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Regulation of Care Sub-Panel

Draft Regulation of Care (Jersey) Amendment Law 202-

Witness: The Minister for the Environment

Thursday, 9th October 2025

Panel:

Deputy T.A. Coles of St. Helier South (Chair)

Deputy J. Renouf of St. Brelade

Deputy H.M. Miles of St. Brelade

Witnesses:

Deputy S.G. Luce of Grouville and St. Martin, The Minister for the Environment

Mr. F. Walker, Head of Policy, Cabinet Office

[15:00]

Deputy T.A. Coles of St. Helier South (Chair):

Good afternoon, and welcome to this public hearing for the Regulation of Care Sub-Panel. Today is 9th October, and this is a public hearing with the Minister for the Environment. I would like to draw everyone's attention to the following. This hearing will be filmed and streamed live. The recording and transcript will be published afterwards on the States Assembly website. All electronic devices, including mobile phones should be switched to silent. I ask all members of the public who have joined us to not interfere with the proceedings. For the purpose of the recording and transcript, I would be grateful for everybody who speaks to ensure that they state their name and their role. I will start; my name is Deputy Tom Coles, and I am the chair of the Regulation of Care Sub-Panel.

Deputy H.M. Miles of St. Brelade:

I am Deputy Helen Miles, and I am a member of the panel.

Deputy J. Renouf of St. Brelade:

Deputy Jonathan Renouf, also a member of the panel.

The Minister for the Environment:

Deputy Steve Luce, I am Minister for the Environment.

Head of Policy, Cabinet Office:

I am Francis Walker, head of Policy in the Cabinet Office.

Deputy T.A. Coles:

Welcome. I am going to start on the more narrow section of this, because we are going to ask a lot of questions obviously about hospital and ambulance services. But there is a section of these new regulations that come in which are slightly smaller in scope, and this is the case of the laser clinics and oxygen therapies. I am wondering, Minister, if you can outline why you chose these 2 particular services to include at this time.

The Minister for the Environment:

Laser services are currently undertaken by some medical practitioners, as I understand, in the hospital. But I do not believe that lasers are covered ... we are not covering the entire concept of lasers. I think lasers that are currently used will be covered and lasers that are not will not be. I probably have not got that quite right. Maybe, Francis, you could remind me.

Head of Policy, Cabinet Office:

Certainly. So the laser clinics are currently regulated under the Nursing Homes Law, which is a 30 year-old law. It used to be used to regulate nursing homes, but currently it only regulates laser clinics. Those are clinics for class 3B and 4 lasers that are not provided by medical practitioners or dentists. So that is currently covered under the law. In order to enable us to repeal the old Nursing Homes Law, which was kept on the statute book largely in case a private hospital was suddenly established, it would have provided some mechanism to regulate the service. But as we are now regulating all hospital services under this, it was deemed appropriate to move the laser clinics that are regulated, so they are not taken out of regulation under the law.

Deputy T.A. Coles:

What about the oxygen therapy services?

The Minister for the Environment:

We looked at this, and hyperbaric therapy will be included. I think it was under discussion. We have attempted to engage with the people that run the service over here, we have not had any response from them at all. Officers continue to try to contact them. But it is important because this is important work, and I have a list of all the things that could be affected: claustrophobia, reversal, myopia, fatigue, headache, vomiting, oxygen toxicity and other things like sinus damage, ruptured middle ear, lung damage, things like that. This is an important service to get right and it will be regulated. I do not know if you want to add any more, Francis.

Head of Policy, Cabinet Office:
Yes, just to be clear, it is the hyperbaric oxygen therapy, not just oxygen therapy that would be covered under these regulations. It is just one service that was decided, given the nature of it and the risks, and the fact that we were not necessarily aware that there was hyperbaric. We knew there was oxygen therapy. We are in the process of trying to ... we did contact the service during the course of consultation. We did not receive a response. We have had further consultation with them. I think we are trying to meet with them later this month as well to understand if they do actually provide hyperbaric. Nevertheless, it was considered that this is a very ... the actual hyperbaric, not just oxygen therapy, which is sort of pressurised through a tube. This is in a chamber. It was felt that this was an appropriate time to regulate them. It is the ambition to regulate lots of services. It was just chosen that this was a service that could be regulated at this stage, given the proportion and the nature.

The Minister for the Environment:
Obviously, oxygen that is not under therapy is used widespread throughout the community. A lot of cancer treatments and other things will be used either through a machine, which increases the amount of oxygen you are breathing, or tanks of oxygen where you inhale it directly as part of your breath, but that is very separate. This is under pressure, and the combination of the pressure and the oxygen have a lot of consequences if they are not done properly, so it is important.

Deputy T.A. Coles:
Because we had a written submission from an oxygen therapist, and I do not know if that is the same people you were referring to.

Head of Policy, Cabinet Office:
Indeed, yes.

Deputy T.A. Coles:
They mentioned that this is not something that is then regulated in the U.K. (United Kingdom). Is that correct?

Head of Policy, Cabinet Office:

Hyperbaric oxygen therapy is regulated by the Care Quality Commission. That is certainly my understanding, and we have double-checked that since. It depends. Services are regulated in different ways. Obviously, the Care Commission would have a lot of latitude as to regulate services in the appropriate way. Obviously, the regulations here apply to children's homes and to hospitals. So, the nature of the regulation, the Care Commission tailors that - I know you have spoken to them - how they decide to do that. Again, with the hyperbaric oxygen therapy services, they would do that in a different way. But nevertheless, they are regulated by the C.Q.C. (Care Quality Commission). We do not think there is a difference here in what we are proposing from what we have looked at.

Deputy T.A. Coles:

The same sort of question leans back to the lasers and the laser clinics. We have had, again, some written submission about the use of intense pulse-like laser treatments, and whether there are risks of burns and injuries through these being improperly used. But I believe that those kind of lasers are not in this scope of regulation.

The Minister for the Environment:

I think we have to say there will be a number of things where people feel they should be regulated. In fact only this morning Francis and I were discussing somebody who has applied for regulation, quite unusually. We cannot do everything at once and I think we need to be very clear if we were to say, right, we are going to regulate everything overnight, the whole system will become completely overwhelmed. There is a structure, this is the third phase that we are going through, and this is quite a big phase - hospital and ambulance obviously and a few tiny little add-ons - but there will be more coming down the line. We know that medicinal cannabis, for example, is somewhere we need to go and want to go but not right now. We want to get this bit done, we will move on to the next and there will be lots of little bits of next as we move forward with the whole project.

Deputy J. Renouf:

Just to pick up on that, you have chosen those 2 services to be included and others not to; can you state what the criteria was to choose those and not, for example, medicinal cannabis or one of those other ones which are coming down the road?

The Minister for the Environment:

You are referring to laser and hyperbaric as opposed to hospital?

Deputy J. Renouf:

Yes

The Minister for the Environment:

Lasers are already in use. Hyperbaric, as we have just explained, I think carries quite a lot of risk to it. But yes, we know that medicinal cannabis is somewhere we would like to look at. The prescribing of medicinal cannabis in hospital will be covered under these regulations so it is the private sector that we ... and I think it is just a question of trying to prioritise, and I accept the point. We did look at other things as well, but these 2 we felt were worthy of doing. Prison services was something else that we considered, and they are ... prisons obviously, as you would expect, are inspected by Her Majesty's Prison Service, and a certain level of health is covered by that. So again, there is some sort of regulation that is there. They are not completely unregulated. We will get there in the future again, I am sure, but it was felt that lasers and hyperbaric was something that we could add.

Head of Policy, Cabinet Office:

About the proportion as well. Clearly, there are lots of other sensitive services. There is minor surgery that takes place in clinics. There are G.P. (general practitioner) surgeries, dentists. It was a question of proportionality. Clearly, we are asking the Care Commission to do a lot by regulating the hospital. When the States Assembly adopted this law, it was all very clear it would be a phased approach so that services did not fall over. We took a risk-based approach and also a proportionate amount looking at the work that the Care Commission would have to do. The laser clinics was very specific to do with it is already regulated. We will just move those ones over. The hyperbaric oxygen therapy, they are a distinct service, it is a service that we felt could be regulated. We did not necessarily know there was hyperbaric oxygen therapy on the Island, but we did ... if it is there, we felt it was a proportionate service to regulate at this time. That was the rough criteria we followed.

