

STATES OF JERSEY



DRAFT REGULATION OF CARE (JERSEY) LAW 201- (P.95/2014): COMMENTS

**Presented to the States on 30th June 2014
by the Health, Social Security and Housing Scrutiny Panel**

STATES GREFFE

COMMENTS

The Health, Social Security and Housing Scrutiny Panel is comprised of the following members –

Deputy K.L. Moore of St. Peter, Chairman
Deputy J.A. Hilton of St. Helier, Vice-Chairman
Deputy J.G. Reed of St. Ouen

Review Adviser – Ms. A. Benn, Associate Consultant of Associate Development Solutions

Introduction

The Panel believes that the Draft Regulation of Care (Jersey) Law 201- is an extremely important piece of legislation that is long overdue. The Panel is therefore disappointed that the timescale it was given by the Department of Health and Social Services to review this important piece of work was unreasonable. P.95/2014, Draft Regulation of Care (Jersey) Law 201-, was lodged on 20th May 2014 with a set debate date of 1st July 2014, allowing the Panel less than 6 weeks to complete a full review. The Panel's increasing workload before the summer recess resulted in it being unable to provide the level of detailed scrutiny this legislation required and, as a consequence, agreed that the most appropriate approach would be to appoint an expert adviser. The Panel appointed Ms. A. Benn, Associate Consultant of Associate Development Solutions, to carry out a full desktop review on the draft Law.

At the request of the Panel, Ms. Benn produced a report which included her general comments into the draft Law, and a list of recommendations for consideration for each of the forthcoming sets of draft Regulations that will underpin the draft Law. The adviser has also made recommendations based on lessons learned from previous reports undertaken in the UK, namely the Francis Report and the Cavendish Review. The adviser's report is used throughout this Comments paper, with her final report attached at the **Appendix**.

Draft Law and Regulations

It should be noted that the Draft Regulation of Care (Jersey) Law 201- is the primary Law which is the foundation for the regulatory framework. Without it, no Regulations can be brought in, and it is effectively the first step in the process. Going forward, each set of draft Regulations will be brought by the Minister for Health and Social Services to the States for debate, providing the finer details that will underpin the Law. The implementation of the first phase of the new regulatory framework is estimated to occur late 2015 to early 2016.

Although the adviser confirms that overall, the draft Law reflects the key aspects of the requirements particularly identified in the present English regulatory standards, and provides a sound framework for regulating health and social care services, it is clear that there are fundamental areas to be explored in great detail once the Regulations come forward.

In the UK, each country has law that governs the provision and delivery of care services, and currently the Care Law in England and Wales has been updated and is going through major changes. This update has taken account of the Health and Social Care Law in England and Wales, and has included the Regulations that support it.

Due to the major changes happening in the UK, the Panel's adviser has recommended that the Draft Regulation of Care (Jersey) Law 201- be suspended until the Care Act 2014 in the UK has completed its consultation on market oversight, allowing time for the draft Law in Jersey to reflect the most up-to-date information and best practice. The market oversight consultation is explained in more detail under the recommendation.

Unfortunately, due to the very tight timescale, the Panel has been unable to review the exact details of the Care Act 2014 and therefore suggests that this information, when available, is used to shape the future draft Regulations.

The Panel is aware that its remit in undertaking this review was to focus on the draft primary Law; however, the Panel would like to stress the importance of the questions and recommendations listed in this report and advise that they are given due consideration during the development stage of the draft Regulations which will underpin the primary Law.

Background

In May 2006 it was recognised by the Council of Ministers that the current legislation underpinning care home and domiciliary care regulation in Jersey was no longer fit for purpose, and drafting time for a new Regulation of Care (Jersey) Law was approved. A formal stakeholder consultation was undertaken (January – May 2008) with the people and organisations affected by the proposed legislation. This provided the opportunity to raise the deficiencies in the current legislation and the possible options about how these could be resolved. There were various methods used to collect the stakeholders' feedback, including questionnaires, written submissions, meetings, service user views through use of advocacy, service user feedback via individual interviews, and Mental Health service user feedback by individual and group informal discussions. The consultation identified that 90% of respondents who completed the questionnaire were in agreement with the proposals to continue regulating facilities providing nursing and residential care, including the proposal to regulate domiciliary care, home nursing and acute hospital care. The responses were broadly supportive of the Department's policy direction, which has resulted in some additional elements for consideration which are noted within the adviser's report under their Appendix 1 – Response to Stakeholder Consultation.

On 20th May 2014, the Draft Regulation of Care (Jersey) Law 201-, which is the primary legislation that enables a new framework for the regulation of health and social care to be established in Jersey, was lodged.

Regulated activities

Although it is the intention to regulate all health and social care activities, the regulated activities will be expanded by Regulations over time in accordance with the implementation plans outlined within the Proposition; however, eventually they will include –

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

The key areas

The adviser has identified 6 key areas covered within the draft Law and has made a number of observations –

- **Transfer responsibility for regulating health and social care from the Minister for Health and Social Services to an independent commission**

This would ensure that the Minister is not in conflict with the commissioning of services, as the Minister is currently responsible for overseeing this function. The commission would be able to function objectively and provide an independent service. This reflects the regulatory functions in the UK.

- **Sets out how the commission will be appointed**

The conditions are stated in Schedule 2 of P.95/2014: Draft Regulation of Care (Jersey) Law 201-. The JAC (Jersey Appointments Commission – an independent body that oversees the recruitment of States' employees and

appointees to States-supported or related bodies, who ensure that the selection is fair, efficient and conducted in accordance with best practice and procedures) will oversee the selection process. There is a need to consider what standards will be used as a benchmark for appointment. Skills for Care and Development UK have produced national occupational standards for inspectors.

- **Requires providers of care services to be registered by the commission, describes the registration process and enables the commission to apply appropriate conditions to registration to maintain standards**

In the UK, legislation clearly states the services that need to be registered to provide services. The regulatory bodies are independent; the establishment of a commission will meet this requirement. England and Wales are currently reviewing their processes.

