

# STATES OF JERSEY



Jersey

## **DRAFT REGULATION OF CARE (REGULATED ACTIVITIES) (AMENDMENT OF LAW) (JERSEY) REGULATIONS 202-**

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**Lodged au Greffe on 8th March 2022  
by the Minister for the Environment  
Earliest date for debate: 25th April 2022**

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**STATES GREFFE**



## REPORT

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### Section 1: Introduction

1. The draft Regulation of Care (Regulated Activities) (Amendment of Law) (Jersey) Regulations 202- (the “draft Regulations”) would, if adopted, extend the scope of the [Regulation of Care \(Jersey\) Law 2014](#) (the “2014 Law”) to subject 10 categories of social work and mental health services provided to children and young people to independent regulation and inspection by the Jersey Care Commission (the “Commission”). The following services would become subject to regulation:
  - adoption services;
  - children’s home services;
  - fostering services;
  - social work services for children and young people;
  - independent monitoring and review services in looked after children’s cases;
  - child contact centres;
  - residential family centres;
  - children and young peoples’ mental health services;
  - care services in special schools; and
  - children and family community nursing services.
2. The draft Regulations are one of 3 sets of draft Regulations being brought forward under the 2014 Law for States approval, the other 2 being –
  - Draft Regulation of Care (Standards and Requirements) (Amendment) (Jersey) Regulations 202- (P.46/2022): Regulations that amend the [Regulation of Care \(Standards and Requirements\) \(Jersey\) Regulations 2018](#) which set out the requirements to be imposed on registered care providers and applicants for registration.
  - Draft Regulation of Care (Transitional Provisions) (Jersey) Regulations 202- (P.47/2022): Regulations that set out the transitional arrangements with regard to certain care home and home care services that are already regulated under the 2014 Law and which provide newly regulated services 6 months to register with the Commission.
3. This report, which should be read alongside the reports relating to the other draft Regulations referred to above, is intended to:
  - (a) provide background information about the regulation of children’s social work and mental health services and the 2014 Law, including matters relating to the fees to be paid by the providers of newly regulated services. Those fees will be set by Order and, whilst they do not form part of the proposition, full details are included in this report in order to ensure that the Assembly are fully informed; and
  - (b) describe the effects of the draft Regulation of Care (Regulated Activities) (Amendment of Law) (Jersey) Regulations 202- which the Assembly are asked to adopt.

## Section 2: Regulation of Social Work and Mental Health Services for Children and Young People in Jersey

### Background

4. The 2014 Law provides a legislative framework for the independent regulation of health and social care in Jersey. It is a single enabling Law which is underpinned by a series of Regulations, each focusing on a distinct type of health and social care provision. The 2014 Law came into force in January 2019, when care homes, home care and day care services for adults were made subject to the new regulatory regime under the Care Commission.
5. In adopting the 2014 Law, the Assembly acknowledged that Jersey's existing legislation is fragmented and inadequate. It allows high-risk health and social care services to operate with minimal independent monitoring of safety or quality of care. This includes Government of Jersey (GoJ) delivered services and services delivered to vulnerable individuals, including children and young people.
6. The adoption of the 2014 Law predated the publication of the Report of the Independent Jersey Care Inquiry (IJCI), which recommended that a statutory basis for the independent inspection of Children's Services should be established at the first opportunity. In its Report published in 2017, the IJCI stated that:
 

*"[Legislation] must require inspections to be undertaken on a regular basis, on both announced and unannounced bases. Inspectors must have powers of access to all relevant premises, documents and staff at all times. Inspection reports must be made publicly accessible, as should the responses made to them by inspected services."*<sup>1</sup>
7. The Care Commission currently regulates and inspects children's homes – these are defined as care home services under the 2014 Law but would be included under a devoted service category under the draft Regulations. The Commission has also conducted two non-statutory inspections of the GoJ's Children's Services and published its findings from these inspections in 2018 and 2019. In its 2018 report, the Commission echoed the IJCI's recommendation, requesting that "the States of Jersey, as a matter of priority, bring forward Regulations under the Regulation of Care (Jersey) Law 2014 so that independent inspection of children's social work services is placed on a statutory footing."<sup>2</sup>
8. In adopting the draft Regulations, the States would be acting on the recommendations of the IJCI to regulate the GoJ's Children's Services and would go further, by placing all social work and outpatient mental health services provided to Jersey's children under the regulatory oversight of the Care Commission.
9. Independent, high-quality regulation is needed for 2 key reasons:
  - (a) **Protecting people:** Care services need to be regulated in order to help keep people safe and to ensure they receive good quality care that meets their needs. Unregulated services place people at risk of harm or abuse (whether that be physical, emotional or financial abuse or at risk of neglect).
  - (b) **Ongoing provision of services:** Locally registered healthcare professionals, including doctors, nurses and midwives, social workers and other allied health professionals, cannot work in Jersey unless they are registered with a statutory regulator in the UK (for example, the General Medical Council,

<sup>1</sup> Recommendation 3 of the IJCI, Vol.3, p.55, paragraph 13.21

<sup>2</sup> Jersey Care Commission, Making a Difference: Driving Improvement, An Inspection of The States of Jersey Children's Social Work Service, online at [making-a-difference.pdf \(carecommission.je\)](https://www.carecommission.je/making-a-difference.pdf) para 67.

