

STATES OF JERSEY



DRAFT REGULATION OF CARE (TRANSFER OF FUNCTIONS) (JERSEY) REGULATIONS 201-

Lodged au Greffe on 23rd October 2018
by the Chief Minister

STATES GREFFE



Jersey

DRAFT REGULATION OF CARE (TRANSFER OF FUNCTIONS) (JERSEY) REGULATIONS 201-

REPORT

Section 1: Introduction

The Draft Regulation of Care (Transfer of Functions) (Jersey) Regulations 201- will transfer a range of registration, inspection and regulation functions from the Minister for Health and Social Services to the Care Commission.

It is one of 4 sets of draft Regulations being brought forward under the [Regulation of Care \(Jersey\) Law 2014](#) (the “2014 Law”) for States approval, the other 3 being –

- Draft Regulation of Care (Regulated Activities) (Jersey) Regulations 201-(P.126/2018): Regulations that describe the types of health and social care to be regulated in the first instance. This includes care home services, home care services¹, and adults’ day care services.
- Draft Regulation of Care (Standards and Requirements) (Jersey) Regulations 201-(P.127/2018): Regulations that set out the requirements to be imposed on registered care providers and applicants for registration.
- Draft Regulation of Care (Transitional and Transfer) (Jersey) Regulations 201-(P.129/2018): Regulations that set out the transitional arrangements with regard to services that are already regulated under the [Nursing Agencies \(Jersey\) Law 1978](#) and the [Nursing and Residential Homes \(Jersey\) Law 1994](#).

Section 2: Background

The 2014 Law was adopted by the States Assembly on 3 July 2014 following debate on the draft Law as lodged *au Greffe* on 20th May 2014 ([P.95/2014](#)). It is a single enabling Law which will be underpinned by a series of Regulations, each focusing on a distinct type of health and social care provision.

The Draft Regulation of Care (Regulated Activities) (Jersey) Regulations 201-(P.126/2018) provide background information about –

- the purpose and function of the 2014 Law
- the fees to be brought forward under the 2014 Law
- the associated consultation process.

¹ Home care is also known as domiciliary care.

Section 3: Draft Regulation of Care (Transfer of Functions) (Jersey) Regulations 201-

The Transfer of Functions Regulations transfer a range of registration, inspection and regulation functions from the Minister for Health and Social Services to the Care Commission, as currently provided across a number of pieces of legislation, including –

- (a) legislation focused on types of service provision: the [Piercing and Tattooing \(Jersey\) Law 2002](#), the [Nursing and Residential Homes \(Jersey\) Law 1994](#); and the [Opticians \(Registration\) \(Jersey\) Law 1962](#) (limited to maintaining a list of opticians businesses);
- (b) legislation allowing for the on-Island secondary registration of key groups of professionals in order that they may practice on the Island, including:
 - the [Health Care \(Registration\) \(Jersey\) Law 1995](#), which provides for registration of ambulance paramedics, nurses, social workers, radiographers, etc.
 - the [Medical Practitioners \(Registration\) \(Jersey\) Law 1960](#), which provides for registration of doctors
 - the [Dentistry \(Jersey\) Law 2015](#), which provides for the registration of dental care professionals other than dentists.

The Regulations will be underpinned by the Regulation of Care (Transfer of Functions) (Jersey) Order 201-. The Order is required due to changes made to the [States of Jersey Law 2005](#) by the [Machinery of Government \(Miscellaneous Amendments\) \(Jersey\) Law 2018](#). Transfers of functions between Ministers must now be effected by Order of the Chief Minister, with the transfer of functions Regulations being limited to transfers to the Care Commission.

Section 4: Financial and manpower implications

Information about the financial and resource implications of the 2014 Law are set out in Section 4 of the report accompanying the Draft Regulation of Care (Regulated Activities) (Jersey) Regulations 201- (P.126/2018), which is lodged for debate on the same day as these draft Regulations.

Explanatory Note

These Regulations transfer the functions of the Minister of Health and Social Services to the Health and Social Care Commission in relation to the regulation of the medical and associated professions and skin piercing and tattooing, other than in relation to the making of Orders. The functions of the Medical Officer of Health under the Health Care (Registration) (Jersey) Law 1995 (which functions are administrative functions that supported the Minister's regulatory functions) are also transferred. The enactments referring to the transferred functions are consequentially amended.