Deputy T.A. Coles:

Moving back more now to the hospital and ambulance service. Obviously, as you have already stated, the 2014 law was always intended to be phased approaches. What was the rationale for specifically choosing the hospital and ambulance services then to be this next phase?

The Minister for the Environment:

The rationale will have to be explained by Francis because it was before my time. But as I am sure you will know, this is work that came in in December 2022. The decision was taken that we would move, the funding was approved by Government in those days, and I felt it was important to continue that work and it was something that I wanted to do, just like the previous Government had wanted to do. I do not want to draw any assumptions - I could have a personal assumption - in the hospital, and the ambulance service that goes with it, I felt that there was always maybe a feeling out there

that they were already regulated. People may well be surprised to hear that they are not. Obviously the hospital is a function which just about every Islander has to use at some point in time. They perform an enormously important function for Islanders, and I think it is right and proper that the sooner we can do this the better. They have had fair warning. The funding has been there for them to prepare, and for the ambulance service, as the funding has of course gone to the Care Commission to get ready. I think we would have liked to have done this a bit sooner. We had a few challenges along the way and certainly in the early days - 12 months ago - I was having quite detailed discussions with the Minister for Health and Social Services about the regulation of the hospital. He questioned the timing, especially given the fact that we were moving to a new hospital, and I was able to convince him, along with the new chair, who is very keen on this, to say to him: "Look, Minister, the most important time for an old hospital to be regulated is when it is going to move to a new one. On top of that, moving into a new hospital you want to be sure that it is going to work as best as it possibly can and the chair and the Commission are here to help you with that. They are not here to bash you. They will be in a position to actually hopefully make it even better so your move can be done in a better way and the operation of the new hospital can be done in a better way as well." But as for the actual reasons for choosing a hospital and the ambulance, as opposed to other things, I do not know but I can only assume that it was so important it had to be done pretty much as soon as it could, and this was the earliest opportunity.

Head of Policy, Cabinet Office:

Yes, indeed. There was impetus behind it based on a public petition in early 2022, and that was then supported by the then Council of Ministers. Then it was put forward to the incoming Minister, Deputy Renouf, and there was a business case that went through, funding was granted, and that was the decision. It was decided that ambulance services as well as hospital services, that would be an appropriate fit because obviously the ambulance has major interaction with the hospital. So you want to try and regulate sensible groups at the same time. Given that you did not want to have a regulatory gap, if there was a question, well, actually, the Care Commission cannot look at that because the regulatory issue may have happened on the ambulance rather than actually in the hospital. So we wanted to close that gap, that is why we did ambulance with the hospital.

Deputy T.A. Coles:

You mentioned having discussions and conversations with the Minister for Health and Social Services. How extensive were those meetings, how frequently were they? To what level of detail?

The Minister for the Environment:

I suspect we probably met 2 or 3 times to discuss these things and some of those - maybe one or 2 even of those meetings - might have been unofficial meetings, if you like. But he certainly expressed a concern in the early days that he felt it was not the right time. I think he felt regulating would be

far more of a challenge than we feel it would be, and he needed to be convinced that actually we wanted to be helpful and a critical friend rather than somebody who just came in with a big stick and bashed the service. I think there were a lot of people inside the service who were wary, but we were able to convince him, as I said, with the help of the new chair of the Commission, that our job is to do a bit like Scrutiny and be a critical friend and go in and show where improvements could be made. Yes, there may well be some times when the point has to be done where things need to be better or things have gone wrong and must be improved. But we very much hope that the Commission can work in tandem with the hospital to improve services for Islanders and not come into conflict, which ends up in nurses and doctors being very wary. We want everybody to work together for a better outcome rather than be confrontational.

Deputy T.A. Coles:
Can you explain the broader consultation that you did beyond just with the Minister in coming up with these regulations?

The Minister for the Environment:
Well, Francis, over to you, I think.

Head of Policy, Cabinet Office:
Sure. We ran a public consultation on the draft legislation. I should say, we never did a policy consultation because it was decided that the policy was set, the model had been adopted by the Assembly under the Regulation of Care Law in 2014. So that model of inspection within online and commission, with the standards of legislation that was largely in place, so it was decided there was no point going back to first policy principles because we knew that that was the direction and we were just taking a phased approach. The policy, as in legislation consultation, was very much a consultation on that law. We published that on 8th April and the consultation ran for 8 weeks until 3rd June. Given the nature of the consultation we were not anticipating large volumes of feedback but we contacted all the relevant services and, as I say, we published it and publicised the consultation and it is quite dry, obviously, because it is on draft legislation but we tried to make it as engaging as possible.

[15:15]

We also did a smart survey. So we had 7 responses to the consultation via the smart survey and 4 email responses and we also conducted internal meetings; not just internal meetings although clearly most of the substantive stakeholders were internal. They were the hospital and the ambulance service and the Care Commission who were very happily consulted throughout the process of developing the legislation all the way back to 2022 in devising the business case as well

and working out the cost implications. We also contacted the services that we thought would be affected by the legislation.

The Minister for the Environment:
Generally I think everybody was supportive. The strongest support came for doing something about the duty of candour, which I am sure we will come on to, and also people under the regulatory standards bits were concerned about visitor access. I think there was some hangover from visitor access during COVID, the issues there that needed to be raised, and also the subject of access to medical records for people was another one that they focused on.

Head of Policy, Cabinet Office:
Yes, indeed so we made some changes there to tighten up so we were proposing those and just to tighten it up to make sure that those provisions that we put in could not be misused, as it were.

Deputy T.A. Coles:
Which quite handily leads me on to my next question which is about how those particular regulations were drafted. We wrote you a letter earlier in this process about it being considered the use of “by” instead of “from” in the context is effective and fulfils the policy intent. Do you believe that that then is clear enough for people who may be reading this regulation about access to patients and their patient record as being clear enough?

Head of Policy, Cabinet Office:
Yes, so those 2 points we think we are satisfied from a drafting angle. We discussed them with the drafters again to confirm. It is quite a technical drafting point but we are satisfied, having discussed it, that that means that it does what we need it to.

The Minister for the Environment:
Having said that, if there is a feeling that the legislative wording is difficult and complicated for the man in the street to understand, it is not impossible at all for guidelines to be issued so that it is very much more in a language that people can understand and it can be outlined in a fairly comprehensible way what access you have and when you should expect it. Obviously there will be some restrictions; mental capacity, age restrictions and things such as that so just to safeguard so that the wrong people do not get hold of records as well. We feel it is very important for people to be able to access records for people that they are responsible for.

Deputy T.A. Coles:

Would those sorts of guidelines be something that you would issue as the Minister for the Environment or is that something that would be encouraged to be produced by the Care Commission?

The Minister for the Environment:

It may well be produced by the Commission, and I am sure they would want to get the wording right but, as the Minister with the law under his responsibility, I would imagine that I would certainly have to approve them and it would probably be me that would issue them. At the end of the day, provided they did what they said on the tin, it is not really important whether it is me or the Commission. It is going to come from outside of the fence and it would be for people to read and understand hopefully.

Deputy T.A. Coles:

So I suppose the final point to clarify around that is the policy intent in itself. In these particular ones it was to intend for the openness and ease of access to records and to patients in cases where it is absolutely appropriate.

Head of Policy, Cabinet Office:

Yes, so the intent is largely to enable the loved ones of patients to be able to access care records and not just patients but also care receivers in care homes. Clearly there are cases where that is not appropriate. It may be that a child is in a children's home and is subject to a care order, so the intent there is that the law is clear and certainly in everything we understand it is clear that that is not appropriate to provide that access and also if there are genuine concerns, but largely the intent is that if a patient wants their loved one to see their care records they should be provided with that information.