- **Enables Regulations and standards to be written about the quality of care services**

During the development of the Regulations, standards need to be focused on outcomes for the individual ensuring a personalised approach.

- **Describes the commission's powers to inspect services**

The commission will need to consider the benefits of unannounced inspections and how this will be managed.

- **Explains the enforcement procedures and appeals process**

Providers will need to be made aware of the consequences for not meeting the requirements of the Regulation and standards.

- **In summary**

Overall, the draft Law provides a sound framework for regulating health and social care services, which reflects the key aspects of the requirements particularly identified in the present English regulatory standards.

The next steps

Issues to be considered regarding the commission structure

The adviser has raised a number of issues regarding the establishment of the commission, stating it is important that it be established in a manner which fundamentally demonstrates fairness, consistency and transparency.

Although it is not recommended that these are included within the draft Law, they should be considered when shaping the structure of the commission, and it is recommended that they form part of the project plan.

- Will the Chief Minister be responsible for leading the recruitment in partnership with JAC to appoint the Chair of the commission?

- What criteria will be used to ensure that the appointee has the relevant knowledge, skills and leadership qualities required?
- What marketing and communication strategy will be used to support the recruitment process?
- Can an employee of Jersey's Council of Ministers apply to be Chair of the commission or commissioner?
- Will the Chair of the commission (once appointed) lead on the recruitment of the commissioners?
- Will the appointment be on a fixed term contract including a probationary period?
- Will the recruitment process be values-based?
- Will service users be part of the recruitment process, if so, how will this be achieved?
- To whom will the Chair of the commission be directly accountable?
- What performance management methods will be used to ensure that the employees of the commission are current, working effectively and developing their knowledge and skills?

Recommendations

- Suspend signing off the Draft Regulation of Care (Jersey) Law 201- until the Care Act 2014 consultation on market oversight – monitoring financial sustainability guidance – is completed, which could then be used as a base for inclusion (this is due to be implemented by April 2015).

Market oversight is the monitoring of financial sustainability guidance. It is being undertaken in the UK due to the financial collapse of the former residential care provider: Southern Cross Healthcare, which put at risk the provision of residential care to thousands of vulnerable citizens across the UK. Southern Cross fell into financial difficulties in 2011 and were the largest residential care provider in the UK, caring for 31,000 people.

- Consult with key stakeholders on the inclusion of market oversight.
- Update the Draft Regulation of Care (Jersey) Law 201-.
- Ensure that the commission is **created independently** using a transparent process, ensuring that there are service user representatives.
- Identify a **review date** of the commission and undertake an independent qualitative and quantitative evaluation of the processes implemented (suggest 12 months).
- The commission to produce a **3 year strategy**.

- A **project manager** to be identified who can lead on the implementation of the regulatory Law and map out the process for designing the standards with the commission.
- To run in parallel – a **communication plan** which ensures that all the key stakeholders are kept up-to-date with developments.
- An **implementation plan**, identifying key elements of the project.
- Decide if the **standards** will be service-specific or standards that cross over services as the CQC essential standards in England.
- Commission to **provide tools** that will support all providers to understand responsibilities, interpretation of standards, implementation of outcomes, registering for the first time, etc.
- Create a **web-link** for providers with useful information, documents, case studies.
- Ensure that the **standards are reviewed** in a timely manner, making certain that they reflect the changing delivery of support and care.
- **Premises – providers need to:**

Be mindful of equipment that needs maintaining and updating, and the associated cost.

Ensure that the premises are suitable for the regulated activity. If changing service focus, would this involve structural changes? How will this be funded?

Ensure that Health and Safety is maintained and fulfils the legislation. There could be some requirement placed on providers that they could have difficulty in implementing, for example, new fire systems.

- **Resources – providers need to:**

Ensure that the staffing level reflects service need. If this is a directive from the commission, providers may not have the funds or resources available to achieve/maintain this requirement.

Ensure that recording systems are adequate and meet data protection and confidentiality requirements. Providers need to ascertain if current IT applications are fit for purpose – this may require investment.

- **Legislation – providers need to:**

Review policies, procedures and guidelines to ensure that they reflect legislation and are fit for purpose; for example, safeguarding, Health and Safety, etc. There could be inconsistency across providers because of lack of knowledge in some areas.

Understand the inspection process, otherwise it could result in a breach of the Regulatory Law.

Be aware that if the registered services provided are not clearly stated, there will be consequences and could possibly be a fine.

Understand the standards for registration. Will providers be legally bound to ensure that the outcomes are achieved as described?

- **Staffing – providers need to:**

Clarify if employees need to be registered with a professional body and if there are fees attached, who pays? The provider or the individual?

Ensure staff demonstrate compliance which is robust and transparent. Identify relevant evidence requirements for each outcome and ensure staff follow the service procedures.

Be aware if there is a minimum hourly rate and understand the retention and recruitment issues.

Plan for unforeseen circumstances, e.g. high sickness levels, job vacancies, suspension of registered manager. This may need a possible contingency fund.

- **Training – providers need to:**

Consider how staff will be trained, the associated costs (releasing staff, funding qualifications, updating refresher training, etc.). What will be mandatory training?

Explain the inspection process; ensuring staff are fully aware of their responsibilities.

- **Funding – providers need to:**

Understand how the fees for registration are calculated? How will this be funded and by whom?

Ensure what the policy of the organisation is, regarding payment for Disclosure and Barring Services (DBS) – is it the provider or the individual?

Please note – The ultimate challenge for a service provider and the commission would be managing provider failure.

Lessons to be learned

Large-scale service failures have prompted much-needed reform. For example, the Francis Report and the independent Cavendish Review which was carried out in the wake of the Francis Inquiry into the Mid-Staffordshire NHS Foundation Trust.

Some of the recommendations from the Francis Report were to develop –

- More clarity about the background of potential providers
- Experience and history of applicants
- Information about governing body members, with additional responsibilities they may hold
- Financial history
- Links and contracts with other organisations
- Detailed information about how the prospective service will be run, for example staffing, skill mix, numbers of staff, job titles
- Provide a narrative on safeguarding, environmental safety, medicine management and staff training, recruitment and retention
- Continuous improvement and how they intend to manage complaints and act on them
- Demonstrate an understanding of current legislation and their legal obligations
- Safeguarding – an understanding of the DOLS applications.