Jersey

DRAFT REGULATION OF CARE (TRANSFER OF FUNCTIONS) (JERSEY) REGULATIONS 201-

Arrangement

Regulation

| | | |
|---|--|----|
| 1 | Interpretation | 9 |
| 2 | Functions of Minister for Health and Social Services transferred | 9 |
| 3 | Functions of the Medical Officer of Health transferred | 10 |
| 4 | Connected rights, liabilities and records transferred | 10 |
| 5 | Transitional provisions | 11 |
| 6 | Citation and commencement | 12 |

SCHEDULE

13

AMENDMENT OF ENACTMENTS

13

| | | |
|---|--|----|
| 1 | Dentistry (Jersey) Law 2015 | 13 |
| 2 | Health Care (Registration) (Jersey) Law 1995 | 13 |
| 3 | Medical Practitioners (Registration) (Jersey) Law 1960 | 14 |
| 4 | Medical Practitioners (Registration) (General Provisions) (Jersey) Order 2014 | 15 |
| 5 | Medical Practitioners (Registration) (Responsible Officers) (Jersey) Order 2014 | 15 |
| 6 | Nursing Homes (Jersey) Law 1994 | 15 |
| 7 | Nursing Homes (General Provisions) (Jersey) Order 1995 | 16 |
| 8 | Opticians (Registration) (Jersey) Law 1962 | 17 |
| 9 | Piercing and Tattooing (Jersey) Law 2002 | 17 |



Jersey

DRAFT REGULATION OF CARE (TRANSFER OF FUNCTIONS) (JERSEY) REGULATIONS 201-

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

THE STATES, in pursuance of Article 37(2) and (3) of the Regulation of Care (Jersey) Law 2014¹ have made the following Regulations –

1 Interpretation

In these Regulations –

“Commission” means the Health and Social Care Commission established by Article 35 of the Regulation of Care (Jersey) Law 2014²;

“Minister” means the Minister for Health and Social Services;

“transferring entity” means the Minister or the Medical Officer of Health, as the case may be.

2 Functions of Minister for Health and Social Services transferred

(1) Subject to paragraph (2) there are transferred from the Minister to the Commission the functions under the following enactments (as, in the case of those mentioned in sub-paragraphs (f) and (g), they are amended by Schedule 2 to the Regulation of Care (Regulated Activities) (Jersey) Regulations 201-³) –

- (a) the Dentistry (Jersey) Law 2015⁴;
- (b) the Health Care (Registration) (Jersey) Law 1995⁵;
- (c) the Medical Practitioners (Registration) (Jersey) Law 1960⁶;
- (d) the Medical Practitioners (Registration) (General Provisions) (Jersey) Order 2014⁷;
- (e) the Medical Practitioners (Registration) (Responsible Officers) (Jersey) Order 2014⁸;
- (f) the Nursing Homes (Jersey) Law 1994⁹;
- (g) the Nursing Homes (General Provisions) (Jersey) Order 1995¹⁰;
- (h) the Opticians (Registration) (Jersey) Law 1962¹¹;
- (i) the Piercing and Tattooing (Jersey) Law 2002¹².

- (2) The functions of the Minister with respect to the making of Orders are not transferred.
- (3) The Schedule has effect for the purposes of amendment of the enactments listed in paragraph (1).

3 Functions of the Medical Officer of Health transferred

- (1) As a consequence of Regulation 2(1)(b), there are transferred from the Medical Officer of Health to the Commission the functions of the Medical Officer of Health under the Health Care (Registration) (Jersey) Law 1995¹³ (which functions are administrative functions that supported the Minister's regulatory functions).
- (2) As a consequence of paragraph (1) the Health Care (Registration) (Jersey) Law 1995¹⁴ is amended as follows –
 - (a) the definition “Medical Officer of Health” in Article 1(1) is deleted;
 - (b) in Articles 7(1) and (2), 8(2) and (3) and 11 (wherever occurring) for the words “Medical Officer of Health” there is substituted the word “Commission”;
 - (c) for Article 8(1) there is substituted the following paragraph –

“(1) Where the Commission has reason to believe that a registered person has ceased to practise the Commission may send to the registered person by registered post to the person's address appearing in the register, or to the person's last known place of abode, an inquiry as to whether or not the person wishes to have his or her name retained in the register.”;
 - (d) for Article 12(1) there is substituted the following paragraph –

“(1) Where the Commission registers or renews the registration of any person it shall issue to the registered person, free of charge, a certificate of registration.”;
 - (e) In Article 15 –
 - (i) for paragraph (1) there is substituted the following paragraph –

“(1) The Commission may require the production of such documents as the Commission thinks necessary in order to ensure that the provisions of this Law are being complied with.”;
 - (ii) for paragraph (3) there is substituted the following paragraph –

“(3) A person who obstructs or impedes the Commission in the execution of its duties shall be guilty of an offence and liable to a fine not exceeding level 3 on the standard scale.”.