Deputy T.A. Coles:

I am going to move on around the governance of the Care Commission. Minister, can you please describe your accountabilities in relation to the proposals under the draft law?

The Minister for the Environment:

My responsibilities under the law will be covering the Care Commission and making sure that their work is done properly. The Minister for Health and Social Services will have responsibility for the hospital, and that has been the subject of some discussion. I know there was some suggestion that chief officers might be the ones held responsible, but certainly we have taken the view that that is too much and that Ministers as corporate soles should be the ones responsible for the departments they oversee. Obviously chief officers can be responsible for the performance but the Minister needs to be responsible for the department. But as you might expect as a corporate sole, the Minister will not be sued or will not be taken to court as an individual and will not be liable individually. I think we

have always felt it was very clear that the Minister should be the one as a corporate sole to take the responsibility, so my job is to liaise with the Care Commission through the chair and the chief executive, with assistance from Francis, and to oversee and make sure that they are doing the job that the Assembly wished them to do. It is a slightly different role to any of the other parts of my department and I am a little bit further away from it, but it comes under my remit and I work through the chair, the chief executive and Francis.

Deputy T.A. Coles:

So you touched on the Ministers now becoming the accountable person as the corporate entity rather than the chief Officers of the department. Do you foresee that offering better lines of protection for members of the Civil Service?

The Minister for the Environment:

Yes. I am sure that is the right … I mean, I looked at it slightly differently and I think we felt that to put this responsibility on a chief officer on top of all the other responsibilities that the chief officer might have could act as a deterrent to good people applying. We also felt that when you looked at the U.K. it is trusts that are held responsible and other corporate entities, and Francis will have to help me here, but it is only right that in Jersey the Minister is responsible not as an individual but as a corporate sole. I do not know if Francis wants to add anything there.

Head of Policy, Cabinet Office:

Yes, I think that largely covers it unless there is any …

Deputy T.A. Coles:

Because Ministers have the ability to delegate functions of their Ministerial portfolio but this would not be something they would be allowed to delegate.

Head of Policy, Cabinet Office:

So the ultimate accountability as provider would rest with the Minister but they would be able to delegate the day-to-day functions of managing the provider regulator relationship.

The Minister for the Environment:

It is a bit like I said, the chief officer will be responsible for performance but the Minister is the person with the liability, if you like, and if the performance of the department fails to such a degree that there is a very serious issue it would be incumbent on the Minister to deal with the chief officer who is responsible for the performance. I do not know if I am explaining myself right but the Minister can remove his chief officer but the Minister will be their responsible person.

Head of Policy, Cabinet Office:

It is important to emphasise that this carries criminal sanctions. It is not a civil penalty so to criminalise a chief officer for things that may not be inside their control, because a lot of these provisions carry requirements to really inject some money to deal with it, so if your premises are not up to standard a chief officer in a hospital would not necessarily have access to the funds. Those funds are granted by the Assembly ultimately and so even a Minister could not necessarily find those funds. Clearly there are tests and it is not about criminalising. Those are ultimate sanctions. No one has ever been prosecuted under it but nevertheless it is a real deterrent for an officeholder to come in, realise that they are responsible for running the hospital, and if things go wrong they could be personally held criminally responsible for that. It is the same way in care homes. It is the corporate structure that runs a care home that registers, so if it is a charity it is the trustees as the trust, as a charitable trust, a board of governors of a charity. If it is a company it is the board of the company who would be liable as a corporate entity. It is akin to that because the Minister as a corporate sole is the legal entity so it was felt that that is a change that should be made.

Deputy T.A. Coles:

Does that work if we do not have corporate manslaughter in Jersey, that we do not have a criminal offence that recognises corporate manslaughter?

Head of Policy, Cabinet Office:

This would be entirely separate to any decisions relating to gross negligence, manslaughter, murder. Those other criminal sanctions. The Care Commission would look at the Regulation of Care (Standards and Requirements) (Jersey) Regulations. If they found breaches, the first step that they would take, and that the law encourages them to take, is to issue an improvement notice and that improvement notice sets out the nature of the improvement that they expect, the timescale that they would expect it to be made, and it is only after that had potentially failed to be met that they would then look to provide evidence to the Attorney General and ultimately prosecution decision via the Attorney General. I think, as you heard from the Care Commission, that they are looking to help services improve. That is the ethos behind this but those sanctions are nevertheless important. In individual cases, if there had been found to be another criminal matter then that would go straight to the police if they uncovered in any regulated service evidence of sexual offences, gross negligence, manslaughter, murder, those sorts of things, then that would be a matter for the police.

Deputy T.A. Coles:

What engagement and discussions have you had, because the redraft of the regulations also splits out the Minister for Children and Families and the Minister for Education and Lifelong Learning. What engagement have you had with these Ministers about their new responsibilities?

The Minister for the Environment:

Francis is going to have to remind me. I cannot remember speaking to either of them directly but I may well have done.

Head of Policy, Cabinet Office:

Yes, we have consulted them. They will take on those responsibilities. They are content from our consultation with them that they would take on those responsibilities to provide the services that they are ultimately responsible for.

Deputy J. Renouf:

Can I just ask a very quick follow-up on that? Does this bake into the law the split between the Minister for Education and Lifelong Learning and the Minister for Children and Families? In other words, if those positions were ever to be merged back into a single Ministerial function would it be something that would require an amendment in this law as well?

Head of Policy, Cabinet Office:

My understanding is that you would be able to deal with that by an order under the States of Jersey Law, so I think that would be covered. It was more of a challenge to insert another Minister, although I think that would have still been possible. It was just something that was not quite … it was a straight change rather than a change and an addition that was made so we just tried to remedy that.

Deputy T.A. Coles:

So moving on in the sense of registration of large services. How have you communicated your expectations to the aforementioned Ministers about the structures that need to be in place to deliver operational performances and effective services?

The Minister for the Environment:

Again, Francis, you responded to those 2 Ministers.

Head of Policy, Cabinet Office:

Yes, so we have spoken to them and the operational decisions would be delegated to the Ministers about how the services would be split up and ultimately it would be for the Care Commission to decide how it is done. We imagine that it would continue. While the Ministers hold responsibility as providers, the conversation takes place between their senior officers and the Commissioner as to how those services split up. For Children's Services it is already set up and largely these issues … so the reason that we put in place these provisions for the large services was it was learning from that position. We recognise that the structure under the law was quite designed for smaller services, so care homes and that sort of thing, provider, manager.

[15:30]

You would have one of each for those services. It may not necessarily be appropriate and also the law allowed the Commission to ask for multiple applications for more than one site, so clearly if you have got a children's service, you want to be able to register that whole service, all of its sites, in one application and you need to be able to map that service and provide appropriate managers. That law bakes in that flexibility. So the way that the Minister communicates that, and we have been clear that the managers need to be of appropriate seniority because that was something that was raised during the consultation, but ultimately it is a decision for them. I know the Minister was clear following the consultation and it was put in the consultation report from that feedback that we do not want there to be fragmented management within services. It is a decision for the Commission and for the services to come to an agreement and ultimately for the Commission to decide, and I think you heard from the Commission they understand that the managers need to be at a high enough level so that there is not fragmentation within the system and lower level managers think that they have responsibilities and then say to the service: "No, my responsibility is here." That then creates tensions. You need to have the managers at a strategic enough level who are working in concert with the provider, which would be the Minister and their senior officer.

The Minister for the Environment:

At the other end of the scale, these changes are going to allow us to deal with individual care providers in a much smaller context, so single care providers can be dealt with, their managers can be dealt with. If the manager and the care provider are the same person they can be dealt with or they can be split up, so whether it is large down to the small, we feel the changes are appropriate.

Deputy T.A. Coles:

You mentioned in that response about some of the activities being the responsibility of the Care Commission to decide. What responsibility do you have in confirming the full scope of what is within regulated activities and how much of that falls to the Commission?

