) In this Law “nursing home” means any premises, not being a mental nursing home, which are used or intended to be used –
- (a) for the reception of, and the provision of nursing for, persons suffering from any sickness, injury or infirmity; or
- (b) for the reception of pregnant women or of women immediately after childbirth (a “maternity home”); or
- (c) for the provision of all or any of the services specified in paragraph (3).

- (2) However “nursing home” does not include –
- (a) any sanatorium provided at a school or educational establishment and used or intended to be used solely by persons in attendance at, or members of the staff of, that school or establishment or members of their families;
  - (b) any first aid or treatment room provided at a factory, office, shop premises or at a sports ground, show ground or place of public entertainment;
  - (c) any premises used or intended to be used wholly or mainly –
    - (i) for the purpose of consultations with patients by a registered medical practitioner,
    - (ii) for the purpose of treating patients by a registered dentist within the meaning of Article 1 of the Dentistry (Jersey) Law 2015<sup>44</sup> or a chiroprapist or podiatrist registered under the Health Care (Registration) (Jersey) Law 1995<sup>45</sup>, or
    - (iii) for the provision of occupational health facilities, unless they are used or intended to be used for the provision of any of the services specified in paragraph (3), not being premises prescribed under sub-paragraph (e);
  - (d) any premises used or intended to be used wholly or mainly as a private dwelling;
  - (e) any other premises which may be prescribed for the purposes of this paragraph.
- (3) The services mentioned in paragraph (1)(c) and paragraph (2)(c) are –
- (a) the carrying out of surgical procedures under anaesthesia;
  - (b) the carrying out of terminations of pregnancy;
  - (c) endoscopy;
  - (d) haemodialysis or peritoneal dialysis;
  - (e) treatment by laser and diagnosis or treatment by radiation, including X-ray; and
  - (f) any other technique of medicine or surgery (including cosmetic surgery) as to which the Minister is satisfied that its use may create a hazard for persons treated by means of it or for the staff of any premises where the technique is used, and which is prescribed for the purposes of this paragraph.”.
- (6) Article 2(4) is deleted.
- (7) For Article 3 there is substituted the following Article –

**“3 Homes to which Law applies**

- (1) This Law applies to any nursing home.
- (2) This Law does not apply to –

- (a) any hospital maintained or controlled by the States or any administration of the States;
  - (b) any premises used for the purposes of a regulated activity within the meaning of Article 2 of the Regulation of Care (Jersey) Law 2014<sup>46</sup>.”.
- (8) For the heading “REGISTRATION OF HOMES” after Article 3 there is substituted the following headings –

## “PART 2

### REGISTRATION OF NURSING HOMES”.

- (9) In Article 4 –
- (a) for paragraph (1) there is substituted the following paragraph –  
“(1) The Minister shall maintain a register of every nursing home.”;
  - (b) in paragraph (2) for the words “home to which this Law applies without being registered in the appropriate register or registers in respect of that home” there are substituted the words “nursing home without being registered under this Law”;
  - (c) paragraphs (3) and (7) are repealed;
  - (d) in paragraph (5) sub-paragraph (c) is deleted and in sub-paragraph (d) the words “in the case of a nursing home,” are deleted;
  - (e) in paragraph (9) for the words “under this Law in respect of any home to which this Law applies” there are substituted the words “under this Article”.
- (10) In each of the following provisions for the words “home to which this Law applies” there are substituted the words “nursing home” –
- (a) Article 4(4);
  - (b) Article 6(3);
  - (c) Article 15(2)(d) and (k);
  - (d) Article 19(1) and (2);
  - (e) Article 20.
- (11) Article 5 is repealed.
- (12) In Article 6 –
- (a) in paragraph (1) for the words “in respect of” to “the number of persons kept,” there are substituted the words “under this Law that the number of persons kept”;
  - (b) in paragraph (3) the word “and” is deleted;
  - (c) paragraphs (3A) and (3B) are deleted.
- (13) In each of the following provisions for the words “in respect of a home to which this Law applies” there are substituted the words “under this Law” –
- (a) Article 7(1);