4 Connected rights, liabilities and records transferred

- (1) All rights enjoyed and liabilities incurred by the transferring entity in connection with the functions transferred by Regulations 2 and 3 are

transferred to the Commission and become the rights and liabilities of the Commission.

- (2) A provision of a contract or other instrument that specifies that a right or liability of the transferring entity is incapable of transfer is, to the extent that it applies to a right or liability transferred by paragraph (1), of no effect.
- (3) The operation of paragraph (1) is not regarded –
 - (a) as a breach of contract or confidence or otherwise as a civil wrong;
 - (b) as a breach of any contractual provision prohibiting, restricting or regulating the assignment or transfer of rights or liabilities; or
 - (c) as giving rise to any remedy by a party to a contract or other instrument, as an event of default under any contract or other instrument or as causing or permitting the termination of any contract or other instrument, or of any obligation or relationship.
- (4) Any records held by the Minister in relation to any services under any of the enactments listed in Regulation 2(1) and any records held by the Medical Officer of Health in relation to any services under the Health Care (Registration) (Jersey) Law 1995¹⁵ are transferred to the Commission, with the Minister continuing to have the right to access the records.

5 Transitional provisions

- (1) The transfers effected by Regulations 2 and 3 do not prejudice the operation of any appointment, approval, authorization, consent, delegation, determination, direction, instruction, requirement or other thing that is, before these Regulations come into force, made, given or done by the transferring entity in relation to the functions, rights and liabilities so transferred, but such matter, if then in force, continues in force to the like extent and subject to the like provisions as if it had been duly made, given or done by the Commission.
- (2) Anything commenced before these Regulations come into force by or under the authority of the transferring entity may, so far as it relates to any of the functions, rights and liabilities transferred by Regulations 2 to 4, be carried on and completed by or under the authority of the Commission.
- (3) Where, on commencement of these Regulations, any legal proceeding is pending to which the transferring entity is a party and the proceeding has reference to any of the functions, rights and liabilities transferred by Regulations 2 to 4, the Commission is substituted in the proceeding for the transferring entity and the proceeding does not abate by reason of the substitution.

6 Citation and commencement

These Regulations may be cited as the Regulation of Care (Transfer of Functions) (Jersey) Regulations 201- and shall come into force on 1st January 2019.

SCHEDULE

(Regulation 2)

AMENDMENT OF ENACTMENTS

1 Dentistry (Jersey) Law 2015

- (1) The Dentistry (Jersey) Law 2015¹⁶ is amended as follows.
- (2) In Article 1 –
 - (a) before the definition “Court” there is inserted the following definition –

“ “Commission” means the Health and Social Care Commission established by Article 35 of the Regulation of Care (Jersey) Law 2014¹⁷;”;
 - (b) the definition “Minister” is deleted.
- (3) In the following places for the word “Minister” (wherever occurring) there is substituted the word “Commission” –
 - (a) in Article 7(1), (3)(e), (4) and (5);
 - (b) in Article 8;
 - (c) in Article 9;
 - (d) in Article 10(3), (4) and (5);
 - (e) in Article 11(1), (5), (6) and (7);
 - (f) in Article 12 (including the heading);
 - (g) in Article 13(1) and (2);
 - (h) in Article 15(1) and (3);
 - (i) in Article 16(1) and (3);
 - (j) in Article 17(1), (2), (3), (4), (5), (7) and (8);
 - (k) in Article 18(1) and (2);
 - (l) in Article 19;
 - (m) in Article 20(1) and (3)(b) and (c).
- (4) In Article 9(4) for the words “his or her” there is substituted the word “its”.
- (5) In Article 11(1), 13(1) and 17(3) for the words “he or she” there is substituted the word “it”.
- (6) In Articles 17(5)(a) and (b), 18(2)(a) and (b), 19(3) and 20(3)(b) for the words “the Minister’s” there is substituted the word “its”.

2 Health Care (Registration) (Jersey) Law 1995

- (1) The Health Care (Registration) (Jersey) Law 1995¹⁸ is amended as follows.