The Minister for the Environment:

The Commission will always look to the U.K. to see what and how they do things and they will suggest to me: "This is how we might do it. This is how it is done elsewhere" in the normal way you might do consultation, so I presume that we have looked at best practice elsewhere and are following it where we can, bearing in mind that Jersey is a small jurisdiction.

Head of Policy, Cabinet Office:

It is very much the law is as clear as possible as to what the services certainly that the Minister thinks should be in scope of the law. It is always difficult when you are defining those services. There is a danger that you capture services that you do not intend to capture. There is a danger that you do not quite capture the right ones, so getting those definitions right is a challenge, particularly in trying to take the phased approach that Jersey has decided to take, which is not a bad approach to take but it does mean that you cannot overnight just suddenly copy, say, the U.K. law. Then once that is defined there are services that are on the edges of some of those definitions. There is potential with the ambulance service one. The hospital is pretty clear cut although services that do end up providing in-patient care may well end up finding that they are a hospital even though they do not think that they are a hospital. That is a challenge potentially with that definition, but when it comes to practice the Assembly ultimately, however it chooses to adopt this, will set out what it expects to be regulated and then the Care Commission on a case-by-case basis will look to police that.

Deputy H.M. Miles:
You just mentioned the ambulance there. Where does patient transport services fit in this?

Head of Policy, Cabinet Office:
That is a very good question. The patient transport services are generally provided by the hospital, so if they are provided by the hospital they will be covered under that. We have got a special category under that.

The Minister for the Environment:
Having said that, ambulance services also provide patient transfer services.

Head of Policy, Cabinet Office:
They do.

The Minister for the Environment:
Quite often if somebody is taken to Accident and Emergency ,if they do not have an easy access back home and a taxi is not called, then a proper ambulance - no offence - but a paramedic ambulance may well take that person back home afterwards.

Head of Policy, Cabinet Office:
Indeed, and so the ambulance would be covered for that as part of its regulation so it will be regulated for that. But then if it is a patient transfer service say off-Island to Southampton, then nurses that fly with them or that accompany them would be regulated as part of the hospital service. The ambulance that transports them would be regulated as part of the ambulance service and then the

air ambulance should be regulated by the U.K. authorities. But the care provided while it is in Jersey would be regulated as part of the hospital service.

The Minister for the Environment:

Yes and then the nurse who travels with the … whoever travels with the person who is being transported to the U.K. on the air ambulance service would also be regulated under the hospital.

Deputy H.M. Miles:

It is really important that regulation does not get in the way of flexibility as well in the way that you said, a paramedic might drop a person home afterwards. You would not want any regulatory activity to make the system more complicated than it is already.

Head of Policy, Cabinet Office:

Yes absolutely, and how that is done is the Commission has a lot of scope and that is how you have to do these types of legislation because you have got to cater for a lot of eventualities and provide the regulator with that scope. It is not anticipated to prevent services from doing things. It is there to say that if you are providing this service these are the standards you have to conform to, so is the transport you are providing appropriate. It is not necessarily a patient does not need to be in an ambulance if they are just being transferred back home and everything is fine. If they then required an ambulance to be used that would be in the Commission's remit. That would be when the Minister might want to have a discussion with the chair about the appropriateness of their standards, but I do not think we have those concerns at the moment.

The Minister for the Environment:

We talk about the potential to restrict services but we do have the power in these new rules to do that very thing. We will be able to stop certain services being provided to certain groups if it is felt appropriate, so I think the example we used was that it may be that we would like to stop certain types of cosmetic surgery being given to people under 18, for example. That is just an example but there are powers in here to restrict services where we feel that it is appropriate but that is not quite where we are going. If we do think it is appropriate and things need to carry on we want to use common sense and allow them to continue.

Deputy T.A. Coles:

My final question for my first area is about the enforceability. Article 14 allows the Assembly powers to make and amend regulations to require care services to provide services that conform to legally enforceable standards. Minister, are you confident about the legal enforceability and also have you consulted with the Care Commission about potential risks to the enforceability of the laws?

The Minister for the Environment:

I am confident that we can enforce. Certainly we have been a long time getting ready, and whether you are the hospital or the ambulance service, but most especially in this case the Care Commission, they have been preparing, they have been given funds to prepare and I would imagine that they are prepared in that way for all eventualities, including enforcement if it is required. I do not know if Francis wants to add any more.

Head of Policy, Cabinet Office:

I think that largely covers it, Minister. Yes, with our discussions we have had with the Commission it is for the Commission to enforce under the law the regulatory matters. It is not a police matter and we are very clear on that, and if it does come to finding evidence for prosecutions ... but as we have said, that is not the intention behind this. The intention is for the Commission to support improvement, which I think you can see from the Children's Services reports. There is real progress being shown every year there, and hopefully that is what the objective of this legislation is there to do, to support those services that work very hard and provide a great service to continue on that path and to shine a light where things may not be going well. Obviously you always need a sanction under the law and we are confident that that would be enforceable.

Deputy H.M. Miles:

I had some questions about new regulated activities, and I think some of them you have answered. You alluded to dentistry before. The Jersey Care Commission themselves said that dental clinics and services provided by the hospital should not be regulated until all the dental services provided in the community were regulated. Can you explain where you differ from the Care Commission in relation to that and that you are going ahead to regulate hospital dental services?

The Minister for the Environment:

Over to you, Francis.

Head of Policy, Cabinet Office:

Certainly. We made the decision that we understood where the Commission came from on that but we felt that to create a gap around that in the hospital, the intent is to cover everything that Health and Care Jersey do. Once you are captured by that hospital definition your services are regulated, basically. Health and Care Jersey are hooked into that definition and then it is very clear for them the services that they provide are regulated, the healthcare services that they provide. That includes the Mental Health Services and everything. That then makes it really straightforward for them legally. If we were to split off the dental services we understand that that would mean that the Care Commission has to do bespoke standards for them but if we did not, if we excluded them from that, then there is a danger we would exclude more. Again, it comes back to why did we regulate the

ambulance at this time. We do not want to have that gap where patients raise a concern with the Commission and the Commission says: "Well, we cannot look at the ambulance service." In the same way is oral surgery dentistry or not? I could not advise the Minister in all good conscience that we would have cleared that gap, so that is …

Deputy H.M. Miles:

Yes. I think the issue was around general dentistry. I think Jersey is quite unusual in that most general dentistry is done in the community whereas we still offer a general dental service, so it was just … you have explained why you are doing it but it is not so much the surgical side of the dentistry as …

Head of Policy, Cabinet Office:

No, exactly and it is provided by Health and Care Jersey, so where we have made an opt-out in effect in the law is for the out-of-hours G.P. service that is at the hospital, and that is because that is not provided by Health and Care Jersey. It is in the hospital but it is not, so that is the one exception that we made and we were able to carve that out quite satisfactorily, whereas we did not think we could carve out dentistry at all.

The Minister for the Environment:

In the same way as the cannabis prescribing. If it is done in hospital it has got to be covered. Private practice outside the hospital is not covered at this time although it is on the list. Dentists will be the same.

Deputy H.M. Miles:

Thank you. Did you do any consultation with any of the regulatory bodies, such as the General Dental Council, about the decision to regulate?

Head of Policy, Cabinet Office:

Not specifically, no, not on this. We are engaging with those bodies to do with another piece of work that falls under the Minister for Health and Social Services remit, the regulation of professionals, but not on this because dentistry is regulated in this way in the U.K. The Minister I do not think has plans at the moment to regulate dentistry, but that does not mean that it would not be appropriate necessarily if the Assembly was minded to support it for dentistry to be regulated. We have not gone around and looked at the specific areas of the hospital. It was decided that we should regulate it all and regulate Health and Care Jersey services at this point and largely because the legislation is based very heavily on the English Health and Social Care Act 2008 (Regulated Activities) Regulations 2014, they are already in place largely. So it is just really a question of is it proportionate

or not to regulate them at this point. The Minister decided it was for the reasons that I have outlined now.

