

STATES OF JERSEY



Jersey

DRAFT REGULATION OF CARE (STANDARDS AND REQUIREMENTS) (COVID-19 – TEMPORARY AMENDMENTS) (JERSEY) REGULATIONS 202-

**Lodged au Greffe on 20th March 2020
by the Chief Minister**

STATES GREFFE

REPORT

1. Introduction

- 1.1 This is emergency draft legislation, drafted in response to the Covid-19 pandemic which is currently affecting Jersey and most of the globe.
- 1.2 The Draft Regulation of Care (Standards and Requirements) (Covid-19 – Temporary Amendments) (Jersey) Regulations 202- (the “draft Regulations”) would amend the [Regulation of Care \(Standards and Requirements\) \(Jersey\) Regulations 2018](#) (“the 2018 Regulations”). These amendments would give registered providers of adult day care, care home and home care services greater flexibility to manage the potential impact of the outbreak of Covid-19 if their services are affected.
- 1.3 The draft Regulations propose temporary measures which will expire on 30th September 2020.

2. Legislation

- 2.1 The [Regulation of Care \(Jersey\) Law 2014](#) provides a legislative framework for the independent regulation of health and social care in Jersey. It is underpinned by a series of Regulations, covering each regulated activity listed under the Law. The aforementioned Law established the independent Jersey Care Commission (“JCC”). The 2018 Regulations, which provide for the regulation of home care, adult day care and care home services, including children’s residential homes, were adopted by the States Assembly in October 2018 and came into force on 1st January 2019.
- 2.2 Under Regulation 3 of the 2018 Regulations, currently the Jersey Care Commission must impose certain relevant conditions on each registered service provider. In the normal course of events, the JCC should limit the nature of the services provided, including the number of beds each care home can provide and the number of care hours each home care service can provide. However, it is clear that the Covid-19 pandemic has the potential to drastically affect the ability of service providers to maintain services as per the usual conditions imposed upon them.
- 2.3 The draft Regulations provide that the JCC must suspend conditions placed on service providers, if they inform the Commission that they are unable to meet their usual conditions of service as a result of Covid-19 and it is reasonable and proportionate to do so. The purpose of this temporary measure is to ensure that service providers can provide services which they would usually be prohibited from doing. For example, it is reasonable to assume that care homes may have to increase capacity at short notice and to provide more nursing care than would usually be permitted. It is important that they should be able to do so, where necessary and with appropriate oversight by the JCC, in response to the outbreak of Covid-19.
- 2.4 Provisions will also allow the JCC to disapply Regulations which require workers to be suitably qualified in circumstances when staff are unavailable because they are suffering with Covid-19, and inexperienced, under-qualified staff are required to step in. Providers must, first, plan for and mitigate against the very predictable event that they will be short-staffed during the outbreak. It is accepted, though, that providers may not – in due course – be able to mitigate against this eventuality by having suitably qualified staff available at all times.

- 2.5 The requirement that those working in care settings must be of good character and integrity will remain, in all circumstances. However, it is recognised that – in a crisis – the agencies which process criminal record background check requests (“DBS checks”) may be unable to process applications in a timely manner. In short, registered providers may need staff more quickly than DBS checks can be processed. In these cases, it would be unreasonable to penalise care providers, and it would be irresponsible to leave providers short-staffed. Even in these cases, under the draft Regulations, providers must have done all they can to verify that workers in care settings are of good character in the circumstances.
- 2.6 Finally, it is likely that the Care Commission will be unable to fulfil its legal obligation to conduct annual inspections of all care providers. This is because it will not be appropriate for them to visit multiple providers due to the risk of spreading the virus to vulnerable people. Equally, there may be too few inspectors available to conduct the usual inspection programme, if the Commission’s staff contract the virus. Under the draft Regulations this obligation would be relaxed, providing that the Commission completes an inspection within 2 years and that the Chief Minister is notified.

3. Financial and manpower implications

There are no financial or manpower implications for the States arising from the adoption of these draft Regulations.

EXPLANATORY NOTE

These Regulations, if passed, would make temporary changes to certain requirements in respect of the registration of registered providers, the employment of workers and inspections by the Jersey Health and Social Care Commission (“the Commission”) in relation to activities regulated under the Regulation of Care regime (“regulated activities”) as a consequence of the outbreak of Covid-19 in Jersey.

The Regulation of Care (Standards and Requirements) (Jersey) Regulations 2018 (“the 2018 Regulations”) are amended in the following respects (*Regulation 1*).

Regulation 2 inserts Regulation 3A into the 2018 Regulations. This provides that the restrictions in Regulation 3 of those Regulations on types and numbers of care receivers and the number of hours during which care is given and the requirement to follow the submitted Statement of Purpose are suspended where the registered provider cannot meet them as a result of the Covid-19 outbreak, the provider has notified the Commission of this and the Commission determines it is proportionate and reasonable to do so.