- Nursing and Midwifery Council, Health and Care Professions Council). Many of those registration bodies increasingly expect their members to be working within regulated services. Without an appropriate regulatory framework for health and social care services in Jersey, there is a very real risk that professional regulators will refuse to allow the validation, supervision or registration of healthcare professionals in Jersey.
10. The 2014 Law brings Jersey into line with other UK jurisdictions, which have had independent inspection and regulation regimes for many years. The Law provides for:
    - (a) Independent regulatory oversight: the independent Care Commission has been established for several years and has been responsible for regulating care home (including children's home services), home care and adult day care services since January 2019. The Care Commission fulfils all the regulatory functions set out in the 2014 Law. The Commission's remit would be expanded, subject to the Assembly's approval, to include the regulation of social work and mental health services provided to children and young people.
    - (b) Registration of regulated activities: providers and managers of all regulated services (registered persons) are required by law to be registered with the Care Commission. The Care Commission applies conditions on registration and may refuse or cancel any registration where those conditions are not met.
    - (c) Requirements related to regulated activities: registered persons have a legal obligation to ensure that services are well conducted, provide good care and protect clients from harm. This includes proper facilities, a safe and appropriate environment, and appropriately qualified and competent staff in sufficient numbers to meet clients' needs. The Care Commission will publish detailed standards, setting out what providers of the newly regulated services must do to meet their requirements.
    - (d) Inspection: the 2014 Law provides comprehensive powers for inspections, in order to monitor the quality and standards of care. The purpose of inspections is not just about monitoring compliance but supporting and facilitating service improvement. Where local expertise is not available, the Care Commission will engage external agencies to carry out specialised inspections. The frequency and type of inspection are set out in the Regulation of Care (Standards and Requirements) Regulations 2018. Inspections of children's social work and mental health services would take place annually. Following an inspection, a provider will be informed of any action required to comply with standards. Failure to comply with Regulations is an offence that can ultimately result in de-registration.
  11. Article 2 of the 2014 Law provides for the States to determine, by Regulations, the types of health and social care services to be subject to the provisions of the Law. If adopted, the draft Regulations would extend the 2014 Law to cover the 10 categories of social work and mental health services set out at paragraph 1, above.
  12. Article 14 of the 2014 Law provides for the States to determine the standards and requirements to be imposed on those regulated activities. The draft Regulation of Care (Standards and Requirements) (Amendment) (Jersey) Regulations 202- would amend the Regulation of Care (Standards and Requirements)

Regulations 2018 to update these requirements so that they can be extended to the 10 new categories of regulated services.

## Fees

13. The 2014 Law provides for a number of different fees to be set, including:
  - (a) fees associated with making an initial application for registration as a provider or a manager;
  - (b) an annual fee for continued registration;
  - (c) fees associated with applying for a variation on conditions of registration; and
  - (d) miscellaneous fees such as replacement registration certificates.
14. Article 41 of the 2014 Law provides that the fees may be prescribed by the Minister for the Environment or by the Care Commission. However, since the 2014 Law came into force, all fees have been set by the Minister under the [Regulation of Care \(Fees\) \(Jersey\) Order 2018](#) (the “2018 Order”). It is intended to continue to set fees in this manner and this report proposes those fees which will be charged to social work and mental health services for children and young people under amendments to the 2018 Order.
15. Amendments to the 2018 Order will be developed after the States debate on the draft Regulations, with the fees coming into force when the Regulations are brought into force. Details relating to the fees are set out in this report to ensure that the Assembly is fully aware of the financial implications of the 2014 Law to services providers and the Government of Jersey.

### Developing the fee framework

16. A number of different factors have been taken into account when determining the proposed new fee structure. These include:
  - (a) fee income as a proportion of the Commission’s total expenditure;
  - (b) the levying of fees in proportion to the size of the provider; and
  - (c) the costs of compliance.
17. Fee income as a proportion of total expenditure: The 2014 Law was agreed by the States on the understanding that the then inspection team’s budget would be grant-funded to the Care Commission, and that this would represent approximately 45% of the total cost of administering the Law (i.e. fees should generate approximately 55% of total Commission expenditure). 45% is part way between 34% government funding provided to the Care Quality Commission (CQC) in England and the 65% provided to the Scottish Care Inspectorate.<sup>3</sup>
18. Fees proportion to size of providers: Prior to the introduction of the 2014 Law, regulated care providers were charged ‘flat’ fees, paid by all providers regardless of business size. This led to smaller providers cross subsidising larger providers, as larger providers absorb a larger proportion of the regulator’s resources.
19. Under the present fee structure, all providers pay an initial registration fee. The level of registration fee depends on the type of regulated activity, with care homes attracting the highest level of fees and home care services the lowest. This is

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<sup>3</sup> Full information on the overall income and expenditure of the COMMISSION can be found in its latest annual at [COMMISSION-2020-AnnualReport.indd \(carecommission.je\)](#)

