

STATES OF JERSEY



Jersey

DRAFT REGULATION OF CARE (TRANSITIONAL PROVISIONS) (JERSEY) REGULATIONS 202-

**Lodged au Greffe on 8th March 2022
by the Minister for the Environment
Earliest date for debate: 25th April 2022**

STATES GREFFE

REPORT

Section 1: Introduction

1. The draft Regulation of Care (Transitional Provisions) (Jersey) Regulations 202- (the “draft Regulations”) set out the transitional arrangements with regard to certain care home and home care services that are already regulated under the [Regulation of Care \(Jersey\) Law 2014](#) (the “2014 Law”) at the point at which the Draft Regulation of Care (Regulated Activities) (Amendment of Law) (Jersey) Regulations 202- (the “draft Regulated Activities Regulations”) come into force. The draft Regulations provide all services which would become regulated for the first time, under the draft Regulated Activities Regulations, 6 months to register with the Jersey Care Commission (the “Commission”).
2. It is one of 3 sets of draft Regulations being brought forward under the 2014 Law for States approval, the other 2 being:
 - Draft Regulation of Care (Regulated Activities) (Amendment of Law) (Jersey) Regulations 202- (P.45/2022): Regulations that describe the types of health and social care to be regulated. These include 10 new categories of social work and mental health service provided to children, including:
 - adoption services;
 - children’s home services;
 - fostering services;
 - social work services for children and young people;
 - independent monitoring and review service in looked after children’s cases;
 - child contact centres;
 - residential family centres;
 - children and young peoples’ mental health services;
 - care services in special schools; and
 - children and family community nursing services.
 - Draft Regulation of Care (Standards and Requirements) (Amendment) (Jersey) Regulations 202- (P.46/2022): Regulations that amend the [Regulation of Care \(Standards and Requirements\) Regulations 2018](#) which set out the requirements to be imposed on registered care providers and applicants for registration.

Section 2: Background

3. 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 is underpinned by a series of Regulations, each focusing on a distinct type of health and social care provision. The 2014 Law came into force in January 2019, when care homes, home care services and day care services for adults were made subject to the new regulatory regime under the Care Commission.

4. The report accompanying the Draft Regulation of Care (Regulated Activities) (Amendment of Law) (Jersey) Regulations 202- provides background information about:
- the purpose and function of the 2014 Law;
 - the rationale for regulating social work and mental health services for children and young people in Jersey;
 - the fees to be charged to providers of newly regulated services;
 - the consultation process and feedback from the consultation; and
 - next steps in the development of the regulatory framework.

Section 3: Draft Regulation of Care (Transitional Provisions) (Jersey) Regulations 202-

5. It is an offence for a person to carry on a regulated activity, under Article 3(1) of the 2014 Law, unless they are registered to do so with the Care Commission. When the draft Regulated Activities Regulations come into force, however, service providers and the Commission must be given a reasonable period of time to submit and to process applications for registration. The purpose of the draft Regulations is to enable the registration process to take place without service providers being deemed to have committed an offence.
6. The draft Regulations provide that:
- (a) children's homes which are currently required to register as care home services under the 2014 Law will automatically be registered as children's home services when the draft Regulated Activities Regulations come into force;
 - (b) children and family nursing services which are currently required to register as home care services under the 2014 Law will be able to re-register with the Commission without paying a registration fee; and
 - (c) those services which will become regulated activities for the first time (such as adoption and fostering services) will be required to register with the Commission within 6 months of the draft Regulated Activities Regulations coming into force.
7. Regulation 2 of the draft Regulations provides that care homes currently regulated under the 2014 Law, but which must register as a children's home when the draft Regulated Activities Regulations come into force, will automatically be treated as carrying on as a children's home for the purposes of the 2014 Law. There will be no requirement for the registered provider of the children's home to make an application to register that service under Article 4(1) of the 2014 Law. Providers of these services will also be exempt from registering a new manager under Article 4(2) of the 2014 Law, providing the individual or individuals who are currently registered as managers of the service continue to act as such.
8. The Care Commission is required to update the details of all registered care homes which become children's homes on the register (under Article 8(2)(d) of the 2014 Law) within 3 months of the draft Regulated Activities Regulations coming into force. In addition, the Commission must inform each of these regulated activities, in writing, that these services are now registered as children's homes and that their details have been updated on the register. The Commission must also issue each service with a new certificate, reflecting that they are now

registered as a children's home. The Commission must not levy a fee for updating the register or for issuing a new certificate in these cases.

