

STATES OF JERSEY



DRAFT REGULATION OF CARE (AMENDMENT OF LAW) (COVID-19 – TEMPORARY AMENDMENT No. 2) (JERSEY) REGULATIONS 202- (P.39/2020): COMMENTS

**Presented to the States on 9th April 2020
by the Corporate Services Scrutiny Panel**

STATES GREFFE

COMMENTS

1. [P.39/2020](#) – the Draft Regulation of Care (Amendment of Law (Covid-19 – Temporary Amendment No. 2) (Jersey) Regulations 2020- (the “draft Regulations”) was lodged by the Chief Minister on 7th April 2020, in light of the ongoing Covid-19 pandemic.
2. The Corporate Services Scrutiny Panel, working in close liaison with the Health and Social Security Scrutiny Panel owing to the cross-cutting nature of the draft Regulations, thank the Chief Minister and his officers for responding to questions on the proposed amendments within the draft Regulations on 8th April 2020.
3. As outlined in the report accompanying the proposed amendments, if adopted, the draft Regulations would make further temporary changes to Schedule 1 to the [Regulation of Care \(Jersey\) Law 2014](#) (“the 2014 Law”), which describes what are “regulated activities” to be regulated under the Law. On 24th March 2020, the States Assembly approved [P.27/2020](#)¹, thereby amending the 2014 Law to provide that temporary care homes or adult day care centres would be exempt from having to register with, or be regulated by, the Jersey Care Commission (“the Commission”), if that service is provided as a direct or indirect result of Covid-19. The exemption does not apply to existing services.
4. The purpose of the additional amendments within the draft Regulations is, therefore, to introduce 2 further safeguards by providing that any such service may only operate if –
 - (a) the Minister for Health and Social Services is satisfied that the service is required; and
 - (b) the provider has consulted the Commission, in order that the Commission can provide all appropriate advice and support, even where the service is not a regulated service ((*Regulation 1(2)*)).
5. [P.27/2020](#) also inserted in Schedule 1 to the Law, as new paragraph 3(3), an exception for adult day care services that were not regulated activities before the 2020 Regulations commenced, and that are provided as a direct or indirect result of the outbreak of Covid-19 in Jersey. These Regulations also now insert the same additional requirements to meet this exception as mentioned above (*see Regulation 1(3)*). These amendments will fall away on 30th September 2020. Therefore, from 1st October 2020 the temporary services – if they still exist – will need to register with, and to be regulated by, the Care Commission.
6. The Panel accepts that the additional amendments are necessary to ensure that the Minister for Health and Social Services can be satisfied that temporary Covid-19-related care homes or adult day care facilities can only be established if there is a genuine need for the facility. The Health and Social Security Scrutiny Panel queried what process the Minister would undertake to satisfy himself that the service is required. It has been assured that if these provisions are required at all, it is likely that the Department for Health and Community Services (and thus the Minister himself) will be the provider of most, if not all, of these temporary care

¹ Regulation of Care (Amendment of Law) (Covid-19 – Temporary Amendment) (Jersey) Regulations 2020 ([R&O.29/2020](#)).

arrangements. In these and other cases, it would be up to the Head of Adult Social Care and her team to advise the Minister whether there is a requirement to open up new care homes or adult day care services as a direct or indirect result of Covid-19. The Minister would be provided with evidence that there is need for extra capacity in these areas, and that this requirement has been caused by Covid-19. The Panel is content that it would be for the Minister to conclude whether this evidence is sufficiently robust to satisfy him that the requirement is met. If he deems it so, his decision will be published in the usual way.

7. The Panel also accepts that the amendments provide assurance that the Commission can offer advice on appropriate training of staff, and on rendering the accommodation suitable to the needs of care receivers. The Health and Social Security Scrutiny Panel asked what form the advice from the Commission would take, and was advised that it would be for the Commission to determine how best to provide advice, given the particular circumstances of the enquiry. It was told that the Commission would likely provide advice to care providers by e-mail, followed up by telephone calls if it were deemed appropriate. Although the Regulations are silent on whether the service provider would need to present evidence that it has sought advice from the Commission, the Panel is satisfied that the service provider should be obliged to accept the advice given and demonstrate that it had done so, where necessary. For example, if there were no record that they had sought advice from the Commission – yet they maintained a regulated activity without registering – they would, clearly, struggle to provide evidence in Court that they were not guilty of an offence under Article 3(4) of the [Regulation of Care \(Jersey\) Law 2014](#). A person who commits this offence is liable to imprisonment for a term of 12 months and to a fine. The Panel was content that the burden of evidence of having sought advice from the Commission would lie with the service provider.
8. The Panel notes that the Regulations do not oblige service providers to accept the Commission's advice. However, it considers that it would be wise for any provider to work towards conformity with the usual standards and to follow the Commission's advice as, if the service is to remain beyond 30th September, the provider must be subject to these standards. The Panel is therefore satisfied that the proposed additional amendments within the draft Regulations will enable the Commission to be aware of all the services which the Minister has agreed should be established so that, if the service is still operational on 1st October 2020, the Commission will be well-placed to register and to regulate the service in the usual way. The Panel is further reassured that these amendments have been prepared with direct input from the Chief Inspector of the Jersey Care Commission, who has expressed support for the introduction of this additional safeguard, and recognises that the standards are the best that can be achieved considering the current circumstances.
9. The Panel noted that the draft Regulations, if enacted, would expire on 30th September 2020, just after the States were due to reconvene after the summer recess. It is understood that, if by September 2020, Jersey was still in the throes of Covid-19, there would be an option to bring new Regulations which carried the same powers as under these draft Regulations. The Panel is further reassured that any further proposed amendments would be subject to scrutiny, noting that, following the decision of the States Assembly to approve [P.29/2020](#) – the Draft Covid-19 (Enabling Provisions) (Jersey) Law 202- (*now published in Jersey's Laws*

Enacted as [L.2/2020](#)), any changes to emergency legislation by Regulations can now be enacted very quickly in order to respond to the current crisis.

10. The Panel, together with the Health and Social Security Scrutiny Panel, supports the adoption of the amendments in the context of the current pandemic, and would recommend that Members support the draft Regulations.