- because the pre-registration work for care providers with premises is more onerous than for those without premises.
20. All newly regulated services will be charged the same initial registration fee, except those to which the provision of premises is integral to the service – these being children’s home services, residential family centre services and care services in special schools. This is because the process of registering these services will provide the same level of bureaucratic burden to the Commission.
  21. The registration fee for managers is, and will continue to be, the same across all types of regulated activities, as the resources required in supporting the initial registration processes are broadly the same regardless of business size.
  22. A charity child contact centre service will pay an initial registration fee and fees to register managers only (i.e. no annual fee) This is in acknowledgement of the fact that charitable services of this nature receive no public funding but do receive referrals from public bodies.
  23. Annual fees will continue to be based on business size, as the resources required in relation to annual inspections – plus the provision of ongoing monitoring and support during the year – vary relating to business size. The larger the business, the greater the resource requirement. All annual fees will continue to be prorated for providers that register part way through a year.
  24. The costs of regulating social work and mental health services for children which are provided by the Government of Jersey have been budgeted for under the Government Plan. These are set out in Table 1, below. It is anticipated that it will cost the Care Commission £375,000 per year (plus inflation) to regulate these Government services which will cover the costs of additional staff with relevant knowledge and experience of regulating social work and mental health services.

**Table 1: Government Plan 2020–2023: Further Information on Additional Revenue Expenditure and Capital and Major Projects Expenditure, July 2019, p.9**

“1.5 Regulation and Inspection: Strategic Policy, Performance and Population

2020	2021	2022	2023	Total
£75,000	£225,000	£375,000	£450,000	£1,125,000

The recently established Care Commission places new demands on children’s services in relation to ensuring that services are fit for purpose. This includes a number of areas such as the ‘fitness’ of managers, qualification of staff, staff ratios, buildings being fit for purpose - all of which requires additional resource. The system being introduced requires the provider to pay fees to the Care Commission for its oversight services. The resources requested are proposed to cover the estimated costs for the Government of Jersey’s relevant children’s services from 2021, and also takes account of the cost of a further inspection by Ofsted in 2020.”

24. Business size is currently and will continue to be measured in different ways:
  - (a) the size of all social work and mental health services provided by the Government of Jersey is based on the total annual budget allocated to those regulated services;
  - (b) the size of non-Government provided children’s homes, social work services, independent reviewing officer services, child contact centre

- services, residential family centres, children's mental health services, and care services in special schools is based on number of client places; and
- (c) the size of non-Government provided children and family community nursing services is based on staff numbers, or more precisely, the total number of staff hours.
25. The business size of non-Government provided adoption and fostering services has not been considered. Currently, only the Government provides these services in Jersey and it is not envisaged that private or charitable providers will do so in the short to medium term. However, it has been necessary to include a fee, in case such services are provided in the future. This has been based on the fee charged to independent fostering agencies in England by Ofsted.
26. Different provider sizes in relation to non-Government provided children and family community nursing services will be determined based on the number of care staff hours provided by a service in a week. This mirrors the current charging structure for home care providers, including:
- (a) small providers: 112 care staff hours per week or less (equivalent to less than 3 full time equivalent staff);
- (b) medium providers: from more than 112 care staff hours per week up to 600 (equivalent to 3 or more, but less than 16 full time equivalent staff);
- (c) medium plus providers: from 600 to 2,250 care staff hours per week (equivalent to 16 or more, but less than 60 full time equivalent staff); and
- (d) large providers: 2,250 care staff hours per week or more (equivalent to more than 60 full time equivalent staff).
27. It is important to note that, care staff hours are not the same as care hours provided. For example, one member of staff may in any one hour simultaneously be providing care to multiple clients. (For example, one member of staff may, in one hour, be caring for 4 clients. This is one staff hour, but 4 care hours.) It will be a legal requirement for registered providers to supply information about the service's staffing levels to the Care Commission on application, in their annual return, and at any time the provider applies to vary the registration conditions. This information can be checked at inspection through either pay-roll or duty rosters.
28. In determining which band (e.g.: small, medium, large etc.) that a non-Government provided children and family community nursing service falls into, consideration will be given to natural fluctuations in staffing levels. For example, a provider at the upper of the medium band may, for a limited period of time, provide additional care hours without being pushed into a higher band if there is a rational for temporary provision of additional hours.
29. The maximum full time equivalent hours provided by a non-Government provided children and family community nursing service and the maximum number of service users for whom other non-Government provided social work and mental health services can provide care will be a condition of the service's initial registration.
30. Costs of compliance: In addition to paying fees, providers are also required to meet costs that arise from compliance with care standards. Where high levels of investment are required to ensure compliance, this will usually indicate that care standards are poor and must be addressed in order to protect the wellbeing of clients.