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- (b) Article 8(1);
  - (c) Article 9(1) and (3);
  - (d) Article 11(1)(a).
- (14) In Article 7(1) –
- (a) in sub-paragraph (a) for the words “home of such a class as that named in the application” there are substituted the words “nursing home”;
  - (b) in sub-paragraphs (b) and (c) for the words “home of that class” there are substituted the words “nursing home”;
  - (c) in sub-paragraphs (e) and (f) the words “in the case of a nursing home or a mental nursing home” are deleted;
  - (d) in sub-paragraph (e) for the words “either a registered medical practitioner, qualified nurse or in the case of a maternity home, a certified midwife” there are substituted the words “a person who has the qualifications, skill, knowledge or experience necessary to be in charge of a nursing home”.
- (15) Article 7(2) is deleted.
- (16) In Article 8(2) for the words “class of homes to which this Law applies since the date of registration of any person in respect of a home within that class” there are substituted the words “nursing home since the date of registration of any person”.
- (17) Before the heading “PROCEDURE” after Article 8 there is inserted the heading “PART 3”.
- (18) In Article 9(3)(b) and 11(1)(b) for the words “for the time being in force in respect of the home by virtue of this Law” there are substituted the words “of such registration”.
- (19) In Article 13 –
- (a) in paragraph 1(a) for the words “in respect of a home to which this Law applies, other than a home to which paragraphs (3) to (5) apply” there are substituted the words “in respect of a nursing home to which this Law applies”;
  - (b) paragraphs (2) to (6) are deleted.
- (20) In Article 14 (including its heading) for the word “registers” there is substituted the word “register” and for the words “any such” there is substituted the word “the”.
- (21) In Article 15 –
- (a) in paragraph (1) for the words “class of homes to which this Law applies” there are substituted the words “nursing home”;
  - (b) in paragraph (2) for the words “homes or any class of homes to which this Law applies” there are substituted the words “nursing homes”;
  - (c) paragraphs 2(e), (j) and (m) are deleted and in sub-paragraph (f) the words from “, including records” until the end of the paragraph are deleted.

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- (22) Before the heading “OFFENCES” after Article 15 there is inserted the heading “PART 4”.
- (23) For Article 16(1) there is substituted the following paragraph –
- “(1) A person who –
- (a) applies any name to premises in Jersey; or
- (b) in any way describes such premises or holds such premises out,
- so as to indicate, or so as reasonably to be understood to indicate, that the premises are a nursing home shall be guilty of an offence unless registration in respect of the home has been effected under this Law.”.
- (24) Before the heading “MISCELLANEOUS AND SUPPLEMENTAL” after Article 18 there is inserted the heading “PART 5”.
- (25) In Article 19 –
- (a) in paragraph (1) the words “, and may inspect any records kept in pursuance of any Order under Article 15(2)(e)” are deleted;
- (b) in paragraph (3) the words “or the visiting or examination of a patient who is liable to be detained by a registered medical practitioner authorized under Article 53 of the Mental Health (Jersey) Law 2016<sup>47</sup>” are deleted;
- (c) paragraph (6) is deleted.]
- (26) Article 21 and the Schedule are repealed.

## **16 Nursing Homes and Mental Nursing Homes (General Provisions) (Jersey) Order 1995**

In the Nursing Homes and Mental Nursing Homes (General Provisions) (Jersey) Order 1995<sup>48</sup> –

- (a) in the short title and in Article 19 the words “and Mental Nursing Homes” are deleted;
- (b) in the definition of “home” in Article 1 the words “or mental nursing home” are deleted;
- (c) In Article 6 –
- (i) in paragraph (2)(b) the words “where the home is a nursing home,” and the words from and where that person” to the end of the subparagraph are deleted,
- (ii) paragraph (10) is deleted;
- (d) for the word “Registers” in the heading to Article 7 there is substituted the word “Register” and for the word “registers” in Article 7(1) there is substituted the word “register”;
- (e) Article 12 is revoked;
- (f) in the Schedule –

- (i) in the subheading below “Part 1” the words “AND RESIDENTIAL” are deleted and in the heading below that sub-heading the words “OR MENTAL NURSING HOME” are deleted;
- (ii) for paragraph 4(a) of Part 2 there is substituted the following sub-paragraph –
  - “(a) the address of any other home or any regulated activity (within the meaning of Article 2 the Regulation of Care (Jersey) Law 2014<sup>49</sup>) in which the applicant has or had a business interest and the nature and extent of his or her interest;”.