Deputy H.M. Miles:
Thank you. We talked a little bit about prison health services and the medicinal cannabis services. Again it is a consultation question. Did you consult at all with the prison about not pulling them into the regulatory regime at this time?

The Minister for the Environment:
I am not aware that we did but, as I said, we are aware that the Prison Service is covered by another independent assessment and inspection on a regular basis, and there is a certain amount of care cover that is done under that. It is another one that would be on the list to potentially do in the future. Given the fact that they are already inspected, I have to say there may well be other services we would want to regulate before we go there but we will have to see.

Deputy H.M. Miles:
The reason we were asking the question is that obviously some of the services that are provided at the prison will be provided by Health and Care Jersey and their staff so it was just trying to understand.

Head of Policy, Cabinet Office:
Yes, and then there are some services that are G.P.s.

Deputy H.M. Miles:
Private dentists, yes.

Head of Policy, Cabinet Office:
And private dentists so given that complexity, it was largely a decision that we reached with the Care Commission although we did map what the prison healthcare service looked like when we came to planning it. But it was largely a question of how did the Care Commission envisage doing that and it was decided not at this time, but it certainly does not preclude it, as the Minister says, from being regulated.

[15:45]

Deputy H.M. Miles:
In terms of medicinal cannabis prison regulation and so on, have you got any timeframe at all in your thinking about when you might bring forward those initiatives?

The Minister for the Environment:

I do not, and the reason I say that is, as I said a little bit earlier, I think it is fair to say we had hoped we might be in this position 12 months ago, and for various reasons we have not and we are here now. We are very close to elections next year and I feel it would only be appropriate for the new Minister to decide where we go next with this. The important thing for me was to make sure that the previous Government's work on this was carried on and enacted before the election. The decisions were taken as to where we were going - hospital, ambulance, inside the hospital and no bits and pieces outside - and then you concentrate your work on that and you try not to think too much … I mean, this is a big piece of work and it has taken a lot of effort in Francis's team and the Care Commission and everybody, but they have all had resources to prepare. This is the big one, if you like, to get over the line and then we move forward. But the most important thing was the decision was made hospital and ambulance, concentrate on it, get it done before the election and forget about putting any resource into thinking about others until we have got this over the line.

Deputy H.M. Miles:

Okay. Thank you very much.

The Minister for the Environment:

Had we been here 12 months ago it may well be a different position but certainly, and I know the Minister for Health and Social Services shares my concern about medicinal cannabis prescribing in Jersey. There are a lot of statistics and a lot of things that need to be sorted out there and it would have been top of my list but we certainly do not have time now until later next year.

Deputy H.M. Miles:

Okay. Thank you for clearing that up.

Deputy T.A. Coles:

Do you think that any of those work frames that you have looked at, such as general dentistry, the prison and the healthcare that is provided up there, and then maybe because pharmacy is included in the regulations, that some of this might be quite easily transferable legislation to community dentists, the prison and cannabis prescribing or do you think it is a bit more complex than that?

The Minister for the Environment:

I think it is always easier once you have got the baseline piece of work done to pick and choose and put certain sections in. As you say, we are going to have some work done around dentists in the hospital. That can only be of assistance. I guess it will be slightly easier, but in certain sections we will have to think hard about where we go. We will have to see.

Deputy J. Renouf:

I am just curious, before I come to my questions to follow up this point, about there being a 12-month delay that you would rather not have had. Was that driven because the work was more complex than you thought technically, or was it driven by a degree of what you might call political opposition in the broadest sense?

The Minister for the Environment:

I think it would be fair to say that the delay started off because the Minister for Health and Social Services indicated that he was uncomfortable with the way this was going, and I think it would be fair to say that right at the outset he was very worried about the effect it could have on his department. I spoke to the incoming chair at the time about how we might move this forward and the new chair was very keen to impress upon me that he saw this as a great opportunity to help the Minister for Health and Social Services and the hospital, current hospital and the new hospital, with his experience and the way he wanted to move things forward. I then took that to the Minister for Health and Social Services, and the Minister for Health and Social Services and the new chair met and had a meeting, and the Minister for Health and Social Services was very much more reassured after that and a lot more comfortable. We had a few little amendments, things that we had to change. I cannot remember what they were but I remember we did have some and we find ourselves where we are, unfortunately. It does seem crazy that it has taken 12 months to get from that position. Have I forgotten any other reasons why there were delays, Francis?

Head of Policy, Cabinet Office:

No. I do not think so, Minister. I think as you say, these are fiddly amendments just by the nature of defining what a service is, what is a healthcare service, what is a hospital, so they are always challenging in that regard because we are taking this phased approach. That definitely contributed to the time, just the nature of the process.

Deputy J. Renouf:

We have the Minister for Health and Social Services tomorrow, so we shall get his take on it from that. Can I move on to some slightly narrower questions to cover off a few items? One of the changes is with term limits. So you have put in changes around those and the disqualification of commissioners as well. Are you worried that they might put people off from applying for the positions?

The Minister for the Environment:

One of the concerns of terms of office of commissioners was around the fact that it was possible, and I think we almost had an example of somebody who had worked almost in their student nurse

days for the hospital and many years later in a position of massive experience and offering themselves as commissioner, but because right at the start of their medical career they had an association with the Island they were disbarred because the rules say no connection. So we felt it was more appropriate to introduce this 9-year rule and provided you have got a 9-year period of not being involved and you qualify and it is felt you are suitable, you can qualify as a commissioner. I can only see that that is a benefit to us because if we are excluding really good people who for some reason very much earlier in their career have had an association with us it would be a shame.

Deputy J. Renouf:

Where did the term limits for commissioners come from?

Head of Policy, Cabinet Office:

That just rounds the loop for the Jersey Appointments Commission guidelines say 9 years as a maximum term limit for these types of offices, and really we felt that it should be in the law. So that was clarified and certainly the C. and A.G. (Comptroller and Auditor General) has flagged up at times where that has not been in the norm.

Deputy J. Renouf:

So it is tidying up and the previous chair served 9 years so …

Head of Policy, Cabinet Office:

Yes. In fact the first inaugural chair just completed an 8-year term and they left. They wanted to leave early so there has not been a problem with it.

Deputy J. Renouf:

Okay. Moving on to duty of candour. I wonder first where the changes around duty of candour ... where the principles that you are putting in around duty of candour came from. What was the motivating thought behind these changes?

The Minister for the Environment:

The first thing to say is I think it is very important that employees have the duty of candour and they say sorry when they genuinely mean it, they explain why things have happened in the way that they have and they show how mistakes have been made. Jersey law does not currently cover that and, depending how the expression of being sorry is expressed, it could end up in court as a liability and say that you could be seen to be admitting your liability. I think we felt that it is very important to bring in laws from outside that say that staff must say they are sorry … well, not must say but we want them to say they are sorry, but they must explain what has gone on, they must explain the mistakes and how that has happened, but equally that does not preclude in any way people taking

the hospital, the Minister, whoever to court or legal proceedings. I personally feel it is very important that people express some sort of apology and say they are genuinely sorry and that mistakes happen. We very much hope that any mistakes that happen in a hospital are genuinely mistakes and people should apologise, and we want staff to be able to apologise.

Deputy J. Renouf:

I guess the controversial bit around this is not being able to use the duty of candour in a legal setting. What was the thinking behind that?

Head of Policy, Cabinet Office:

That follows other jurisdictions.

The Minister for the Environment:

I am trying to understand the question. Not using duty of candour in a legal setting?

Deputy J. Renouf:

The rules, as I understand it, say that you cannot use the duty of candour letter.

Deputy T.A. Coles:

The wording of the law says that it is not submissible.

The Minister for the Environment:

The current law or the new law?

Deputy T.A. Coles:

The draft law says that it is not submissible as evidence in legal proceedings.