The Cavendish Review makes a number of recommendations on how the training and support of healthcare assistants who work in hospitals, and social care support workers who are employed in care homes and people's own homes, can be strengthened to ensure that they provide care to the highest standard.

Healthcare assistants and social care support workers provide some of the most personal and fundamental care to people when they are ill, or help people with long-term conditions to live as independently as possible in their own home. Such care should be done by competent professionals who treat people with compassion and dignity. But the review finds that the quality of training and support that care workers receive in the NHS and social care system currently varies between organisations.

The recommendations it makes include –

- Common training standards across health and social care, along with a new 'Certificate of Fundamental Care', written in language that is meaningful to patients and the public. For the first time, this would link healthcare assistant training to nurse training.
- The opportunity for talented care workers to progress into nursing and social care through the creation of a 'Higher Certificate of Fundamental Care'. This will ensure they have a route to progress in their careers and an opportunity to use their vocational experience of working as healthcare assistant to enter the nursing profession.

- HEE, with Skills for Health and Skills for Care, should develop proposals for a rigorous system of quality assurance for training and qualifications, which links to funding outcomes, so that money is not wasted on ineffective courses.
- Healthcare assistants should be allowed to use the title ‘Nursing Assistant’ on completion of the Certificate of Fundamental Care, to improve clarity and communication between staff and patients, enhance the status of support workers and reduce the number of job titles – which currently stands at more than 60.
- The legal processes for challenging poor performance should be reviewed so that employers can be more effective in identifying and removing any unsatisfactory staff.

It is important to recognise that the role of providers has changed and continues to change, due to the landscape of health and social care becoming more complex and challenging. The increased levels of responsibility make it even more important to set clear, consistent standards to hold employers accountable.

The Panel recommends that each set of Regulations should be drafted with the above lessons learned in mind.

Financial and manpower implications

The Panel has concern around the ongoing cost that the implementation of the new Regulations will incur. Within the proposition, under ‘Financial and manpower implications’, it is stated that –

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

It is not clear if this will cover all other areas requiring funding, especially within the areas recommended from the adviser regarding premises and resources. It is imperative that alongside any draft Regulations, a detailed costs analysis is provided, showing all financial implications that will be incurred within that specific set of Regulations.

Conclusion

The Panel is aware that the finer detail for this important piece of legislation will come with each set of Regulations that will underpin this Law. Due time needs to be given for all key stakeholders to have the opportunity to be actively involved in the development of the draft Regulations; and the Panel recommends that a detailed, thorough consultation period is held for each set of Regulations, allowing adequate time for any concerns to be addressed before lodging. The Panel believes that it is of utmost importance that future Regulations should be fit for purpose and able to meet the needs of the Island.



Report of
Health, Social Security and Housing Panel: Regulation of
Care Law Review 2014

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1. Health, Social Security and Housing Panel: Regulation of Care Law Review 2014

1.0 Purpose of report

The purpose of this report is to examine the draft regulation of care (Jersey) Law 201 - in order to explore whether the law is fit for purpose and if it will achieve the desired outcomes, while considering how it is measured against other jurisdictions in the UK. The report will identify the potential implications for private and state run businesses and other providers involved in the delivery of care.

1.1 Background

In May 2006 it was recognised by the Council of Ministers that the current legislation underpinning care home and domiciliary care regulation in Jersey was no longer fit for purpose and drafting time for a new Regulation of Care (Jersey) Law was approved.

A formal stakeholder consultation was undertaken (January – May 2008) with the people and organisations affected by the proposed legislation. This provided the opportunity to raise the deficiencies in the current legislation and the possible options about how these could be resolved. There were various methods used to collect the stakeholders feedback, questionnaires, written submissions, meetings, service user views through use of advocacy, older people service user feedback via individual interviews and Mental Health service user feedback by individual and group informal discussions. The consultation identified that 90% of respondents, who completed the questionnaire, were in agreement with the proposals to continue regulating facilities providing nursing and residential care, including the proposal to regulate domiciliary care, home nursing and acute hospital care. The consultation gave the Minister for Health and Social Services the opportunity to engage and ascertain the views of stakeholders. The responses were broadly supportive of the department's policy direction, which has resulted in some additional elements for consideration (see Appendix 1).

On the 20th May 2014, the Draft Regulation of Care (Jersey) Law 201 - which is the primary legislation that enables a new framework for the regulation of Health and Social Care to be established in Jersey, was lodged.

1.2 Introduction

The UK legislative picture has changed. There is less cohesion across the four countries and this applies also to the regulatory frameworks for social care services and staff. The CSA (care standards act) 2000 has ceased to have effect in England in relation to adult social care and this has led to some legislative anomalies. That is why Wales identified the need to develop a coherent and consistent approach to regulation and inspection that ensures all relevant activity delivered in Wales is regulated

Despite many examples of excellent care, there have also been some high-profile cases of staff mistreating people or ignoring their care needs. There have been significant concerns by a number of high profile cases in Wales and the UK, and it is important that we learn lessons from them. The examples include: the financial collapse of the former residential care provider Southern Cross Healthcare, which put at risk the provision of residential care to thousands of vulnerable citizens across the UK; Operation Jasmine which concerns allegations of abuse in care homes in the Gwent area; the Winterbourne View Hospital serious case review, which highlighted the abuse of vulnerable adults and failings by public bodies; https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/213215/final-report.pdf and more recently the Francis report, which produced wide ranging recommendations, following failings at Mid Staffordshire NHS Foundation Trust <http://www.midstaffspublicinquiry.com/sites/default/files/report/Executive%20summary.pdf> Recommendations 20-27 identify the responsibility for regulating and monitoring compliance.

Therefore, it is essential that the regulation and inspection of care and support services are robust and challenge practices and processes.

1.3 Why regulate?

People who use health and care services have the right to be treated with respect, dignity and compassion by staff that have the skills and knowledge to deliver a personalised/person-centered approach.