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- (2) In Article 1 –
- (a) after the definition “applicant” there is inserted the following definition –
“ “Commission” means the Health and Social Care Commission established by Article 35 of the Regulation of Care (Jersey) Law 2014¹⁹;”;
 - (b) the definition “Minister” is deleted;
- (3) In the following places for the word “Minister” (wherever occurring) there is substituted the word “Commission” –
- (a) Article 2(4)(b);
 - (b) Article 3(1);
 - (c) Articles 5 and 6;
 - (d) Article 8(4);
 - (e) Article 9(1);
 - (f) Article 14(1).
- (4) In Article 6(2) for the words “he or she” there is substituted the word “it” and for the word “Minister’s” there is substituted the word “Commission’s”.

3 Medical Practitioners (Registration) (Jersey) Law 1960

- (1) The Medical Practitioners (Registration) (Jersey) Law 1960²⁰ is amended as follows.
- (2) In Article 1(1) before the definition “Minister” there is inserted the following definition –
- “ “Commission” means the Health and Social Care Commission established by Article 35 of the Regulation of Care (Jersey) Law 2014²¹;”.
- (3) In the following places, for the word “Minister” (wherever occurring) there is substituted the word “Commission” –
- (a) in Articles 3 and 4;
 - (b) in Article 5(1) and (3);
 - (c) in Article 5A;
 - (d) in Article 5B(1), (5), (6), (7) and (8);
 - (e) in Articles 5C and 5D;
 - (f) in Article 8;
 - (g) in Article 9(1), (2), (3), (4), (5), (7) and (8)(a);
 - (h) in Article 10(1), (2), (3) and (4);
 - (i) in Article 10A;
 - (j) in Article 10B(1), (3) and (4).
- (4) In Article 5B and 9(3) for the words “he or she” there is substituted the word “it”.

- (5) In Articles 9(5)(a) and (b), 10(4)(a) and (b), 10A(3), 10B(4)(b) for the words “the Minister’s” there is substituted the word “its”.

**4 Medical Practitioners (Registration) (General Provisions) (Jersey)
Order 2014**

- (1) The Medical Practitioners (Registration) (General Provisions) (Jersey) Order 2014²² is amended as follows.
- (2) In the following places for the word “Minister” (wherever occurring) there is substituted the word “Commission” –
- (a) in Article 4(1)(a) and (d) and (2);
 - (b) in Article 6(3), (4) and (5);
 - (c) in Article 7 (including the heading);
 - (d) in Article 8(1).
- (3) In the heading to Article 8 for the word “Minister’s” there is substituted the word “Commission’s”.

**5 Medical Practitioners (Registration) (Responsible Officers) (Jersey)
Order 2014**

- (1) The Medical Practitioners (Registration) (Responsible Officers) (Jersey) Order 2014²³ is amended as follows.
- (2) In the following places for the word “Minister” (wherever occurring) there is substituted the word “Commission” –
- (a) in Article 4(2), (3) and (4);
 - (b) in paragraph 2(2)(c)(ii) of Schedules 1, 2, 3 and 4;
 - (c) in paragraph 2(d) of Schedule 5;
 - (d) in paragraph 3(2)(c) of Schedule 6.
- (3) In paragraph 2(2)(c)(ii) of Schedules 1, 2, 3 and 4 and paragraph 3(2)(c) of Schedule 6 for the words “his or her” there is substituted the word “its”.
- (4) In paragraph 2(d) of Schedule 5 for the word “Minister’s” there is substituted the word “Commission’s”.

6 Nursing Homes (Jersey) Law 1994

- (1) The Nursing Homes (Jersey) Law 1994²⁴ is amended as follows.
- (2) In Article 1(1) –
- (a) after the definition “certified” there is inserted the following definition –

“ “Commission” means the Health and Social Care Commission established by Article 35 of the Regulation of Care (Jersey) Law 2014²⁵;”;
 - (b) the definition “Minister” is deleted.

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- (3) In the following places for the word “Minister” (wherever occurring) there is substituted the word “Commission” –
- (a) in Article 1A(3)(f);
 - (b) in Article 4(1), (5)(a), (6), 8(b) and (10);
 - (c) in Article 6(2), (3) and (4);
 - (d) in Article 7;
 - (e) in Article 8(1);
 - (f) in Article 9;
 - (g) in Article 10(1) and (3) and in the heading;
 - (h) in Article 11(1), (2) and (6);
 - (i) in Article 12;
 - (j) in Article 13(1);
 - (k) in Article 14;
 - (l) in Article 15(2)(d) and (i);
 - (m) in Article 19(1).
- (5) In Article 9(1) and (4)(a), 11(3) for the word “Minister’s” there is substituted the word “Commission’s”.
- (6) In Article 10(1) for the words “he or she” there is substituted the word “it” and for the words “his or her” there is substituted the word “its”.