The Minister for the Environment:

Yes. I mean I think it is important that if we have some sort of awful case that happens we want staff to be able to apologise. That letter does not need to be admissible in court because if something terrible has happened there will be a huge body of evidence that has been investigated that will all be put in front of the court, and I do not see that the duty of candour letter makes very much difference in that way. The investigation will happen, the evidence will be clear and that will be put in front of the court. Have I got that right?

Head of Policy, Cabinet Office:

Yes, absolutely. To be clear, it is not admissible as evidence of an admission of liability. So any evidence in relation to a case is admissible under the rules of court as they stand today. So we

would be talking about negligence generally, which this legislation does nothing to affect, tort law, negligence. The court already has its long-established rules on what is and is not admissible as evidence. All this says is that letter that is issued, which has got the apology, details all the facts, is not admissible as evidence of liability. So it could be used to say, well, the hospital said they did this, they did that, they did the other, you could use it like that but you cannot say: "Look, they apologised. They are saying this is their admitting liability." The law is very clear you cannot use it in that way and the principle behind the duty of candour is open, honest transparency and encouraging, and in those cases you will not see many in court because they settle. You want cases to settle. Things do go wrong in healthcare. That is not malice. Things go wrong and often it is not negligence. Often it is a reasonable body of practitioners would have done this, something went wrong, it is not negligent but still payments are made in all settings. You want to have that openness and transparency when things have gone wrong, apologies, settlements can be made and things can be moved on. That is part of the process and the duty of candour first came about in England following the Francis review of the Mid Staffordshire Hospital in 2014 and the very clear recommendations on that. The more we can make that effective, and it has not always been that effective because of how it is being used, and some of that is because of the protections for apologies in English law are not as clear for this liability point, so that still makes them reluctant. We want all services to know that it is not an admission of liability. They may still be liable and there may still be lots of evidence of liability but that is not evidence of liability.

Deputy J. Renouf:

But it is the case, is it not, in the U.K. they can be used as admissions of liability?

Head of Policy, Cabinet Office:

So apologies cannot but the letters … they are not saying that the letters … so the Compensation Act in England is worded differently. It is not as clear on whether the letter could be. It is saying apologies are not an admission of liability but they do not say that they are not admissible as evidence of liability, if you see what I mean. The law in England effectively says they cannot be construed as such, but this just goes further and says they are not admissible in evidence as evidence of liability.

Deputy J. Renouf:

This could be a very technical point, but what you are saying I think is that it cannot be used to say: "You are wrong here because you have clearly admitted it" but it is admissible for the purposes of saying: "When you add up all of these things that you have put in this letter in our view, as a claimant, that is an admission" and then it becomes a negotiable point, basically, as opposed to it is definitely an admission.

Head of Policy, Cabinet Office:
Yes, so you could use the evidence in a letter to find other evidence to say they have documented that this happened, this happened, this happened and then you would go through the different points within negligence and say …

Deputy J. Renouf:
Is it negligence or not.

Head of Policy, Cabinet Office:
… are they liable, and then it is for the court to decide, for the judge to decide on the balance of probabilities based on that evidence provided. What this is saying is that the judge cannot just look at the letter and go: "They said they are liable because they have apologised in this letter." They cannot do that.

Deputy J. Renouf:
So, it is the word "apology" that is the thing that cannot be used?

Head of Policy, Cabinet Office:
To that extent. I mean it may be the case that they would try to use it and that there would be an argument in the parties, but almost certainly the letter would be brought forward as evidence and then there would be an argument about the status of that letter and how it should or should not be used in that case. But the fact is it would be still disclosable but it cannot be used as evidence for the liability point.

[16:00]

Deputy J. Renouf:
The central reasoning behind that is that you want to encourage open admissions and you worry that if the duty of candour could be used then it will restrict what people say in those duty of candour letters, that it will make those people far more cautious?

The Minister for the Environment:
I think that is absolutely right. A mistake or something may happen in hospital and the relatives may go in or even the person affected may say: "What has gone on here?" And the manager, or whoever, will be in a position where they will want to say: "I am sorry", but will be terrified to because the next thing they know, they are in court. They will want to say: "I am really sorry what happened. We were doing this. This machine broke. This drug was administered wrong." Or what have you. But they will say none of that, and then the patient will be hugely frustrated and upset because the

department will say nothing because they will be concerned. This allows them to say they are sorry, to explain basically what has happened. As Francis said, if it is a machine or a drug, there will be hopefully another investigation into that, and that will be a body of evidence that will come forward and the drug evidence will come ... there will be a pile of evidence here and a letter here. Just because the letter is not an admission or admissible, this is that there will be another body of evidence will be forming the court case if it goes to litigation.

Deputy J. Renouf:

What about seeing it from the point of view of the person wishing to pursue legal action? Is there not a risk that they will see this as an attempt to lessen the grounds in which people can be held responsible? Because something that looks plain and simple to an ordinary person, as you got this wrong, will not be admissible in that way in the court.

The Minister for the Environment:

It would seem to me that if there was a body of evidence that has come forward and the case is clearly proven, that we get to the same conclusion by a different route. But I think we go back to the original thing, which is where we want people, and not just in hospital, in other forms of government and what have you, we want people to say they are sorry, to explain why things have happened in the hope that things will get better. In this particular case, with the hospital it could be quite serious and we might end up in court. We just want to make sure that people who we would want to say sorry, get to a point where they say: "I do not want to do that. I am sorry, I cannot say anything to you. I am terribly sorry." They will not even say that. They would just say nothing. They will say, "I cannot say anything." A no comment interview almost, if you like, where they would desperately be wanting to say to the patient: "I cannot apologise too much about what has happened here. This happened or that happened." I think it is really important that people can have a duty of candour to patients, absolutely.

Head of Policy, Cabinet Office:

The other point here is that this is saying you must apologise. If Jersey law is silent on the status of that apology, and yet you are requiring them to apologise, and if Jersey law, you can still, in this case, say that apology could be construed as an admission of liability and could be used as such, then every time somebody apologises here, then there is potential to say: "Admission of liability", and then every point is argued: "Is it or is it not an admission of liability? What is the status of the apology?" It would be irresponsible to introduce this duty without clarifying what the status for the apology is. The purpose is to create that openness and transparency. There will be much more evidence, and this applies to care homes, home care. This duty applies to all of these services, not just government services. In all of these cases, you want them to be open and honest and

transparent, and for that information to be shared. Having that clarification is an important point to enable them to then use the duty, otherwise there would be real reluctance to use it.

The Minister for the Environment:

It might just be that somebody may wake up from an operation and feel a particular way, and it is important that somebody can say: "I do not know quite what is happened here. I am really sorry you feel like you do. We are going to find out." But it is all about empathy and trying to help.

Deputy J. Renouf:

Okay. I will move on from duty of candour. A couple of questions on access to visitors and access to care and health records. Article 41 of the draft law amends the 2018 regulations, as these currently provide that the registered person is responsible for considering whether it is appropriate to allow the service user's representative to access their personal plan and care record. I am just trying to get at how this change will improve patient rights to access their care records.

The Minister for the Environment:

Going back to the first point, which was the visitors and the access to visitors, it was clear to us that during COVID, for the obvious reasons, there was a sort of a lockdown. We know there were a lot of people in care homes who got really upset because they could not be visited. Post-COVID, there was a certain amount of - how do we say it - it certainly made life easier for some care homes if people did not visit because they had less organising to do. We want to make sure that we do not get anywhere near that situation again. We want to make sure that if visitors are restricted, that is recorded and the reason is recorded, and it is clear why it is recorded. Because it is only right that people have access to their children or a doctor or a lawyer or a nurse or what have you. We felt that was important. Access to records is another one, and we have discussed it previously, but it is only right that close relatives or responsible people have the ability to access people's records where appropriate. Francis mentioned certain instances where that might not be the case.