**17 Residential Homes (General Provisions) (Jersey) Order 1995**

The Residential Homes (General Provisions) (Jersey) Order 1995<sup>50</sup> is revoked.

**18 Termination of Pregnancy (Jersey) Law 1997**

In the definition “approved place” in Article 7 of the Termination of Pregnancy (Jersey) Law 1997<sup>51</sup> the words “and Residential” are deleted.

**19 Restriction on Smoking (Workplaces) Regulations 2006**

In the Restriction on Smoking (Workplaces) Regulations 2006<sup>52</sup> –

- (a) in Regulation 1 the definition “1994 Law” the words “and Residential” are omitted;
- (b) for Regulation 5(3)(c) and (d) there is substituted the following sub-paragraph –
  - “(c) a home consisting of a care home service within the meaning of paragraph 1(2) of Schedule 1 to the Regulation of Care (Jersey) Law 2014<sup>53</sup>;”.

**20 Fire Precautions (Designated Premises) (Jersey) Regulations 2012**

For the definition “care or nursing home” in Regulation 1(1) of the Fire Precautions (Designated Premises) (Jersey) Regulations 2012<sup>54</sup> there is substituted the following definition –

- “ “care or nursing home” means –
  - (a) any home consisting of a care home service as defined in paragraph 1(2) of Schedule 1 to the Regulation of Care (Jersey) Law 2014<sup>55</sup>; or
  - (b) a nursing home within the meaning of Article 1A of the Nursing Homes (Jersey) Law 1994<sup>56</sup>, and includes any nursing home maintained or controlled by the States or any administration of the States and which, by virtue of Article 3(2) of the Nursing Homes (Jersey) Law 1994, are premises to which that Law does not apply;”.

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**21 Goods and Services Tax (Jersey) Law 2007**

In Schedule 5 to the Goods and Services Tax (Jersey) Law 2007<sup>57</sup>, for paragraph 4(1)(e) there is substituted the following clause –

“(e) the supply of any service or goods in a nursing home registered under the Nursing Homes (Jersey) Law 1994<sup>58</sup> or in any premises where a regulated activity described in paragraph 1, 2 or 3 of Schedule 1 to the Regulation of Care (Jersey) Law 2014<sup>59</sup> is carried on, being a supply made by or on behalf of the person carrying on the home or regulated activity to a patient in the home or person who is a receiver of care provided by the regulated activity as the case may be;”.

**22 Long-Term Care (Jersey) Law 2012**

In the Long-Term Care (Jersey) Law 2012<sup>60</sup> –

(a) In Article 1 –

(i) after the definition of “approved care home” there is inserted the following definition –

“ “approved home care service” shall be construed in accordance with Article 6A;”;

(ii) after the definition “Fund” there is inserted the following definition –

“ “home care service” has the same meaning as in paragraph 2(2) of Schedule 1 to the Regulation of Care (Jersey) Law 2014<sup>61</sup>;”;

(b) After Article 6 there is inserted the following Article –

**“6A Approved home care service**

(1) A home care service may be approved by the Minister for the purposes of this Law (an “approved home care service”).

(2) The Minister shall, by Order, make provision as respects all such matters as he or she thinks fit concerning approval under paragraph (1) including, without limiting the generality of the foregoing –

- (a) conditions subject to which approval may be given;
- (b) procedures for approval and subsequent reviews;
- (c) the form and manner of an application for approval, including any application fee;
- (d) revocation or suspension of approval;
- (e) provision for appeals against revocation or suspension of approval.”.