7 Nursing Homes (General Provisions) (Jersey) Order 1995

- (1) The Nursing Homes (General Provisions) (Jersey) Order 1995²⁶ is amended as follows.
- (2) In the following places for the word “Minister” (wherever occurring) there is substituted the word “Commission” –
- (a) in Article 2(2);
 - (b) in Articles 5 and 7;
 - (c) in Article 8(1);
 - (d) in Articles 9(1), (2) and (4);
 - (e) in Article 10(1)(t) and (2)(d);
 - (f) in Article 11;
 - (g) in Article 13(1);
 - (h) in Article 14;
 - (i) in Article 16(1)(b), (3)(a) and (4);
 - (j) in paragraphs 1, 2 and 4 of Part 2 of Schedule 1;
 - (k) in the sub-heading to Schedule 3.
- (3) In Article 16(3)(a)(i), (ii) and (iii) for the words “the Minister’s” there is substituted the word “its”.

8 Opticians (Registration) (Jersey) Law 1962

- (1) The Opticians (Registration) (Jersey) Law 1962²⁷ is amended as follows.
- (2) In Article 1(1) –
 - (a) before the definition “Court” there is inserted the following definition –

“ “Commission” means the Health and Social Care Commission established by Article 35 of the Regulation of Care (Jersey) Law 2014²⁸;”;
 - (b) the definition “Minister” is deleted.
- (3) In the following places for the word “Minister” (wherever occurring) there is substituted the word “Commission” –
 - (a) in Article 6;
 - (b) in Article 7(1)(b);
 - (c) in Article 15(1) and (3);
 - (d) in Article 17.
- (4) In Articles 15(3) and 17 (wherever occurring) for the words “he or she” there is substituted the word “it”.
- (5) In Article 17(1) for the words “his or her” there is substituted the word “its”.

9 Piercing and Tattooing (Jersey) Law 2002

- (1) The Piercing and Tattooing (Jersey) Law 2002²⁹ is amended as follows.
- (2) In Article 1 –
 - (a) after the definition “body piercing” there is inserted the following definition –

“ “Commission” means the Health and Social Care Commission established by Article 35 of the Regulation of Care (Jersey) Law 2014³⁰;”;
 - (b) the definition “Minister” is deleted.
- (3) In the following places for the word “Minister” (wherever occurring) there is substituted the word “Commission” –
 - (a) in Article 2(1) and (2);
 - (b) in Article 3(a) and (c);
 - (c) in Article 4;
 - (d) in Article 7(1);
 - (e) in Article 9;
 - (f) in Article 10(2);
 - (g) in Article 11.
- (4) In Articles 4(3) and 11(1) for the words “he or she” there is substituted the word “it”.

- (5) In Article 11(1)(a), (2) and (6) for the word “Minister’s” there is substituted the word “Commission’s”.

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| 1 | <i>chapter 20.820</i> |
| 2 | <i>chapter 20.820</i> |
| 3 | <i>P.126/2018</i> |
| 4 | <i>chapter 20.100</i> |
| 5 | <i>chapter 20.300</i> |
| 6 | <i>chapter 20.600</i> |
| 7 | <i>chapter 20.600.30</i> |
| 8 | <i>chapter 20.600.80</i> |
| 9 | <i>chapter 20.725</i> |
| 10 | <i>chapter 20.725.30</i> |
| 11 | <i>chapter 20.750</i> |
| 12 | <i>chapter 20.900</i> |
| 13 | <i>chapter 20.300</i> |
| 14 | <i>chapter 20.300</i> |
| 15 | <i>chapter 20.300</i> |
| 16 | <i>chapter 20.100</i> |
| 17 | <i>chapter 20.820</i> |
| 18 | <i>chapter 20.300</i> |
| 19 | <i>chapter 20.820</i> |
| 20 | <i>chapter 20.600</i> |
| 21 | <i>chapter 20.820</i> |
| 22 | <i>chapter 20.600.30</i> |
| 23 | <i>chapter 20.600.80</i> |
| 24 | <i>chapter 20.725</i> |
| 25 | <i>chapter 20.820</i> |
| 26 | <i>chapter 20.725.30</i> |
| 27 | <i>chapter 20.750</i> |
| 28 | <i>chapter 20.820</i> |
| 29 | <i>chapter 20.900</i> |
| 30 | <i>chapter 20.820</i> |