Regulation 3 inserts Regulation 17A into the 2018 Regulations. This provides that the stipulation in Regulation 17 of those Regulations that to be a “fit person” to work in a regulated activity, the person has to be suitably qualified, skilled, competent and experienced for the duties to which he or she is assigned, along with the factors to take in consideration when determining this fitness and various other related requirements on registered persons, may be disapplied. This disapplication happens in relation to any of those requirements if the registered person has put a plan in place to mitigate the effects of a shortage of those fit persons but is still unable to comply with that requirement due to the Covid-19 outbreak and has reasonable grounds for declaring this to the Commission.

Both modifications described above last 3 months but the registered provider or person is able to follow the process again, and, if the requirements are met, subsequent 3-month suspensions or disapplications of conditions or requirements will apply.

The stipulation in Regulation 17 that a person is not a fit person if the person has been sentenced to imprisonment for certain offences, been convicted of an offence against a care receiver or is on a list of persons barred from working with children or vulnerable adults is also modified (by inserted Regulation 17A(4)). The stipulation is to apply only where the registered person, having made reasonable enquiries of the person, knows or has reason to suspect that this is the case.

Regulation 4 inserts Regulation 32A into the 2018 Regulations. This provides that the Commission need not comply with the requirement in Regulation 32(1) to carry out 12-monthly inspections of regulated activities if this is not possible due to the Covid-19 outbreak, the Commission notifies the Chief Minister and an inspection is carried out within 2 years of the last one.

Regulation 5 inserts Regulation 34A into the 2018 Regulations, which provides for the inserted Regulations 3A, 17A and 32A to expire on 30th September 2020.

Regulation 6 sets out how the Regulations may be cited and provides for them to come into force on the day after they are made.



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

THE STATES make these Regulations under Articles 11, 14 and 30(3) of the Regulation of Care (Jersey) Law 2014¹ and after the Chief Minister having consulted the Health and Social Care Commission and in accordance with Article 14(9) –

1 Amendment of Regulation of Care (Standards and Requirements) (Jersey) Regulations 2018

The Regulation of Care (Standards and Requirements) (Jersey) Regulations 2018² are amended in accordance with the following provisions of these Regulations.

2 Regulation 3A inserted

After Regulation 3 there is inserted –

“3A Modification of application of Regulation 3 due to outbreak of Covid-19

- (1) Paragraph (2) applies if –
 - (a) a registered provider is unable to comply with any of the relevant conditions of the provider’s registration imposed under Regulation 3 as a direct or indirect result of the outbreak of Covid-19 in Jersey; and
 - (b) the registered provider notifies the Commission of the conditions that the provider is unable to comply with.
- (2) Where this paragraph applies, the Commission must suspend the imposition of any relevant condition in relation to that registered provider for a period of 3 months if the Commission determines, on the basis of information supplied by the registered provider, that it is proportionate and reasonable to do so.

- (3) Paragraph (2) also applies if, at the end of that and any subsequent 3-month period, paragraph (1)(a) continues to apply and the registered provider again notifies the Commission as required by paragraph (1)(b).
- (4) In this Regulation “relevant conditions” means the conditions set out in Regulation 3(1)(d) to (j).”.

3 Regulation 17A inserted

After Regulation 17 there is inserted –

“17A Modification of application of Regulation 17 due to outbreak of Covid-19

- (1) Paragraph (2) applies if –
 - (a) a registered person has put in place a plan to mitigate the effects of a shortage of persons who are suitably qualified, skilled, competent and experienced for the duties to which they are assigned as a direct or indirect result of the outbreak of Covid-19 in Jersey; and
 - (b) the registered person has reasonable grounds for declaring to the Commission that, due to that outbreak, the registered person is nevertheless still unable to comply with any relevant requirement.
- (2) Where this paragraph applies, any relevant requirements that the registered person is unable to comply with do not apply to the registered person for a period of 3 months.
- (3) Paragraph (2) also applies if at the end of that or any subsequent 3-month period, the registered person again satisfies the conditions set out in paragraph (1).
- (4) Regulation 17(2) has effect as if after “A person is not a fit person if” there is inserted “the registered person, having made reasonable enquiries of the person knows or has reason to suspect that”.
- (5) In this Regulation “relevant requirements” means the requirements set out in Regulation 17(1)(a), (3) and (4).”.

4 Regulation 32A inserted

After Regulation 32 there is inserted –

“32A Modification of application of Regulation 32 due to outbreak of Covid-19

The Commission need not comply with Regulation 32(1) if –

- (a) the Commission is unable to carry out the required inspection as a direct or indirect result of the outbreak of Covid-19 in Jersey, whether or not this is due to there being an insufficient number of inspectors available;

- (b) the Commission notifies the Chief Minister of the failure to comply and the reason for it; and
- (c) the required inspection is carried out within 2 years of the date of the last such inspection.”.

5 Regulation 34A inserted

After Article 34 there is inserted –

“34A Expiry of Regulations 3A, 17A and 32A

Regulations 3A, 17A and 32A expire on 30th September 2020.”.

6 Citation and commencement

These Regulations may be cited as the Regulation of Care (Standards and Requirements) (Covid-19 – Temporary Amendments) (Jersey) Regulations 202- and come into force on the day after they are made.

ENDNOTES

Table of Endnote References

<i>1</i>	<i>chapter 20.820</i>
<i>2</i>	<i>chapter 20.820.65</i>