Head of Policy, Cabinet Office:

Yes. The provision basically says if somebody consents to their relative or loved one wanting to see their records, then that should be allowed, that the healthcare establishment should do that, unless ... and the carveouts from that is if they are accommodated in a children's social work service or they are cared for by a children's social work service, clearly that would potentially be ... it may not be, because there are very many cases, but that is possible for them to withhold that. Also, if an individual lacks capacity, and say there is a safeguarding issue, it would not be appropriate for a care home for somebody who may be deprived of their liberty under the terms of the Capacity and Self-Determination Law and they are unsure that they would really want that care record to be shared, they can deny that, otherwise consent if they want that to be shared. Maybe they have

concerns about the way that they are being cared for or treated, they want their loved one to look at their care record, be able to share it with somebody, an external third party, then that is a right for them to then see that.

Deputy T.A. Coles:

What about the reversal on that? What if you have got somebody who does not have capacity, either through dementia or mental health conditions, but their loved ones are concerned about their care and their ability to request those records?

Head of Policy, Cabinet Office:

That is a potential issue, if they are using that. It is not to say that they have to withhold access, it is to say that it is only in those circumstances that they may withhold access. It may very well be appropriate for somebody to see. We have also said that if there is a lasting power of attorney or if a delegate is appointed then the service cannot deny it. So, if there are concerns in that way, then the best thing to do is obviously to have a power of attorney so that if you do end up lacking capacity, then this will kick in and they will always be able to see it. But we just had to provide that safeguard just in case.

Deputy J. Renouf:

Moving on to a couple of points that were raised by the Office of the Children's Commissioner around access to health and care records and visitors. You made amendments, I think, in response to some of those. Did you subsequently check in with the Office of the Children's Commissioner just to check that the amendments you had made, whether they had any feedback about those?

Head of Policy, Cabinet Office:

Yes, we did.

Deputy J. Renouf:

That was all ...

Head of Policy, Cabinet Office:

They supported the changes we made. The original change was too much of a blanket. It was effectively if they are there then they must not share them. Whereas on reflection, the Minister, following the consultation, decided no, it is a gateway to allow them. But also they still need to explain their reasons why. So, that has got to be an open decision. So, again, if they do restrict access, and this was something that we inserted thanks to the Children's Commissioner's feedback, is they need to be able to document that and have a record of that so the Care Commission, on its

inspection, can find that record, see it, it will be in their care record, and they can hold them to account for that.

Deputy J. Renouf:

Okay, good. Are there any broader implications that have been thought about in terms of patient privacy or data protection in relation to these amendments? Are you comfortable that the whole gamut has been considered?

Head of Policy, Cabinet Office:

Yes. The powers for the Care Commission to obtain information are already in the primary law and we are not touching those. Apart from the fact that it is extended across services, we are not extending the Commission's powers. The Commission has the systems and the servers in place to handle that data and they are already an existing service doing that under the powers they have got. So, yes, I think we are confident in that. I do not know, Minister, if you have got anything to add.

Deputy J. Renouf:

Did you consult at all with organisations that represent vulnerable groups in relation to the amendments as a whole?

Head of Policy, Cabinet Office:

We did some consultation, we obviously put it out there, but we did not do focus groups on the amendments or anything. Again, the Care Commission, we were aware, was going out and doing that. We did not want to duplicate work. The Care Commission standards are the things that will really impact on people. We have the legislative framework, it is largely in place. How they interpret that is what will really impact. We are talking to patient representatives in the hospital, but basically these are tweaks to the legislation. So, we did not do a full-scale engagement on that.

Deputy H.M. Miles:

Just to follow up some questions about political oversight and leadership. We talked earlier, Minister, about the Minister being ultimately accountable, and it is therefore the Minister who will become responsible for any corporate breaches. But will there be any sanctions against the chief officers, and I think more particularly the C.E.O. (chief executive officer)? What do you understand is the relationship of the C.E.O. in all this?

The Minister for the Environment:

I think I said previously when we were discussing who would be liable, and we discussed the Minister, and we discussed the reasons around that. I think the C.E.O. and chief officer are responsible for the performance of the department ultimately. If the Minister is sanctioned because

something has gone wrong and performance standards have dropped or performance is to the point where something has seriously gone wrong, I think it is then for the Minister to sanction his C.E.O., chief officer, if you like, and ultimately the Minister could replace the officer, if necessary. But the Minister has to be the one who is liable and stand up in the dock, and as a corporate sole represent and take the case. But following on from that, he may say to his chief officer: "I am not happy about this, taking a lot of stick. You were responsible for this. You have to carry the can. Although not legally carry the can, you are going to pay with ..."

Deputy H.M. Miles:

Yes. What we are trying to get at is where that accountability sits. So, for example, when the recent health and safety case was brought before the Magistrate's Court, it was the C.E.O. who represented the States of Jersey in the Magistrate's Court.

The Minister for the Environment:

Yes. What we are trying to do here, because obviously that was a case, but cases, when we start regulating hospital and ambulance service, cases could escalate in size quite dramatically. What we are trying to do is to make sure that good applicants still apply for these jobs. You do not want the liability of having to go to court as a chief officer or a chief executive officer, as a reason for people not to take the job on. We think, especially when you look to the U.K. and the way we have described the trusts and what have you, it is not the C.E.O.s that end up in the dock.

Deputy H.M. Miles:

What you are describing there is really part of the rationale for changing the accountability framework through these regulations. You had that feedback from potential candidates.

[16:15]

The Minister for the Environment:

I am not sure that we did directly, but certainly the officers indicated that it might be a problem in the future, and certainly the pressure that officers might feel if they were knowing that they were ultimately responsible for the performance of the whole hospital as an individual, that is a lot of responsibility.

Deputy H.M. Miles:

A specific example then, under the draft law, if a breach occurs within the ambulance service, would it be the chief ambulance officer or would it be the C.E.O. of Healthcare Jersey that would be ripping the bar?

The Minister for the Environment:

Ultimately the performance would be the C.E.O., because, I mean I might be wrong, but it would seem to me that the civil service have a structure of line managers, managers, chief officers, senior chief officers, what have you, but you had to get to the top of the ceiling, but ultimately the performance responsibility is with the chief officer.

Deputy H.M. Miles:

Would that remain if the chief ambulance officer had a statutory responsibility?

Head of Policy, Cabinet Office:

The statutory responsibility would fall on whoever had responsibility under this statute, as it were.

Deputy H.M. Miles:

This statute?

Head of Policy, Cabinet Office:

Yes, for these breaches. So, Health and Safety Law, the reason it was the C.E.O. was because they act under delegation from the States Employment Board, as I am sure you know, Deputy. But this is different because it is the service that is regulated. The employees are employed by the States Employment Board that sits here, but the Minister is responsible for carrying on the Health Service. The Minister for Children and Families is responsible for carrying on the Children's Service. Then their officers are employed, yes, through the States Employment Board and through the C.E.O., but the Health and Safety Law looks at the employer, whereas this looks at the service, who is running the service, who is carrying it on. The provider would be the Minister and then there will be managers. So, it would depend who the manager is, and it would depend on who the responsibility is placed on under the law. A lot of the responsibilities are placed on where it says “registered persons”, that means both of them; manager and provider. Then it would be a question of the facts as to whether it is the manager, the provider, or both who would be prosecuted. That would be a decision for the Attorney General based on the facts. It is possible to have ... there is such a thing as criminal vicarious liability as well; the tests are different. So, you could face a scenario in which it was the States Employment Board who picked up the case even though it was a manager who was prosecuted. It all gets very complicated, but it has not been tested.

Deputy H.M. Miles:

But it has been thought about?

Head of Policy, Cabinet Office:

But it has been thought about.

Deputy H.M. Miles:

Thank you for that explanation, because it is something that the panel have been going around in circles. It is always the what ifs, is it not, in these things?

Head of Policy, Cabinet Office:

Indeed.

Deputy H.M. Miles:

Minister, what extent does the Council of Ministers support these draft regulations?

The Minister for the Environment:

Good support now. As I said, 12 months ago there was a concern with the relatively new Minister for Health and Social Services about what we might be doing here. But with the work I have done with him, and officers have done with him, Council of Ministers are completely on board with this and supportive, as of course was the States Assembly when in 2022 we started this again.