In order to:

associate development solutions

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- Ensure health and social care services are safe and are fit for purpose
- Safeguard individuals
- Deliver on outcomes for the individual that delivers personalised service
- Have quality services that are delivered with dignity and respect for the individual
- Provide a consistent approach
- Provide a framework that standards are measured against
- Ensure providers are accountable

1.3.1 Key Elements of regulation

- Involvement and information
- Personalised care, treatment and support
- Safeguarding and safety
- Suitability of staffing
- Quality and management
- Suitability of management

Appendix 2 provides the sub sections of the CQC (Care Quality Commission, England)

Regulation that gives the providers/managers a framework that identifies their responsibilities to maintain a service fit for purpose, and the possible consequences for non-compliance.

2. Draft Regulation of Care (Jersey) Law 201-

2.0 Introduction

Ultimately the law is primary legislation that enables a new framework for the regulation of health and social care. This law will ensure that all services delivering care and support will be regulated and monitored against safety, standards and quality of care provided to vulnerable people.

2.1 Fit for purpose

To ascertain if this law is fit for purpose the regulatory requirements of England, Wales, Scotland and Northern Ireland have been used as a benchmark. It is essential to recognise that health and social care across the UK is in a state of reform. This is due to a combination of factors, for example, out of date legislation, ageing population and the associated challenges of supporting individuals with complex health and social care needs within financial constraints. Each country in the UK has legislation that states that services have to be regulated by an independent regulatory body and standards. NHS Health in England, Wales and Scotland has regulatory bodies who work in partnership, for example, in England NHS services are also monitored by Monitor under the Health and Social Care Act 2012 ('the 2012 Act'). Monitor was established as the 'sector regulator' for health services in England to help in this transformation. Further information can be found here: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/308087/MonitorStrategy2014-17.pdf. Northern Ireland has Health and Social Care trusts, which are overseen by one regulatory body.

2.2 Will the draft law achieve the desired outcomes?

The consultation has been undertaken using a measured approach and stakeholders have been positively engaged in the process, which has resulted in questions being identified and additions being agreed.

The draft law will ensure:

- all providers will have to meet the required standards, whether states or private sector provision

- protection of vulnerable individuals
- an independent commission, which continues to implement the ethos of supporting and encouraging service improvements
- transparency of inspection reports
- inspectors are skilled and knowledgeable

There are six key areas that the draft law has identified which are:

- **Transfer responsibility for regulating health and social care from the Minister for Health and Social Services to an independent commission**

This would ensure that the Minister is not in conflict with the commissioning of services as the Minister is currently responsible for overseeing this function. The commission would be able to function objectively and provide an independent service.

This reflects the regulatory functions in the UK.

- **Sets out how the commission will be appointed**

The conditions are stated in schedule 2. The JAC (The Jersey Appointments Commission - an independent body that oversees the recruitment of States' employees and appointees to States supported or related bodies. They ensure that the selection is fair, efficient and conducted in accordance with best practice and procedures) will oversee the selection process. There is a need to consider what standards will be used as a bench mark of appointment. Skills for Care and Development UK have produced national occupational standards for inspectors - details can be found at the below link.

http://www.skillsforcareanddevelopment.org.uk/Careersincare/Inspectors_of_Health_and_Social_Care_Standards.aspx

- **Requires providers of care services to be registered by the commission, describes the registration process and enables the commission to apply appropriate conditions to registration to maintain standards.**

In the UK legislation clearly states the services that need to be registered to provide services. The regulatory bodies are independent; England and Wales are currently reviewing their processes.

- **Enables regulations and standards to be written about the quality of care services.**
The standards need to be focused on outcomes for the individual ensuring a personalised approach.

- **Describes the commission's powers to inspect services**

The commission needs to consider the benefits of unannounced inspections and how this will be managed

- Explains the enforcement procedures and appeals process

Providers need to be aware of the consequences for not meeting the requirements of the regulation and standards

2.3 Summary

Overall, the draft law provides a sound framework for regulating health and social care services, which reflects the key aspects of the requirements particularly identified in the England regulatory standards at present.

In the UK each country has law that governs the provision and delivery of care services. Currently in England and Wales the law has been updated and is going through major changes. The Laws in England and Wales already incorporate regulations however in Jersey, the regulations have not yet been drafted and it is only the primary law that is being debated at this time.

Areas for consideration for further, future work on the Jersey regulations follow in this report under section 2.7

2.4 Consideration of relevant legislation in England and Wales

2.4.1 Development of the Care Act 2014 in England (Adults)

In July 2012, saw the publication of the 'Caring for our future: reforming care and support' White Paper. The White Paper outlined the vision for a reformed care and support system one that would:

- focus on people's wellbeing and support them to stay independent for as long as possible
- introduce greater national consistency in access to care and support
- provide better information to help people make choices about their care
- give people more control over their care
- improve support for carers

- improve the quality of care and support
- improve integration of different services

On the 10th May 2013 the 'Care Bill' was published, introducing legislation to provide protection and support to the people who need it most and to take forward elements of the government's initial response to the Francis Inquiry. It will give people security that they will be treated with compassion when in hospital, care homes or their own home.

The Bill pulls together threads from over a dozen different Acts into a single, modern framework for care and support, fundamentally reforming how the law works, prioritising people's wellbeing, needs and goals, so that individuals will no longer feel like they are battling against the system to get the care and support they need. In addition, for the first time, it puts carers on a par with those for whom they care.

The bill has gone through the parliamentary stages in both Houses which consist of;

House of Lords

- First reading
- Second reading
- Committee stage
- Report stage
- Third reading

House of Commons

- First reading
- Second reading
- Committee stage
- Report stage
- Third reading

Royal Assent - This is when the Queen formally agrees to make the bill into an Act of Parliament (law).

2.4.2 What happens after royal assent?

The legislation within the bill may come into effect immediately, after a set period or only after a commencement order by a government minister. A commencement order is designed to bring into force the whole or part of an Act of Parliament at a date later than the date of the royal assent. If there is no commencement order, the Act will come into force from midnight at the start of the day of the royal assent. The practical implementation of an Act is the responsibility of the appropriate government department, not Parliament.