### The fees framework

31. The fees set out below will be introduced under the 2018 Order and will come into force when the draft Regulations come into force.<sup>4</sup> The draft Regulations will be brought into force by an Order made by the Minister for the Environment.
32. Providers that will be regulated for the first time under the 2014 Law, will be required to pay both an initial application fee and an annual registration fee.
33. Providers of children's home services which are currently regulated as care home services under the 2014 Law will be required to pay the annual fees due under the 2018 Order. Providers of home care services which are currently regulated as children and family nursing services under the 2014 Law will also be required to pay the annual fees due under the 2018 Order. Providers and managers of these services who are already registered will not need to pay application fees.
34. Registration fees for all providers

Regulated Activity	Category of Provider	Fee for Provider	Fee for Each Manager
Adoption service	All providers	£1,615	£280
Children's home	All providers	£1,615 in respect of each premises at which the service is carried on	£280
Fostering service	All providers	£1,615	£280
Social work service for children and young people	All providers	£1,615	£280
Independent reviewing officer service	All providers	£1,615	£280
Child contact centre	All providers	£1,615	£280
Residential family centre	All providers	£1,615 in respect of each premises at which the service is carried on	£280
Children and young peoples' mental health services	All providers	£1,615	£280
Care services in special schools	All providers	£1,615 in respect of each premises at which the service is carried on	£280
Children and family community nursing services	All providers	£1,615	£280

<sup>4</sup> Please note that the figures in these tables, which are based on the current fees charged to registered providers under the [Regulation of Care \(Fees\) \(Jersey\) Order 2018 \(jerseylaw.je\)](http://jerseylaw.je), have been rounded for the purposes of this report

35. The registration fee for these services is based on the fees which are currently charged, under the 2018 Order, to the providers of care home services. As noted at paragraph 20, above, residential family centres, care services in special schools and children's homes must have at least one premises from which they provide services. The provision of suitable premises is a key component of these services, and it is for this reason that these providers must pay a registration fee based on the number of premises they intend to provide. The other services listed above may or may not provide premises as part of their services. The costs to the Commission in registering them is likely to be similar. It is for these reasons that these services will be charged the same registration fee.
36. Annual fee for social work and mental health services provided by the Government of Jersey

Regulated Activity	Category of Provider	Annual Fee
<ul style="list-style-type: none"> <li>• Adoption service</li> <li>• Children's home</li> <li>• Fostering service</li> <li>• Social work service for children and young people</li> <li>• Independent reviewing officer service</li> <li>• Child contact centre</li> <li>• Residential family centre</li> <li>• Children and young people's mental health service</li> <li>• Care services in special schools</li> <li>• Children and family community nursing services</li> </ul>	Services carried on by the Government of Jersey	0.8% of the total annual budget allocated to these regulated activities

37. The formulation for the annual fee for Government provided children's social work and mental health services is based on the way that fees are charged by the Care Quality Commission (CQC) in England to NHS trusts.<sup>5</sup> The budget allocated to services refers to the estimated operating revenue of all these services added together, as allocated and set out under the Government Plan for that year. As set out under paragraph 24, above, the costs of regulating these Government provided services has been budgeted for under the Government Plan. This calculation will recover those costs for the Commission in the fees it charges to the Government.
38. Annual fees for social work and mental health services which are not provided by the Government of Jersey:

<sup>5</sup> Further information can be found on the CQC's website at [Fees Guidance for providers 2020 21 \(cqc.org.uk\)](https://www.cqc.org.uk) p.10

Regulated Activity	Category of Provider	Annual Fee
Adoption service	All providers, excluding services carried on by the GoJ	£2,830
Children's home	All providers, excluding services carried on by the GoJ	£172 for each bed available to a service user that is permitted by the conditions of registration <sup>6</sup>
Fostering Service	All providers, excluding services carried on by the GoJ	£2,830
Social work service for children and young people	All providers, excluding services carried on by the GoJ	£86 for each service user place that is permitted by the conditions of registration
Independent reviewing officer service	All providers, excluding services carried on by the GoJ	£86 for each service user place that is permitted by the conditions of registration
Child contact centre	All providers, excluding services carried on by the GoJ	£0
Child contact centre	All providers, excluding services carried on by the GoJ	£86 for each service user place that is permitted by the conditions of registration
Residential family centre	All providers, excluding services carried on by the GoJ	£172 for each bed available to a service user that is permitted by the conditions of registration
Children and young peoples' mental health service	All providers, excluding services carried on by the GoJ	£86 for each service user place that is permitted by the conditions of registration
Care services in special schools	All providers, excluding services carried on by the GoJ	£86 for each service user place that is permitted by the conditions of registration
Children and family community nursing services	Small provider (non-GoJ)	£646
Children and family community nursing services	Medium Provider (non-GoJ)	£1,185

<sup>6</sup> This is the same fee which is charged to children's homes under the current legislation

Children and family community nursing services	Medium plus provider (non-GoJ)	£2,369
Children and family community nursing services	Large provider (non-GoJ)	£4,523