Deputy H.M. Miles:

Have you received any feedback about the funding proposals for the Jersey Care Commission?

The Minister for the Environment:

Well, they had a significant chunk of money increased not that long ago. Yes, they have had to make some reductions, like everybody else has had to.

Deputy H.M. Miles:

13 per cent.

The Minister for the Environment:

Having said that, I believe we are in a quite enviable underspend position at the moment, which would indicate that, with luck, the cuts they have had to make may be absorbable without too much effect. It is important - especially if we are going to start work next year - to get these registrations ... provided this goes through, the hospital will have 6 months to register. There will be a lot of work involved in that registration, and then the inspections will start later. But funding I believe is okay. There is a chart in front of me here with the monies that were voted at the time. As I say, they had an increase of nearly £1 million not too long ago. There is an underspend currently, but they have been asked to produce by just over £200,000. With everybody else, we are trying to make some cuts and save some money.

Deputy H.M. Miles:

Thank you. That is the kind of the view from Ministers, but the chief executive made it quite clear that Jersey's got too many arm's length organisations and is over-regulated. Can you tell us how you square that circle? This is obviously a heavily-regulated environment. Have you had a battle at all with anybody about introducing a new set of regulations when the commitment is to reduce regulation?

The Minister for the Environment:

Not in this circumstance. Certainly, I have heard the words that you have just uttered on a regular basis recently. We regulate too much, it costs us too much money; with regulation comes all these costs that we have to fund. But I have to say, notwithstanding the fact that they have been party to these savings targets and will be made to save just over £200,000, I have not had anybody come back to me and say these 2 sections, hospital and ambulance, are areas that ... nobody has come back and said: "Why are you spending taxpayers' money regulating the hospital?" As I said right at the beginning, a lot of people will be surprised to find that the hospital is not regulated. They would expect it to be regulated, and for a million reasons that I will not go into now, we need a hospital to be regulated.

Deputy H.M. Miles:

If the reduction that they take in the 13 per cent proves to be problematic, will you support the topping up of that in order for them to fulfil their obligations?

The Minister for the Environment:

Absolutely. I do not think it is right to put all legislation in place and go along regulating and then find that you cannot regulate properly. People would say quite rightly: "Well, if you cannot afford to do it, why bother to go to the trouble in the first place?" As I say, I am confident we have got enough money to do what we need to do, but if we need a little bit more, if I am Minister, or the next Minister, I feel would probably have to try to find a way of getting some more money out of the Exchequer, and I am sure they would be supported by any future Council of Ministers. It would be silly to be 95 per cent of the way there and not do it properly when we know how important this is.

Deputy H.M. Miles:

Thank you. My final question: do you feel confident about the readiness and the preparations that have been put in place both by the Care Commission and Health and Care Jersey that they will be able to implement the proposed changes set out under the draft law?

The Minister for the Environment:

Yes, I am confident. As I said, they have had funding. The hospital, the ambulance service, and the Commission have all had funding for a couple of years now to prepare them for this to happen. I have not heard any alarm bells to say that they are struggling for either time or money, so I must assume they are ready. We have had a delay, as we know, to where it could have happened some time ago. There will be the 6-month delay so that the registrations can take place. That is another 6 months ... 9 months probably now with the Assembly debate and everything else. There is time. I would be disappointed and surprised if either of those 3 parties were not ready. Certainly, from a Commission perspective, I have not heard that we are not prepared. A lot of discussion going on with people who might come into help us for the actual inspections. We have looked at the cost to the hospital. Initially we were suggesting inspections every 3 years, and annually for the ambulance service. We have had a lot of discussions over the implications of an annual service, where people came to us and said: "We spend this amount of time getting ready for our annual service, we spend this amount of time getting inspected, and we have got this much left before we start for the following year." So, we have taken that on board; ambulance is going to 3 years, hospital is going to 5. The other thing about the hospital, we agreed to rather than inspect the whole thing in one hit, we will chunk by chunk. We have listened to all those concerns and made changes to make sure that we can make the whole thing affordable and practical, as well as anything else, because it is really important.

Deputy H.M. Miles:

Will you, as Minister, have any influence over the sequencing of the inspections?

The Minister for the Environment:

I do not think I will, and I am not sure that it would be right. I would certainly have to think about that. But I think it is important the commissioner ... we want our hospital services independently regulated. There is funding and there is other stuff, with all this legal work has to be done outside. But once they are here, we want them to be independent, so they do not feel that they are being pressurised to do one thing or another. Having said that, if it was clear to me that there was a section which was performing much less well than other sections, it may well be that I would say: "I would like this done first." But at the moment, it has not been suggested.

Deputy T.A. Coles:

Thank you. Just moving on to the last couple of questions, we are very close to the end. There is one question around the decision around the health service fee being nil. Why was that decision came to?

The Minister for the Environment:

The fee?

Deputy T.A. Coles:

Yes.

The Minister for the Environment:

The funding is being provided by Government to the Care Commission to fund the inspections. Health Services have got an awful lot of things to pay for coming up, and I presume that was the reason, Francis, or it is going to be dollars going around the circuit?

Head of Policy, Cabinet Office:

Exactly, wooden dollars. An administrative process, when in reality all the funding has been provided by the Assembly. So, nominally to having them pay fees when really they are not charged fees - it is provided centrally - we needed to just clarify that in the law that the funding for government-provided services would come under the annual budget in a specific process that was led by the Minister for the Environment to then put that case into the annual budget and then obviously considered by the Assembly. Then the fees would be charged to other services. But they are currently all subsidised. The regulation of those services is subsidised. It is not like, say, financial services, which is a full cost recovery model. 55 per cent of the cost of regulating those services is paid for by fees, and 45 per cent of the cost of regulating those services is paid for by Government.

Deputy J. Renouf:

It is a slightly different model because, obviously, Government does pay fees for planning applications. Is there a philosophical change behind this or why, because it does seem like a change of the normal model, which is the Government pays the same as private?

The Minister for the Environment:

It is a very good question, one I am not sure I have got the answer to. Certainly, I have not heard any suggestions that we take the hospital-type model and stick it into the Regulation Department. The Regulation Department would need seriously more levels of funding from the Treasury if that was the case, and I can imagine the Treasury's reaction.

Head of Policy, Cabinet Office:

Yes, I think on this case, given that the funding was already provided and it was a bit of an academic exercise, that the fees were there, the funding was there, so why charge the fees when it is clear? We just updated the duties and the law on that basis.

Deputy T.A. Coles:

This applies to Children's Services operated by Government as well. They are nil.

Head of Policy, Cabinet Office:

All services that are regulated. There are also some currently regulated care homes as well from Health and Care Jersey, children's homes, anything provided by Government, the funding would still be provided, Government will still pay, it just pays through the budget rather than through fees.

Deputy T.A. Coles:

Then the last question I have around the proposed budget, under the heading of "Other estate projects", there is another I.&E. (Infrastructure and Environment) estate projects funding of £1.3 million in 2026, but it is labelled as "Regulation of care". Are you aware of this line and what it applies to?

The Minister for the Environment:

I am not and I do not. Any ideas?

Head of Policy, Cabinet Office:

I do not know for sure. But it may be to do with ... but, please, I am not sure, but it may be to do with an investment in property to do with one of the health or social care services to increase standards to meet the Care Commission standards. So, that may well be what it is, but we would have to get back to you on that.

Deputy T.A. Coles:

Okay. We have got the Minister for Health and Social Services tomorrow, so hopefully if he cannot shed a light on it, then we will write back to you and ask if you are able to clarify that position. Minister, that brings us to the end of our meeting right on 4.30. Thank you, Minister, for your attendance today, and for the officers for coming with us. As I have just said, if there is anything further, we will follow up with you in writing. Again, thank you very much, and I will draw this meeting to a close.

The Minister for the Environment:

Thank you.

[16:29]