2.4.3 Receives Royal Assent

The Care Act received Royal Assent on the 1 May 2014 together with the Social Services and Well-being (Wales) Act. This puts in place a coherent framework to govern the provision of adult (children's social care is included in the Wales law) social care across England and Wales.

It places personalisation on a statutory footing for the first time. It gives new legal rights to carers and introduces a new legal framework for safeguarding vulnerable adults. It will streamline and modernise a system, clarifying rights and responsibilities for older and disabled people and local councils, and improving the position of carers.

2.4.4 Consultation on draft regulations and guidance

This consultation asks for views about the draft regulations and guidance on part 1 of the Care Act 2014. The comments from the consultation will be used to improve the guidance and regulations consultation will close for comments by 15th August 2014.

2.5 The Care Act 2014: regulations and guidance

2.5.1 The Care Act 2014:

- Contains core legal duties and powers relating to adult social care.
- Regulation making powers which allow the government to make secondary legislation, regulations, that provide more detail.

- The guidance is intended to provide local authorities with the information they need about how they should meet the legal obligations placed on them by the Act and the regulations.
- The guidance will be used by local authority officers to plan care and support at a local authority level, as well as by practitioners.
- The guidance can also be used by people using care and support, their families, the voluntary sector and providers of care and support to help them understand the new system
- These draft regulations and guidance relate to the care, support reforms and provisions in the Care Act which are;
 - a) General responsibilities
 - b) Who is entitled to care and support
 - c) Assessment and eligibility
 - d) Care and support planning
 - e) Charging
 - f) Funding reform
 - g) Safeguarding
 - h) Carers
 - i) Continuity of care
 - j) Market oversight and provider failure
 - k) Transitions

Elements of the above areas will come into effect in April 2015. The guidance describes how the care and support system should operate in 2015/16.
- Regulations and updated guidance to support implementation of the additional reforms which come into effect in April 2016, for example, the cap on care costs, will be subject to a separate consultation, to be published later this year.

2.5.2 Introduces duties on CQC (care quality commission) regulator for England

- To assess the financial sustainability of the most difficult to replace provider
- To support local authorities to ensure continuity of care when providers fail, by informing them where it deems that it is likely that a provider will fail and providing

authorities with information they need, including details of the individuals receiving services from the provider in the authority's area.

- To support CQC in doing this, the Bill gives CQC powers to engage providers in mitigation planning by requiring them to develop a sustainability plan or commissioning an independent review of the provider's business.
- These provisions create a new legal function for the Care Quality Commission to assess and monitor the financial sustainability of certain providers, as determined by criteria in regulations. Local authorities' legal responsibilities are limited to responding to cases of failure, as per the previous clauses, and guidance will set out expectations for working with CQC as part of this new regime.

The link below provides more detail relating to managing provider failure and other service interruptions

https://s3-eu-west-1.amazonaws.com/media.dh.gov.uk/network/497/files/2014/05/05_guidance_Managing-provider-failure.pdf

2.6 Development of the Social Services and Well-being (Wales) act 2014 (Adults and Children)

The Welsh Government's white paper, 'Sustainable Social Services for Wales: A Framework for Action' outlined the change programme.

The white paper is based on the following principles:

- A strong voice and real control
- Supporting each other
- Safety
- Respect
- Recovery and restoration
- Adjusting to new circumstances
- Stability
- Simplicity
- Professionalism

The white paper highlighted a number of challenges faced by public services in Wales. These included demographic changes, increased expectations from those who access care and support as well as continuing hard economic realities. The Bill aims to address these issues and in doing so will give people greater freedom to decide which services they need while offering consistent, high-quality services across the country.

On the 12 March 2012 the Social Services and Well-being (Wales) Bill went out to consultation, which concluded on the 1st June 2012. The bill is the first time which provided a coherent legislative framework for social services in Wales. The consultation set out the legislative proposals for the Social Services (Wales) Bill in the following areas:

- maintaining and enhancing the wellbeing of people in need
- giving citizens a stronger voice and real control
- ensuring a strong national direction and local accountability for delivery
- safeguarding and protection
- regulation and inspection
- adoption and transitions for disabled children and young people.

The bill was introduced 28 January 2013 which went through the national assembly for Wales process;

Stage 1

- Committee and consideration of general principles
- Debate in plenary on general principles
- Financial resolution

Stage 2

- Committee consultation of amendments

Stage 3

- Plenary considerations of amendments
- Report stage- Plenary considerations of amendments

Stage 4

- Passing of the bill plenary

2.6.1 Royal Assent (same process as England)

The Act introduces, for the first time, a strong statutory framework for the protection of adults and has provided for strong national leadership arrangements for safeguarding people. It will also ensure people have access to clear information, advice and assistance and will place their voice and rights at the centre of decisions about their care and support. It is anticipated the main elements of the act will be implemented in 2016.

2.6.2 The future of regulation and inspection for social care in Wales

A new Bill to reform the regulation and inspection regime in social care in Wales will be introduced before the National Assembly in February 2015. The new Regulation and Inspection Bill will refocus the regulation of social care towards outcomes for people.

Currently a draft policy – known as a White Paper - sets out the proposals to change the regulation and inspection of care and support in Wales.

The changes will support the proposals in the Social Services and Well-being (Wales) Act.

The paper will enable a model of care and support based on the idea of well-being and improved outcomes for citizens, whilst ensuring that quality standards are being met by service providers and the workforce.

It is proposed to introduce:

- an outcomes based inspection regime;
- a service based regulatory regime; and
- a national institute of care and support.

It is also proposed to change specific aspects of regulation and inspection.

These include:

- requiring the service regulator to evidence the involvement of citizens in their work;
- requiring providers to produce an annual report on their services and making it an offence to provide false or misleading information in these
- strengthening the responsible Individual requirements for providers of care and support services; and
- taking powers to extend registration to encompass new areas of the workforce.

Another area identified in the Act is to reconstitute 'The Care Council for Wales' as a National Institute of Care and Support to develop a more professional workforce and to deliver service improvement.