39. Children's home services are currently charged on the basis of the number of beds which they are permitted to have under the provider's conditions of registration. The conditions of a provider's registration are set by the Care Commission when the service registers initially and these can be amended upon application by the provider. These proposals will not, therefore, change the way that children's home services are charged. It is proposed that residential family centres should be charged on the same basis, as these services will also be providing accommodation to service users.
40. If private or charitable organisations are to provide adoption or fostering services in future, then they would be charged a set annual fee which is based on the fees charged by Ofsted to independent fostering agencies in England. As has been stated at paragraph 25, above, it is not envisaged that these services will operate in Jersey in the short to medium term, but fees will be put in place in case this situation changes.
41. Private and charitable providers of social work services, independent reviewing officer services, children and young people's mental health services and care services in special schools will be charged based on the number of service users they are permitted to provide care to under their conditions of registration. As stated above, the conditions of registration will be set by the Commission for each provider upon its initial registration. These conditions can be amended upon a further application from the provider. Adult day care services are currently charged on this basis under the 2018 Order.
42. A charitable child contact centre would mean a provider:
- that is registered as a charity within the meaning of Article 1 of the [Charities \(Jersey\) Law 2014](#);
  - that facilitates contact for no more than 10 children at any one time;
  - whose sole activity is the provision of that service;
  - that does not charge its service users directly; and
  - that does not hold any contract for services with, nor receives any form of grant or aid from, any administration of the States of Jersey.
43. If, following its application to register with the Commission, the Commission determines that a child contact centre satisfies the conditions set out in paragraph 42, the provider of that service will not have to pay annual fees. Child contact centre services which do not satisfy these conditions will pay a fee which is based on that charged to adult day care centres under the 2018 Order.
44. The definitions of the categories of provider for children and family community nursing services (small, medium, medium plus and large) is set out at paragraph 26, above. Home care services are currently charged in precisely this fashion under the 2018 Order.

### Comparison with other jurisdictions

45. Comparisons with other British jurisdictions are difficult, given that the fee structures in England & Wales and Scotland vary considerably. That said, under the current and proposed new Jersey fee structure, Jersey providers will pay in the region of that paid by providers based in mainland UK.
46. The majority of the social work and mental health services for children and young people which it is proposed to regulate are provided by the Government of Jersey. In the UK, regulators do not always charge public health and social care providers directly but, in some cases, charges are levied. For example, in England, Ofsted does not charge fees to regulate and inspect social work services provided by local authorities but the CQC charges fees to regulate NHS trusts. However, Ofsted does charge fees to local authority run adoption and fostering agencies. The Care Commission has an established funding model under which fees will be charged to all regulated services, regardless of the nature of the provider, albeit with certain minor exemptions for specific charitable providers.
47. The table below provides an overview of fees in England and Scotland compared to Jersey, where a direct comparison is possible.

	Scotland	England	Jersey (Proposed Fees)
	Care Inspectorate <sup>7</sup>	Ofsted <sup>8</sup>	Care Commission (Non-GoJ)
Adoption service/agency			
Registration fee	<u>Small</u> – £2112 <u>Medium</u> – £3516 <u>Other</u> – £4449	<u>Voluntary</u> >8 FTE - £2445 <u>Voluntary</u> <8 FTE - £667 <u>Support</u> > 3 FTE - £2445 <u>Support</u> < 3 FTE - £667	£1615
Manager registration	N/A	<u>Voluntary</u> >8 FTE – N/A <u>Voluntary</u> <8 FTE – N/A <u>Support</u> > 3 FTE - £667 <u>Support</u> < 3 FTE - £0	£280
Annual fee	<u>Small</u> – £1250 <u>Medium</u> – £3126 <u>Other</u> – £4372	<u>Support agency</u> - £1694 <u>Small support</u> - £895 <u>Voluntary</u> - £1689 for the principal office, plus £1689 for each branch and £895 for each small branch <u>Voluntary with small principal office</u> - £895 for the principal office, plus £1689 for each branch plus £895 for each small branch <u>Local authority</u> - £2059	£2830

<sup>7</sup> Care Inspectorate, Fees Table, online at [Fees Table - Update 17.11.16.pdf \(careinspectorate.com\)](https://www.careinspectorate.com/fees-table-update-17-11-16.pdf)

<sup>8</sup> Ofsted, [Registration fees for children’s social care services](#), & [Ofsted, Annual fees for children’s social care services](#)

Children's home			
Registration fee	<u>Care home</u> - £3849 <u>Secure</u> - £5544 <u>Offender</u> - £4510	<u>&lt; 4 places</u> - £960 <u>&gt; 4 places</u> - £2646	£1615 in respect of each premises at which the service is carried on
Manager registration	N/A	<u>&lt; 4 places</u> - N/A <u>&gt; 4 places</u> - £910	£280
Annual fee	<u>Care home</u> - £157 per registered place <u>Secure</u> - £221 per place <u>Offender</u> - £180 per place	<u>&lt; 4 places</u> - £2578 <u>4 to 29 places</u> - £2578 plus £257 for each place 4 to 29 inclusive <u>&gt;30 places</u> - £9285	£172 for each bed available to a service user that is permitted by the conditions of registration
Fostering service			
Registration fee	<u>Small</u> - £2112 <u>Medium</u> - £3516 <u>Other</u> - £4449	<u>Independent agency</u> - £2646	£1615
Manager registration	N/A	<u>Independent agency</u> - £910	£280
Annual fee	<u>Small</u> - £1250 <u>Medium</u> - £3126 <u>Other</u> - £4372	<u>Independent agency</u> - £2830 <u>Local authority</u> - £3216	£2830
Residential family centre			
Registration fee	N/A	<u>&lt; 4 places</u> - £801 <u>&gt; 4 places</u> - £2646	£1,615 in respect of each premises at which the service is carried on
Manager registration	N/A	<u>&lt; 4 places</u> - N/A <u>&gt; 4 places</u> - £801	£280
Annual fee	N/A	<u>&lt; 4 places</u> - £1717 <u>&gt; 4 places</u> - £1913	£172 for each bed available to a service user that is permitted by the conditions of registration

48. The Care Inspectorate and Ofsted do not charge for the regulation of local authority social work services, including services provided by independent reviewing officers. Shortfalls in the regulators' budgets for regulation of these activities are funded by central government grants.
49. Comparisons in relation to child contact centres is not possible as these are not subject to statutory regulation in England and Scotland.
50. Outpatient mental health services provided to children and young people are regulated by the CQC in England. These services are categorised as community healthcare services – a category which includes a variety of services, including private doctors, independent ambulance services and community health visiting.