**23 Long-Term Care (General Provisions) (Jersey) Order 2014**

In the Long-Term Care (General Provisions) (Jersey) Order 2014<sup>62</sup> –

- (a) for Article 4(2)(b) there is substituted the following sub-paragraph –
- “(b) any person who is responsible for providing a home care service, in return for remuneration, comprising any long term care as part of the approved care package –
- (i) is registered under Article 7 of the Regulation of Care (Jersey) Law 2014<sup>63</sup>, and
- (ii) is approved under Article 13A of this Order.”
- (b) For Article 13(1) there is substituted the following paragraph –
- “(1) In this Article “registered home” means a home that is part of a care home service within the meaning of paragraph 1(2) of Schedule 1 to the Regulation of Care (Jersey) Law 2014.”;
- (c) for Article 13(8)(a) there is substituted the following sub-paragraph –
- “(a) is in breach of a condition of registration under the Nursing Homes (Jersey) Law 1994<sup>64</sup> or the Regulation of Care (Jersey) Law 2014 (in circumstances where paragraph (7) does not apply); or”
- (d) After Article 13 there is inserted the following Article –

**“13A Approved providers of home care service**

- (1) A provider of a home care service may apply to the Minister for approval under this Article.
- (2) An application under paragraph (1) must be made to the Minister on a form approved by the Minister, or in such other manner as the Minister may accept as sufficient in the circumstances of the case, and accompanied by such information, documents and evidence as the Minister requires for the purpose of enabling the application to be assessed.
- (3) On receiving an application under paragraph (1) the Minister may –
- (a) grant the application;
- (b) grant the application on a provisional basis; or
- (c) refuse the application.
- (4) The Minister shall notify the applicant in writing of any decision under paragraph (3)(a) or (b) with reasons and –
- (a) if the application is granted under paragraph (3)(a), that the provider of the home care service is fully approved; or
- (b) if the application is granted under paragraph (3)(b), that the provider of the home care service is approved only to the extent of providing long term care to individuals to whom they already provided it immediately before the application

- was granted (a 'provisionally approved' provider of a home care service).
- (5) The Minister shall not grant an application under paragraph (3)(a) unless he or she is satisfied that –
- (a) the provider of the home care service is registered under Article 7 of the Regulation of Care (Jersey) Law 2014; and
  - (b) there is an agreement in place between the provider of the home care service and the Minister with respect to the administration services provided, such services being ancillary to the long-term care provided.
- (6) The Minister shall not grant an application under paragraph (3)(b) unless he or she is satisfied that –
- (a) the provider of the home care service is registered under Article 7 of the Regulation of Care (Jersey) Law 2014; and
  - (b) although there is no agreement as described in paragraph (5)(b), arrangements have been agreed between the provider of the home care service and the Minister with a view to such an agreement being made in the future.
- (7) An approval under this Article ceases to have effect when the registration under the Regulation of Care (Jersey) Law 2014 ceases to have effect.
- (8) If the Minister is satisfied that an approved provider of a home care service is in breach of a condition of registration under the Regulation of Care (Jersey) Law 2014 (in circumstances where registration under that Law continues to have effect) the Minister may take the steps referred to in paragraph (9).
- (9) Those steps are that –
- (a) where the provider of the home care service is fully approved –
    - (i) the Minister may make a determination that imposes a restriction that the provider is approved only to the extent of providing long term care to individuals to whom they already provided it immediately before the date that the restriction is imposed, and
    - (ii) if, after imposing such a restriction, the Minister is not satisfied that the breach of the agreement as described in paragraph (5)(b) or condition referred to in paragraph (8) is likely to be remedied in a satisfactory manner, the Minister may determine that the approval shall cease from the date of the Minister's determination; or
  - (b) where the case of a provider of a home care service that is provisionally approved, if the Minister is not satisfied that the breach of the arrangements referred to in paragraph (6)(b) or condition referred to in paragraph (8) is likely to be remedied in a satisfactory manner, the Minister

may determine that the approval shall cease from the date of the Minister's determination.

(10) A notification of a decision to refuse an application under paragraph (3)(c) or of a determination under paragraph (9) shall be by notice in writing with reasons to the provider of the home care service and may be given only after the Minister has considered any objections or representations made in accordance with paragraph (11).

(11) Before giving a notification under paragraph (3)(c) or (9) the Minister must serve notice on the provider of the home care service –

(a) giving the Minister's reasons for the Minister's proposed refusal or determination; and

(b) stating that within such period as may be specified in the notice (not being less than 21 days beginning with the date of service of the notice) the person on whom it is served may make objections or representations in writing to the Minister concerning the proposal.