It is anticipated that the National Institute of Care and Support would carry out the following functions:

- Providing leadership for the improvement agenda across the sector
- Designing and implementing social services improvement schemes to deliver national improvement priorities as identified by Welsh Government through its strategic improvement framework for wellbeing
- Overseeing workforce registration, planning, standards, development and learning schemes including the regulation of training
- Supporting the development of research capacity and applied research, and assisting policy makers locally and nationally in developing best practice
- Acting as an information hub for best evidence-informed practice and promoting this practice across the sector
- Providing information to the public on standards and authoritative frameworks
- Providing information on social care and social work to the public, media and government
- Learning from and involving citizens who use services
- Enabling collaborative partnership working across the care and support sector, wider local government and health.

2.6.3 The timeline for implementation

Summer to winter of 2014

Further development of proposals and consultation with stakeholders

Publication of an Equality Impact Assessment and a Regulatory Impact Assessment

2015 Regulation and Inspection Bill introduced into National Assembly for Wales

2015 Scrutiny of Bill by the National Assembly

Skills for Care & Development (SfC&D) is the sector skills council working with employers and people who provide social work, social care and children's and early years services across the UK. As a partnership Skills for Care & Development works with more than 62,400 employers, employing a total workforce in the UK of around 1.87 million people.

2.7 Considerations

In addition, information is recommended in regards to Part 7 of the draft, which describes how the commission will be established, including the general functions. It is important that the commission is established in a manner which fundamentally demonstrates fairness, consistency and transparency. The below areas do not have to be included in the draft regulation but should be considered when shaping the structure of the commission and would recommend they form part of the project plan:

- Will the Chief Minister be responsible for leading the recruitment in partnership with JAC to appoint the Chair of the commission?
- What criteria will be used to ensure that the appointee has the relevant knowledge, skills and leadership qualities required?
- What marketing and communication strategy will be used to support the recruitment process?
- Can an employee of Jersey council apply for the Chair of the commission or commissioner?
- Will the Chair of the commission (once appointed) lead of the recruitment on the commissioners?
- Will the appointment be on a fixed term contract including a probationary period?
- Will the recruitment process be values based?
- Will service users be part of the recruitment process, if so how will this be achieved?
- Who will the Chair of the commission be directly accountable to?
- What performance management methods will be used to ensure that the employees of the commission are current, working effectively and developing their knowledge and skills?

2.7.1 Possible implications of implementing the regulations that will underpin the draft law for service providers in private, states and others in the delivery of care



1. Premises - providers need to:

Be mindful of equipment that needs maintaining and updating and the associated cost.

Ensure that the premises are suitable for the regulated activity. If changing service focus might involve structural changes, how will this be funded?

Ensure that Health and Safety is maintained and fulfils the legislation. There could be some requirement placed on providers that they could have difficulty in implementing, for example, new fire systems.

2. Resources - providers need to:

Ensure that the staffing level reflects service need. If this is a directive from the commission, providers may not have the funds or resources available to achieve/ maintain this requirement.

Ensure that recording systems are adequate and meet data protection and confidentiality requirements. Providers need to ascertain if current IT applications are fit for purpose - this may require investment.

3. Legislation - providers need to:

Review policies, procedures and guidelines to ensure they reflect legislation and are fit for purpose for example, safeguarding, Health and Safety etc. There could be inconsistency across providers because of lack of knowledge in some areas.

Understand the inspection process because if not it could result in a breach of the regulatory law.

Be aware if it does not clearly state the registered services provided there will be consequences and could possibly be a fine.

Understand the standards for registration. Will providers be legally bound to ensure the outcomes are achieved as described?

4. Staffing - providers need to:

Clarify if employees need to be registered with a professional body and if there are fees attached, who pays? The provider or the individual?

Ensure they demonstrate compliance which is robust and transparent. Need to identify relevant evidence requirements for each outcome and staff must follow the service procedures.

Be aware if there is a minimum hourly rate and understand the retention and recruitment issues.

Plan for unforeseen circumstances e.g. high sickness levels, job vacancies, suspension of registered manager. This may need a possible contingency fund.

5. Training - providers need to:

Consider how staff will be trained, the associated costs (releasing staff, funding qualifications, updating refresher training etc.). What will be mandatory training?

Explain the inspection process; ensuring staff are fully aware of their responsibilities.

Resources available in the UK; there are four delivery partners in Skills for Care & Development which are:

- [Skills for Care](#) who work with adult social care employers in England
- [Care Council for Wales](#)
- [Northern Ireland Social Care \(NISCC\)](#)
- [Scottish Social Services Council \(SSSC\)](#)

Children and Early years employers in England should contact [Skills for Care & Development](#)

6. Funding - providers need to:

Understand how the fees for registration are calculated? How will this be funded and by who?

Ensure what the policy of the organisation is regarding payment for DBS is it the provider or the individual?

Please note – The ultimate challenge for a service provider and the commission would be managing provider failure.

3. Links with UK legislation

3.1 England

Regulated services	Standards	Future
Care Homes Clinics Community services Dentists Doctors/GP's Hospitals Mental Health Services in your home	Essential Standards	From April 2015 Market oversight will be a new regulatory duty <ul style="list-style-type: none"> • Monitoring financial sustainability and assessing the likelihood of business failure of difficult-to-replace adult social care provider organisations. • Identifying and responding to risks in respect of financial sustainability. • Providing early warnings of business failure to local authorities • Assisting in coordinating a response in the event of business failure.
		Care Act 2014 – draft regulations and guidance for Part 1 of the care act currently out for consultation

Legislation - Health and Social care Act 2008 -section 20

<http://www.legislation.gov.uk/ukpga/2008/14/contents>

<http://www.legislation.gov.uk/ukpga/2012/7/contents/enacted>

<https://www.gov.uk/government/speeches/care-bill-becomes-care-act-2014>

Regulatory body - CQC – care quality commission

<http://www.cqc.org.uk/>

Standards- CQC –Essential standards

<http://www.cqc.org.uk/content/essential-standards>

3.2 Wales

Regulated services	Standards	Future
Care homes for adults-including those providing nursing care	Regulations and national minimum standards are divided into four areas; Child minders Day care Adult services Children's services	Social services and wellbeing (Wales) Act 2014 (regulatory and inspection processes are currently out for consultation)
Domiciliary care agencies		
Adult placement schemes		
Nurses' agencies		
Children's homes		
Child minders		
Day care services for under 8's		
Fostering agencies		
Adoption agencies		
Boarding schools		
Residential special schools and, Further education colleges which accommodate students under 18		