The CQC charges fees to these services based on the number of locations at which the service is provided<sup>9</sup>:

Number of locations	Fee payable (for providers of community health care services or NHS Blood and Transplant)
1	£1,867
2 to 3	£3,728
4 to 6	£7,456
7 to 10	£14,910
11 to 15	£29,820
More than 15	£59,640

51. Mental health services provided by NHS trusts would be regulated by the CQC as part of the all the services provided by each trust. The CQC charges NHS based on the following calculation:

<b>Turnover</b>	<b>X</b>	<b>0.0768%</b>	<b>=</b>	<b>£ Fee payable</b>
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52. Healthcare Improvement Scotland registers NHS hospitals and services and independent healthcare. It charges fees to providers of independent healthcare but not to NHS services. Mental health services provided by medical practitioners in an independent clinic are charged on the following basis:<sup>10</sup>

Type	Fee
Application for registration – Independent Clinics	£2,706
Annual continuation – Independent Clinics carrying out non-surgical procedures (with staff, including practicing privileges, additional directors, admin staff)	£1,327
Annual continuation – Independent Clinics carrying out non-surgical procedures (single-handed practitioner)	£955

53. Fees are not charged for the regulation of care services in special schools in either England or Scotland per se. In Scotland, Education Scotland and the Care Inspectorate conduct integrated inspections of schools providing care services. In England, Ofsted has responsibility for regulating these services. It charges an annual fee to residential special school services (but no fee to non-residential special school providers). For schools with 3 or fewer places, it charges £2,061. For schools with 4 to 18 places, Ofsted charges £2,061 plus £205 for each place. For residential special schools with 18 or more places, it charges £5,007.

<sup>9</sup> CQC, Provision for fees, online at [Microsoft Word - 20190306 2019-20 Fees Scheme FINAL.doc \(cqc.org.uk\)](#) p.6

<sup>10</sup> [Healthcare Improvement Scotland, Independent Healthcare Services: Fees Information 2021/22,](#)

54. Children and family community nursing services are usually provided by the NHS in both England and Scotland. As set out above, in Scotland NHS services are not charged fees to be regulated. In England, the CQC does charge NHS providers. The CQC regulates community health visiting services which are not provided by an NHS trust as community healthcare services and, therefore, charges these services in accordance with the table set out under paragraph 50, above.

### **Consultation Process and Feedback**

55. Consultation on the draft Regulations: A full public consultation on the draft Regulations and the draft Regulation of Care (Standards and Requirements) (Amendment) (Jersey) Regulations 202- took place between 19th July and 17th September 2021. The associated transitional arrangements were not included in the consultation process as these are technical Regulations which do not define or determine policy.
56. Both sets of draft Regulations were published on the Government of Jersey's website and feedback was requested from key stakeholders and other interested parties, particularly children and young people. The public was notified that the consultation had launched via the media and key stakeholders were contacted directly and provided with the opportunity to attend stakeholder briefings. The GoJ's Children and Adolescent Mental Health Service (CAMHS) and Independent Safeguarding and Standards Service requested briefings, as did two independent providers of children's mental health services and the provider of a child contact centre. A briefing was also provided to the Commissioner for Children and Young People.
57. Stakeholders and the public were invited to provide feedback via both an online survey and by emailing or posting detailed feedback to the Department for Strategic Policy, Planning and Performance.
58. In the online survey, respondents were asked whether they agreed with each proposed legislative change by answering "yes", "no" or "don't know". There were 5 responses received to this survey, 3 responses from private individuals and 2 from organisations. None of the respondents registered disagreement with any of the legislative proposals. One organisation registered the response "don't know" to a majority of the questions. It is not statistically sound to rely on this as evidence for wider approval or disapproval of the legislative proposals, due to the small number of responses to the consultation.
59. More weight has been given to detailed feedback provided by key stakeholders in their written submissions. Submissions were provided by the Care Commission, a provider of home care services and a provider of a child contact centre service. The Commissioner for Children and Young People also provided formal advice to the Minister for the Environment on the draft legislative proposals.
60. Generally, the feedback received was supportive but with observations and suggestions for changes to certain provisions in the draft Regulations. Some amendments have been made to the final draft Regulations in response to this feedback. For example, mental health services provided by GPs and counsellors have been excluded from the scope of the draft Regulations.
61. Negative feedback was received from the provider of a charitable child contact centre service. In summary, the provider welcomed sensible regulation but had concerns that the administrative burden presented by the proposals could prevent

the continuation of the current standard of services provided. It was further submitted that regulation of child contact centres should be bespoke and should not come under a generic regulatory framework.