9. Regulation 3 of the draft Regulations provides that home care services which become children and family nursing services (under paragraph 15 of Schedule 1 to the draft Regulated Activities Regulations) will be exempt from the payment of a registration fee, the payment of a fee for registering a manager (unless that manager is not registered as such when the draft Regulations come into force) and payment of a fee for a new certificate. These service providers will be treated as being registered as home care services under paragraph 2 of Schedule 1 to the 2014 Law until they have been registered by the Commission as a children and family nursing service.
10. Home care services which become children and family nursing services will be required to make an application to register with the Commission, within 6 months of the draft Regulated Activities Regulations coming into force.
11. Regulation 4 of the draft Regulations applies to all other providers of new regulated activities. All providers must make an application to register with the Commission within 6 months of the draft Regulated Activities Regulations coming into force. A service provider will not be liable to be convicted of the offence of carrying on a regulated activity without having registered with the Commission, if they have made an application within that 6-month period and until that application has been approved (or declined) by the Commission, including the time taken for any appeals process.

Section 4: Financial and manpower implications

12. Information about the financial and resource implications of the 2014 Law are set out in Section 4 of the report accompanying the Draft Regulation of Care (Regulated Activities) (Amendment of Law) (Jersey) Regulations 202- (lodged for debate on the same day as these draft Regulations).
13. Under the 2014 Law, all registered providers will pay initial registration and annual fees. Those providers who fail to meet with the standards and requirements brought forward by these Regulations will also incur compliance costs (i.e. the investment necessary to ensure services meet the required standards). As set out above, children's home and children and family nursing services which are already registered as care home and home care services will not be required to pay initial registration fees.

EXPLANATORY NOTE

The Regulation of Care (Transitional Provisions) (Jersey) Regulations 202-, if passed, will, in respect of registered providers under the Regulation of Care (Jersey) Law 2014 (the “Law”), provide for the transition of registered providers of care home services to become registered providers of children’s home services and for registered providers of home care services to become registered providers of children and family community nursing services. That transition will occur on the coming into force of the Regulation of Care (Regulated Activities) (Amendment of Law) (Jersey) Regulations 202- (the “Amendment of Law Regulations”), if those Regulations are passed by the States.

Regulation 1 contains the definition of certain words and phrases used in these Regulations.

Regulation 2 provides that any registered provider of a care home service (as defined in *Regulation 1*) who, before the coming into force of the Amendment of Law Regulations (the “commencement date”), provided that service only in respect of children, is treated on the commencement date as being a registered provider of a children’s home service (as defined in *Regulation 1*). The same treatment is afforded to an individual who was the registered manager of a care home service. That individual is treated, on the commencement date, as the registered manager of a children’s home service. The Health and Social Care Commission (the “Commission”) is required, not later than 3 months after the commencement date, to update the register of persons registered under the Law, inform the registered provider and, if there is one, the registered manager in writing of the update, and issue the registered provider with a fresh certificate under Article 8 of the Law.

Regulation 3 applies to a person who, before the commencement date, is a registered provider of a home care service (as defined in *Regulation 1*) and who from the commencement date also provides a children and family community nursing service. Where this Regulation applies, that person is afforded a 6-month grace period from liability to be convicted of an offence under the Law to allow the person time to apply, in accordance with Article 4 of the Law, to be registered as a provider of a children and family community nursing service and, where applicable, for the registration of an individual as the manager in relation to that service.

Regulation 4 applies in respect of persons carrying on any new regulated activities set out in Part 3 (provision of health or social care services for, or in respect of, children and young people) of Schedule 1 to the Law (as amended by the Amendment of Law Regulations). As with *Regulation 3*, this Regulation provides a 6-month grace period from liability to be convicted of an offence under the Law to enable the application for registration process to be completed.

Regulation 5 provides for the title by which these Regulations may be cited, and for them to come into force on the coming into force of the Amendment of Law Regulations.