Legislation- The care standards Act 2000

<http://www.legislation.gov.uk/ukpga/2000/14/contents>

Social Services and Wellbeing (Wales) Act 2014

http://www.legislation.gov.uk/anaw/2014/4/pdfs/anaw_20140004_en.pdf

Regulatory Body - CSSIW- care and social services inspectorate wales

<http://cssiw.org.uk/?lang=en>

Standards- <http://cssiw.org.uk/providingacareservice/regs-nms/adult-services/?lang=en>

<http://www.legislation.gov.uk/wsi/2004/219/contents/made>

3.3 Northern Ireland

Regulated services	Standards	Future
Adult placement agency	Minimum standards for each area	RQIA – corporate strategy for 2012-2015 review process being implemented
Children’s homes		
Day care settings		Current position;
Dental treatment		RQIA – corporate strategy for 2015 -2018
Domiciliary care agency		Draft Strategy July 2014
Independent Clinic		Formal Consultation – August to October 2014
Independent hospital		Consultation Feedback Report January 2015
Nursing agency		RQIA Corporate Strategy January 2015
Nursing homes		
Residential care homes		
Residential family centres		

Legislation- Health and personal social services act (NI) 2001

<http://www.legislation.gov.uk/nia/2001/3/contents>

Health and personal Social Services (quality, improvement and regulation)(NI) 2003

<http://www.legislation.gov.uk/nisi/2003/431/contents/made>

Residential Care Home regulations (NI) 2005

<http://www.legislation.gov.uk/nisr/2005/161/contents/made>

Regulatory body RQIA- regulation and quality improvement authority

<http://www.rqia.org.uk/home/index.cfm>

Standards-

http://www.rqia.org.uk/publications/useful_documents.cfm

3.4 Scotland

Regulated services	Standards	Future
Adoption Agencies Adult Placement Care at Home Care Homes for Children and Young People Care Homes for Older People Care Homes for People with Physical/Sensory Impairments Care Homes for People with Learning Disabilities Care Homes for People with Mental Health Problems Care Homes for People with Drug and Alcohol Misuse Problems Childcare Agencies Criminal Justice Supported Accommodation Early Education/Childcare Up to 16 Fostering and Family Placement Housing Support Nurse Agencies School Care Accommodation Secure Care Accommodation Short Breaks and Respite Care Support Services	Scotland's National Care standards are divided into; Services for Adults Services for Children and young people Services for everyone	Care inspectorate – corporate plan 2014- 2018 The inspection plan for 2014-2015 has been approved by Scottish ministers

Legislation- Public Services Reform (Scotland) Act 2010

<http://www.legislation.gov.uk/asp/2010/8/contents>

Regulatory body- Social Care and Social Work Improvement Scotland (SCSWIS) known as Care Directorate

<http://www.careinspectorate.com/>

Standards- <http://www.nationalcarestandards.org/23.html>

3.5 Summary

The fundamental approach of each regulatory body is to ensure that the individual is central to the process and advocate that services should be safe, effective, compassionate and of a high quality.

Regulatory bodies need to be mindful of proportionality (for example interventions should be appropriate to the risk posed), accountability, consistency and transparency when working with key stakeholders and the providers.

Scotland, Wales and Northern Ireland's regulatory bodies are responsible for services across Adults and Children. CQC in England do not regulate Children's services, this responsibility lies with Ofsted. They inspect the following services;

- maintained schools and academies
- some independent schools
- early years and childcare
- children's centres; children's homes
- family centres
- adoption and fostering services and agencies
- CAF/CASS
- children's services in local authorities
- initial teacher training
- further education colleges and 14 to 19 provision
- a wide range of work-based learning and skills training
- adult and community learning
- probation services

- and education and training in prisons and other secure establishments

Ofsted are currently implementing the strategic plan for 2011- 2015.

<http://www.ofsted.gov.uk/about-us/who-we-are-and-what-we-do/services-we-inspect-or-regulate>

3.5.1 Lessons learnt

Large scale services failing have prompted much needed reform, for example, the Francis report and the independent Cavendish review, which was carried out in the wake of the Francis Inquiry into Mid-Staffordshire NHS Foundation Trust.

Some of the recommendations from the Francis report were to develop;

- More clarity about the background of potential providers
- Experience and history of applicants
- Information about governing body members, with additional responsibilities they may hold
- Financial history
- Links and contracts with other organisations
- Detailed information about how the prospective service will be run, for example staffing, skill mix, numbers of staff, job titles
- Provide a narrative on safeguarding, environmental safety, medicine management and staff training, recruitment and retention
- Continuous improvement and how they intent to manage complaints and act on them
- Demonstrate an understanding of current legislation and their legal obligations
- Safeguarding - an understanding of the DOLS applications

The Cavendish review makes a number of recommendations on how the training and support of healthcare assistants who work in hospitals and social care support workers who are employed in care homes and people's own homes can be strengthened to ensure they provide care to the highest standard.

Healthcare assistants and social care support workers provide some of the most personal and fundamental care to people when they are ill or help people with long term conditions to live as independently as possible in their own home. Such care should be done by competent professionals who treat people with compassion and dignity. But the review finds that the quality of training and support that care workers receive in the NHS and social care system currently varies between organisations.