(12) If a person is aggrieved by –

(a) a decision of the Minister under paragraph (3); or

(b) a determination under paragraph (9),

the person may appeal to the Royal Court no later than 28 days after the date of receipt of the notification of the decision or determination, as the case may be, on the ground that the decision or determination of the Minister was unreasonable having regard to all the circumstances of the case.

(13) Unless the Royal Court so orders, the lodging of an appeal shall not operate to stay the effect of a decision under paragraph (3) or a determination under paragraph (9) pending determination of the appeal.

(14) On hearing the appeal, the Court may confirm, reverse or vary the Minister's decision or determination.”.

## 24 Social Security (Television Licence Benefit) (Jersey) Regulations 2009

In the definition “domestic premises” in Regulation 1 of the Social Security (Television Licence Benefit) (Jersey) Regulations 2009<sup>65</sup> for the words “nursing home, a mental nursing home, or a residential care home, in each case within the meaning of the Nursing and Residential Homes (Jersey) Law 1994” there are substituted the words “nursing home within the meaning of Article 1A of the Nursing Homes (Jersey) Law 1994<sup>66</sup> or a home consisting of a care home service within the meaning of paragraph 1(2) of Schedule 1 to the Regulation of Care (Jersey) Law 2014<sup>67</sup>”.

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- 1 *chapter 20.820*
  - 2 *chapter 08.840*
  - 3 *chapter 20.820*
  - 4 *chapter 12.200*
  - 5 *chapter 26.550*
  - 6 *chapter 26.900*
  - 7 *chapter 26.600*
  - 8 *chapter 05.450.50*
  - 9 *chapter 20.820*
  - 10 *chapter 07.455*
  - 11 *chapter 12.200*
  - 12 *chapter 20.820*
  - 13 *chapter 08.840.50*
  - 14 *chapter 12.200*
  - 15 *chapter 20.820*
  - 16 *chapter 10.700*
  - 17 *chapter 20.725*
  - 18 *chapter 20.820*
  - 19 *L.20/2018*
  - 20 *chapter 20.820*
  - 21 *chapter 20.725*
  - 22 *chapter 12.050*
  - 23 *chapter 20.820*
  - 24 *chapter 12.200*
  - 25 *chapter 20.820*
  - 26 *chapter 20.725*
  - 27 *chapter 20.820*
  - 28 *chapter 12.200.50*
  - 29 *chapter 12.200.65*
  - 30 *chapter 20.725*
  - 31 *chapter 20.820*
  - 32 *chapter 12.200.80*
  - 33 *chapter 20.820*
  - 34 *R&O.79/2005 (chapter 12.200.90)*
  - 35 *chapter 10.700*
  - 36 *chapter 18.150*
  - 37 *chapter 20.725*
  - 38 *chapter 20.820*
  - 39 *chapter 18.150.10*
  - 40 *chapter 20.725*
  - 41 *chapter 20.820*
  - 42 *L.7/1978 (chapter 20.700)*
  - 43 *chapter 20.725*
  - 44 *chapter 20.100*
  - 45 *chapter 20.300*
  - 46 *chapter 20.820*
  - 47 *L.29/2016*
  - 48 *chapter 20.725.30*
  - 49 *chapter 20.820*
  - 50 *R&O.8812 (chapter 20.725.60)*
  - 51 *chapter 20.925*
  - 52 *chapter 20.825.95*

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53	<i>chapter 20.820</i>
54	<i>chapter 23.150.25</i>
55	<i>chapter 20.820</i>
56	<i>chapter 20.725</i>
57	<i>chapter 24.700</i>
58	<i>chapter 20.725</i>
59	<i>chapter 20.820</i>
60	<i>chapter 26.600</i>
61	<i>chapter 20.820</i>
62	<i>chapter 26.600.30</i>
63	<i>chapter 20.820</i>
64	<i>chapter 20.725</i>
65	<i>chapter 26.950.50</i>
66	<i>chapter 20.725</i>
67	<i>chapter 20.820</i>