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DRAFT REGULATION OF CARE (TRANSITIONAL PROVISIONS) (JERSEY) REGULATIONS 202-

Made [date to be inserted]

Coming into force [date to be inserted]

THE STATES make these Regulations under Article 49 of the [Regulation of Care \(Jersey\) Law 2014](#) –

1 Interpretation

- (1) In these Regulations –
- “Amendment of Law Regulations” means the Regulation of Care (Regulated Activities) (Amendment of Law) (Jersey) Regulations 202-;
 - “as amended” means as amended by the Amendment of Law Regulations;
 - “care home service” is construed in accordance with paragraph 4 of Schedule 1 to the Law, as amended;
 - “children and family community nursing service” is construed in accordance with paragraph 15 of Schedule 1 to the Law, as amended;
 - “children’s home service” is construed in accordance with paragraph 7 of Schedule 1 to the Law, as amended;
 - “commencement date” means the date on which the Amendment of Law Regulations come into force;
 - “finally determined” means, in relation to an application for registration under Article 4 of the Law, that the Commission has made a decision on the application and either the time for appealing that decision under Article 44 of the Law has expired without an appeal having been made, or, if an appeal was made, that appeal has been concluded;
 - “home care service” is construed in accordance with paragraph 5 of Schedule 1 to the Law, as amended;
 - “Law” means the [Regulation of Care \(Jersey\) Law 2014](#).
- (2) Except as defined in paragraph (1), words and phrases used in these Regulations which also occur in Schedule 1 to the Law, as amended, have the same meaning for the purposes of these Regulations as given in that Schedule.

2 Care home service

- (1) Any registered provider of a care home service that immediately before the commencement date, provided a care home service only in respect of children, is treated on the commencement date as being registered as a provider of a children's home service.
- (2) Any individual who, immediately before the commencement date, was registered as a manager of a care home service referred to in paragraph (1), and who upon the commencement date continues to act as a manager, is treated on the commencement date as being registered as a manager of a children's home service.
- (3) Not later than 3 months after the commencement date, the Commission must –
 - (a) in accordance with Article 8(2)(d) of the Law, enter in the register the new regulated activity that, from the commencement date, is regulated in respect of a registered provider to whom paragraph (1) applies and, if applicable, a manager to whom paragraph (2) applies;
 - (b) inform, in writing, the registered provider and, if applicable, the registered manager that the entry referred to in sub-paragraph (a) has been made; and
 - (c) in accordance with Article 8(6) of the Law, issue a fresh certificate.
- (4) Despite Article 41 of the Law, the Commission may not charge a fee for performing the requirements listed in paragraph (3).
- (5) In this Regulation “new regulated activity” means the provision of a children's home service.

3 Home care service

- (1) This Regulation applies to a person who, immediately before the commencement date, is a registered provider of a home care service and from the commencement date also provides a children and family community nursing service.
- (2) A person to whom this Regulation applies –
 - (a) is not liable to be convicted of an offence under Article 3 of the Law for a period of 6 months following the commencement date, if the person has, within that 6-month period, applied in accordance with Article 4 of the Law –
 - (i) to be registered as a provider of a children and family community nursing service, and
 - (ii) where applicable, for the registration of an individual as the manager in relation to that service; and
 - (b) the 6-month period has expired before the application mentioned in sub-paragraph (a) is finally determined.
- (3) For the avoidance of doubt, nothing in this Regulation affects the registration in respect of the provision of a home care service by a person to whom this Regulation applies.

- (4) Despite Article 41 of the Law, the Commission may not charge a fee in respect of an application for registration by, or for the issue of a certificate to, a person to whom this Regulation applies.

4 Persons undertaking new regulated activities

- (1) This Regulation applies to a person who –
 - (a) is not a person to whom Regulation 2 or 3 applies; and
 - (b) on or after the commencement date, is carrying on or managing a new regulated activity.
- (2) A person to whom this Regulation applies –
 - (a) is not liable to be convicted of an offence under Article 3 of the Law for a period of 6 months following the commencement date, if the person has, within that 6-month period, applied in accordance with Article 4 of the Law –
 - (i) to be registered as a provider of a new regulated activity, and
 - (ii) where applicable, for the registration of an individual as the manager in relation to that new regulated activity; and
 - (b) the 6-month period has expired before the application mentioned in sub-paragraph (a) is finally determined.
- (3) In this Regulation “new regulated activity” means the provision of a regulated activity under Part 3 (provision of health or social care services for, or in respect of, children and young people) of Schedule 1 to the Law, as amended.

5 Citation and commencement

These Regulations may be cited as the Regulation of Care (Transitional Provisions) (Jersey) Regulations 202- and come into force immediately after the commencement of the Amendment of Law Regulations.