62. Child contact centre services remain included in the draft Regulations. The 2014 Law does provide a broad framework for the regulation of health and social care in Jersey, but the Care Commission applies bespoke standards to each category of service provider to take account of the differing nature of each service. Child contact centres would, therefore, be subject to a bespoke regulatory regime, subject to consultation with the Care Commission. In recognition of the unique circumstances of charitable child contact centres, the lack of Government provision of this service and the resulting necessity to avoid placing a financial burden on charitable child contact centres, these services will not be required to pay an annual fee to the Commission.
63. Consultation on the fees: Stakeholders were informed during the consultation on the draft Regulations that fees would be charged to newly regulated services, in the same way that all services regulated under the 2014 Law are currently required to pay fees. Details of the proposed fees are being issued for public consultation. All consultation responses received will be considered prior to drafting amendments to the 2018 Order.

### **Next Steps in Development of Regulatory Framework**

64. The 2014 Law was adopted by the States on 3rd July 2014 ([P.95/2014](#)), and it was set out in the report to the proposition that establishing regulation of previously unregulated environments across Jersey's health and social care sector is a sizeable and complex task. Implementing regulation across the whole sector overnight would overwhelm both the regulator and the regulated entities. It is for this reason that Regulations under the framework law have been and will continue to be brought for debate in the Assembly in phases.
65. Phase 1 of the project was to regulate care home (including children's home), home care and adult day care services. These Regulations were adopted by the States on 20th November 2018 and came into force on 1st January 2019 ([P.126/2018](#)). The regulation of social work and mental health services for children and young people represents phase 2 of this project and this was set out at paragraph 43 of the report to P.126/2018.
66. It is envisaged that, over time, further Regulations will be brought forward for consideration by the Assembly to extend independent regulation and inspection across the health and social care sector, in the following phases:
  - (a) social and community care services, and mental health services for adults, including inpatient mental health services provided to children;
  - (b) hospital services, ambulance services and services provided in independent clinics; and
  - (c) community medical and dental services.

### **Section 3: Draft Regulation of Care (Regulated Activities) (Amendment of Law) (Jersey) Regulations 202-**

67. The draft Regulations will be made under Article 2 of the 2014 Law. Schedule 1 to the draft Regulations would insert a new Schedule 1 to the 2014 Law. This Schedule sets out those activities which will be subject to regulation and

inspection by the Commission – it defines these services. An individual who or an organisation which provides a service defined under Schedule 1 to the 2014 Law must register with the Commission and adhere to the requirements set out under the Law.

68. Regulation 2 of the draft Regulations also make amendments to the definition of “social care” under Article 1(1) of the 2014 Law. This definition has been amended so that it now encompasses assessments of individuals’ social care needs, the formulation of care plans to meet those assessed needs and the safeguarding of individuals from risk of harm by or under the supervision of a registered social worker.

### **Existing Regulated Activities**

69. There are currently three types of services; care homes, home care and adult day care services which are regulated activities under the 2014 Law. Minor amendments have been made to the definitions of these services under Schedule 1 of the draft Regulations.

#### **Adult day care – paragraph 3**

70. No substantive amendments have been made to the definition of adult day care but the paragraphs of Schedule 1 of the 2014 Law have been reordered.

#### **Care home – paragraph 4**

71. Currently, children’s home services, including secure children’s homes, are regulated as a care home service. This new definition will exclude children’s home services from the care home category. Children’s homes will continue to be regulated but under a new regulated activity, under paragraph 7 of Schedule 1 to the draft Regulations.

#### **Home care – paragraph 5**

72. The definition of a home care service has been amended to exclude the providers of community nursing services provided to children and their families from the home care category. Providers of children and family nursing services will be required to register under a new regulated activity, under paragraph 15 of Schedule 1 to the draft Regulations.

### **New Regulated Activities**

73. The draft Regulations define and describe ten new categories of service which will become ‘regulated activities’ under the 2014 Law, including children’s home services which are currently regulated as care homes. All the services described below will become subject to independent regulation and inspection by the Care Commission.

#### **Adoption – paragraph 6**

74. The Government of Jersey’s Adoption Service will be regulated by the Care Commission. The draft Regulations also cover registered adoption societies but only if they operate in Jersey. Registered adoption societies include adoption societies which are registered in the UK and the States of Guernsey’s adoption service, providing these have been approved by the Minister for Children and Education.
75. Article 6(1)(a) of the [Adoption \(Jersey\) Law 1961](#) restricts persons other than the Minister for Children and Education from making adoption arrangements unless

the proposed adopter is a relative of the child. This means that adoption services cannot be run by any other providers in Jersey.

#### **Children's home – paragraph 7**

76. Children's home services are currently regulated as care home services. This new definition captures all residential accommodation which is provided together with care to children and young people only. If a service provides accommodation and care to children and to adults aged 22 and over, then this service will continue to be regulated as a care home service.
77. Children's home services are solely responsible for the day-to-day delivery of care to the children in the accommodation that the service has provided. If the day-to-day delivery of care to children accommodated in the service is shared by the service with the child's parent, this is not a children's home service. This does not mean that only care provided to children who are under the care of the Minister for Children and Education ("looked after children") will be regulated. If the service is providing accommodation and care to a child and there is no parent assisting with caring for that child, then this service must be regulated under paragraph 7.
78. In some cases, young people, in particular care leavers up to but not including the age of 22, may be accommodated in a children's home.
79. Paragraph 7 also specifies that secure accommodation provided for children is to be regulated as a children's home service. Hospice services; long-term or respite nursing care services; and residential or respite services for children with learning difficulties or mental health problems are also to be regulated as children's home services, if the service is provided to children and young people up to the age of 22 only and the provider of that service has sole responsibility for the child's care.
80. Foster care, care provided in a hospital and care provided in private accommodation does not constitute a children's home service.