The recommendations it makes include:

- Common training standards across health and social care, along with a new 'Certificate of Fundamental Care', written in language that is meaningful to patients and the public. For the first time, this would link healthcare assistant training to nurse training.
- The opportunity for talented care workers to progress into nursing and social care through the creation of a 'Higher Certificate of Fundamental Care'. This will ensure they have a route to progress in their careers and an opportunity to use their vocational experience of working as a healthcare assistant to enter the nursing profession.
- HEE, with Skills for Health and Skills for Care, should develop proposals for a rigorous system of quality assurance for training and qualifications, which links to funding outcomes, so that money is not wasted on ineffective courses.
- Healthcare assistants should be allowed to use the title 'Nursing Assistant' on completion of the Certificate of Fundamental Care to improve clarity and communication between staff and patients, enhance the status of support workers and reduce the number of job titles - which currently stands at more than 60.
- The legal processes for challenging poor performance should be reviewed so that employers can be more effective in identifying and removing any unsatisfactory staff.

It is important to recognise the role of providers has changed and continues to change due to the landscape of health and social care becoming more complex and challenging. The increased levels of responsibility make it even more important to set clear, consistent standards to hold employers accountable.

4. Recommendations and conclusions

4.0 Recommendations

1. Suspend signing off the regulation of care (Jersey) Law 201- until the Care Act 2014 consultation on market oversight – monitoring financial sustainability guidance is completed which then could be used as a base for inclusion (Is due to be implemented by April 2015)
2. Consult with key stakeholders on the inclusion of market oversight
3. Update the regulation of care (Jersey) Law 201-
4. Ensure that the commission is created independently using a transparent process, ensuring that there are service users representatives
5. Identify a review date of the commission and undertake an independent qualitative and quantitative evaluation of the processes implemented (suggest twelve months)
6. The commission to produce a three year strategy
7. A project manager to be identified who can lead on the implementation of the regulatory law and map out the process for designing the standards with the commission
8. To run in parallel - a communication plan which ensures that all the key stakeholders are kept up to date with developments
9. An implementation plan, identifying key elements of the project
10. Decide if the standards will be service specific or standards that cross over services as the CQC essential standards in England
11. Commission to provide tools that will support all providers to understand responsibilities, interpretation of standards, implementation of outcomes, registering for the first time etc.
12. Create a web link for providers with useful information, documents, case studies
13. Ensure the standards are reviewed in a timely manner ensuring they reflect the changing delivery of support and care

4.1 Conclusion

The remit of the report was to establish if the proposed draft regulation of care (Jersey) Law 201- was fit for purpose and would achieve the desired outcomes.

Whilst undertaking the research and exploring the processes regarding regulation within the UK, it came apparent that the health and social care law particularly in England and Wales has undergone huge transformation which include the regulatory requirements being updated.

Appendix 1 - Response to stake holder consultation: Draft Regulation of Care (Jersey) 201-

Extracted from report of stakeholder consultation

9.1 The Law to include the registration and regulation of care homes, acute hospital facilities, minor surgery, nursing agencies and domiciliary care in the independent sector

9.2 The legislation to include registration for a single category care home with additional regulations for those providing nursing care.

9.3 The Law will provide for the setting of enforceable minimum standards specific to different health and social care services and categories of care. Appropriate and reasonable timeframes shall be set to enable providers an opportunity to achieve the required standards.

9.4 The Law shall ensure that regulations and standards are person centred and focus on outcomes for service users.

9.5 There shall be provisions within the Law to require providers to develop robust quality assurance and governance arrangements

9.6 The Law will provide for all inspection reports to be placed in the public domain.

9.7 The Law shall require robust staff recruitment procedures, including the carrying out of criminal record checks, are in place to ensure that staff have the necessary qualities, skills and qualifications required for the job.

9.8 The regulations will specify a fee structure, proportionate to the size and complexity of the service.

9.9 There shall be provision within the Law to enable a flexible risk based inspection regime

9.10 The Law will remove the current exemption for Health and Social Services and other States departments and include the registration and regulation of all health and social care services and facilities, including those in the independent and public sector.

9.11 The Law will enable the creation of an independent regulatory body that has the authority to commission external regulation agencies to carry out an inspection function for specific specialist service

Appendix 2- Extracted from CQC Essential Standards (England)

Involvement and information

- Respecting and involving people who use services
- Consent to care and treatment
- Fees

Personalised care, treatment and support

- Care and welfare of people who use services
- Meeting nutritional needs
- Cooperating with other providers

Safeguarding and safety

- Safeguarding people who use services from abuse
- Cleanliness and infection control
- Management of medicines
- Safety and suitability of premises
- Safety, availability and suitability of equipment

Suitability of staffing

- Requirements relating to workers
- Staffing
- Supporting workers

Quality and management

- Statement of purpose
- Assessing and monitoring the quality of service provision

- Complaints
- Notification of death of a person who uses services
- Notification of death or unauthorised absence of a person who is detained or liable to be detained under the Mental Health Act 1983
- Notification of other incidents
- Records

Suitability of management

- Requirements where the service provider is an individual or partnership
- Requirement where the service provider is a body other than a partnership
- Requirements relating to registered managers
- Registered person: training
- Financial position
- Notifications – notice of absence/– notice of changes

References

Regulatory bodies

CQC (Care Quality Commission) England

Ofsted England

CSSIW (Care and Social Services Inspectorate) Wales

RQIA (Regulation and Quality Improvement Authority) Northern Ireland

SCSWIS (Social Care and Social Work Improvement Scotland). Everyday name *Care Inspectorate*

Other

Skills for Care and Development

Monitor (Sector regulator for health services) England

Glossary of terms

Act of Parliament

If the House of Commons and the House of Lords agree proposals for a new law (called a Bill), and it then receives Royal Assent from the monarch, it becomes an Act of Parliament.

Pre-legislative scrutiny:

This is when a Bill is examined whilst it is in draft form, before it is introduced to Parliament. Draft Bills are normally scrutinised by a Parliamentary committee. The Draft Care and Support Bill was scrutinised by a Joint Committee of Lords and MPs.

Primary legislation

This a general term used to describe the main laws passed by Parliament, usually called Acts of Parliament

Regulations

A type of secondary legislation made under an Act of Parliament, setting out extra details that help the Act to be implemented.

Royal Assent

This is the process whereby a Bill is presented to the reigning monarch for approval, once both Houses of Parliament have agreed on its contents. Once Royal Assent is given, a Bill becomes an Act of Parliament and is law.

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