

# STATES OF JERSEY



## JERSEY ETHICAL CARE CHARTER (P.48/2017): SECOND AMENDMENT

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Lodged au Greffe on 3rd July 2017  
by Deputy G.P. Southern of St. Helier

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STATES GREFFE

JERSEY ETHICAL CARE CHARTER (P.48/2017): SECOND AMENDMENT

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**1 PAGE 2, PARAGRAPH (a)(i) –**

For the words “commissioning of visits” substitute the words “arranging care”.

**2 PAGE 3, PARAGRAPH (b) –**

For the words “to request all of the providers on the approved provider framework for homecare agencies to sign up to the Charter” substitute the words “to consult with the Jersey Care Commission, under Article 39 of the Regulation of Care (Jersey) Law 2014, on the terms of the Charter and whether all providers of domiciliary care should be asked to sign up to the Charter”.

**3 PAGE 3, PARAGRAPH (c) –**

Delete paragraph (c).

**4 PAGE 3, PARAGRAPH (d) –**

For the words “bring forward the necessary legislative changes to implement paragraph (c) above” substitute the words “report to the States on the outcome of his consultation with the Jersey Care Commission under paragraph (b) by 31st December 2017”; and re-designate paragraph (d) as paragraph (c).

DEPUTY G.P. SOUTHERN OF ST. HELIER

## REPORT

In the debate on [P.29/2017](#) the Chief Minister expressed support for an ethical care charter as follows –

*“It cannot be right simply to say no to Deputy Southern’s proposition without having another approach that would help deliver some of those safeguards that he has right ...”*

*“... I think that at this point can be better undertaken through working together on the Unison Ethical Care Charter, a Jersey version of it, ...”*

In responding to the amendments from the Minister for Health and Social Services ([P.48/2017 Amd.](#)) with my own amendment, it is my intention to seek a consensual way forward which delivers the safeguards contained in a care charter in a reasonable timeframe.

Thus I placed all 11 points in the charter in the [proposition](#) and not in the report or in an appendix, to encourage debate on the issues. Instead, the Minister has attempted to undermine the link which underpins the principle that the manner in which home care is delivered can affect the quality and safety of service delivery.

And yet, he accepts that the 2014 Law “... already incorporates many of the eleven standards proposed”.

Thus, in amending paragraph (a)(i) of my proposition, the Minister, in the final paragraph of page 4 of the report accompanying his amendment, states that my proposals would be *ultra vires*.

Having examined this, I can only conclude that the Minister has misinterpreted the use of the words “*commissioning of visits*” borrowed from the Unison Charter.

While technically the commissioner of the care service from a provider is the individual client, it was not my intention that the Commission should interfere with the contract between the client and provider, but solely that the assessment of the need for care, and hence the cost to the Long-Term Care Fund, made by trained social workers, should be based solely on client need.

I have consequently amended paragraph (a)(i) to remove this potential lack of clarity.

The Minister makes great efforts to argue that the 2014 Law does not (*note: not “cannot”*) be used to adopt a care code which extends to the potential safety consequences of some terms and conditions of the employment of care workers, thus –

### *Terms and conditions of employment*

*As set out in the Minister’s comments on P.29/2017, the 2014 Law, as adopted by the States Assembly, does not provide powers to regulate employment standards. Article 14(3)(c) of that Law provides powers to regulate “the recruitment, management and training of workers who work in any service provided in the carrying on of a regulated activity”, but these powers do not expressly extend regulating the terms and conditions of employment of workers,*

*because it was never intended that the Care Commission, as established under the 2014 Law, would be charged with looking at employment standards.*

The Minister persists with this argument, despite the fact that the 2014 Law matches the care code in referring directly to the “*training of workers ... in the service*” in Article 14(3)(c) of the Law.

The Minister might also have paid greater attention to Article 14(3)(a) of the 2014 Law, which states that Regulations may –

*“make provision as to the manner in which a regulated activity is carried on;”.*

Notwithstanding the breadth of scope contained in the use of the phrase “*manner in which*”, the Minister should have paid greater attention to the duty to consult in Article 39 of the 2014 Law –

**“39 Minister’s duty to consult Commission**

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

In the preparation of Regulations (which are still in draft, awaiting lodging) the Minister must consult the Commission on ‘*any other enactment*’ and ‘*may consult ... upon any other matter ...*’.

In the light of Article 39, I am able to agree with the Minister that a consultative process with the Care Commission as reflected in paragraph (b) of my amendment is the correct way forward.

The Minister also expends significant energy on the rather specious argument that the original proposal would establish a minimum wage for this sector, which is prohibited by the [Employment \(Jersey\) Law 2003](#).

*“Even if it were provided for in the 2014 Law, using the powers in that Law to set employment conditions and wages via a statutory Charter would, to all intents and purposes, establish a minimum wage for those working in domiciliary care services. That would appear to conflict with the prohibition in the 2003 Law on setting sectoral minimum wages.”*

This is of course a complete red herring. There is no reference anywhere in the proposal to do this, nor indeed any mention at all of minimum wage. The reference to the Jersey Living Wage is clearly dependent on a future and separate States decision.

## **Consultation**

The only remaining concern is one of timing, hence paragraph (d) of my amendment, which reduces the consultation period from 9 months to 6. Having appointed the members of the Commission, it would seem logical that the terms of which the Commission operates are agreed as soon as possible. It is worth noting in this case that the consultation on the underlying 2004 Law, which has a much broader canvas, took place in just over 5 weeks, from 25th March to 30th April 2014.

Delaying debate on the adoption of a charter until the end of the first quarter of 2018 also runs into difficulties with the political cycle, in that debate would be unlikely to take place before this Assembly is dissolved by the 2018 election. The current States membership has the choice to deliver an ethical charter in the first quarter of 2018, rather than leaving this decision to the next Assembly.

## **Financial and manpower implications**

Despite the detail contained in the draft ethical charter in the proposition, the great majority of the 11 points are uncontroversial, and in some cases are already contained in the approved provider Regulations. To suggest that these constitute “extensive changes to the law” is surely inaccurate. In the absence of sight of the conclusions and advice to be gathered from the Care Commission, nor can any estimate what costs there may be to either providers or the States.

The proposal as amended remains an in principle decision, the detail and potential cost of which remains to be decided at a later date.

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## **Re-issue Note**

This Amendment is re-issued to include an additional paragraph which would delete paragraph (c) of P.48/2017.