#### **Fostering – paragraph 8**

81. Paragraph 8 of Schedule 1 to the draft Regulations includes all fostering services provided by the Government of Jersey and any support which is provided by the Government's Fostering Service in connection with privately fostered children.
82. Privately fostered children are those under the age of 16 who are cared for and provided with accommodation for more than 28 days by someone other than their parent, a relative or a person with parental responsibility for them.

#### **Social work for children and young people – paragraph 9**

83. Social work services provided by the Government of Jersey's Children's Service apart from those social work services which are provided in connection with adoption, fostering or the operations of a children's home will be subject to regulation under paragraph 9 of Schedule 1 to the draft Regulations. Social work services provided to children and young people by private or charitable providers will also be required to register with and to be regulated by the Commission.
84. The types of activities which are covered by this definition include but are not limited to the following activities, if they are provided to a child or a young person by a registered social worker or a person working under the direction or supervision of a social worker:
  - providing assessments of a child or young person's social care needs;
  - providing assessments for the purpose of determining whether a child, young person or their carer is in need of financial support;

- arrangements for the safeguarding of children or young people who may be at risk of harm, including the performance of any statutory functions in this regard;
  - health care assessments carried out by a registered health care professional or doctor employed or contracted to provide such assessments as part of a social work service for children and young people; or
  - providing any other form of assessment or services.
85. In this context, “young people” are persons of between 18 to 25 years old who:
- have a disability;
  - are or have been sentenced or placed in youth detention; or
  - whilst under the age of 18 were:
    - looked after by the Minister for Children and Education;
    - subject to an emergency protection order;
    - accommodated in a voluntary home; or
    - were subject to private fostering arrangements.

**Independent monitoring and review service in respect of looked after children’s cases – paragraph 10**

86. Services which are provided under the direction of a social worker to monitor and review the arrangements made for children who are looked after by the Minister for Children and Education would be required to register under paragraph 10 of Schedule 1 to the draft Regulations. This includes, for example, the review of arrangements made to foster a looked after child or to place a child in a children’s home.
87. Officers who perform these functions are termed Independent Reviewing Officers (IROs). This definition will ensure that the work of IROs in reviewing placements made by the Government of Jersey’s Children’s Service is regulated.

**Child contact centre – paragraph 11**

88. Services which are provided for the purpose of facilitating contact between children and parents who do not reside with them would be required to register under paragraph 11 of Schedule 1 to draft Regulations. This definition also covers when the child contact centre facilitates contact between a child and other persons connected with the child who do not reside with them, including other relatives or friends.
89. If contact is facilitated between a child and their parent or guardian as part of a social work service, the registered provider of the social work service does not have to register as a child contact centre as well.

**Residential family centre – paragraph 12**

90. A residential family centre is a service which provides accommodation for children and their parents; the parents' capacity to respond to the children’s needs and to safeguard their welfare is monitored or assessed; and the parents are given such advice, guidance or counselling as is considered necessary. These services will be required to register with the Commission under paragraph 12 of Schedule 1 to the draft Regulations. There are currently no such services operating in Jersey, but these are increasing in number across the UK and the establishment of a service in Jersey is being considered.

91. This definition does not encompass services aimed at parents – such as a women’s refuge. A women’s refuge and similar residential services are different to a residential family centre because it is the parent who is primarily in receipt of the service. In these cases, a parent and child may be present in the refuge, but the parent retains responsibility for the child. In effect a refuge is a service provided for adults which is why it is not included here. This service is also distinct from a children’s home service and a care home service.

**Children and young people’s mental health service – paragraph 13**

92. Outpatient mental health or psychological assessment, diagnosis and treatment services for children or young people which are provided by a registered medical practitioner or health care professional would be required to register under paragraph 13 of Schedule 1 to the draft Regulations. This includes services provided by the Government of Jersey’s Child and Adolescent Mental Health Service (CAMHS), as well as any private providers of such services.
93. The provision of mental health services to children and young people by General Practitioners (GPs) would not be regulated at this stage. This is because it would not be practical to regulate GPs for this aspect of their practice without regulating all the services which GPs provide. Services provided by individuals who are not legally required to register to practice professionally, such as counsellors, would also not be required to register at this stage. This is because many counsellors provide services to both children and adults. It is, therefore, practical to register counselling services for children and adults simultaneously, at a later date.
94. In this context, young people include those aged between 18 and 25 who were being treated by the service before the age of 18 and who are still being treated by the service after the age of 18, having not been referred for treatment as an adult by a different service provider.

**Care services in special schools – paragraph 14**

95. Care services which are provided in schools which are termed, under the [Education \(Jersey\) Law 1999](#), as “special schools” would be required to register with the Care Commission under paragraph 14 of Schedule 1 to the 2014 Law. These are schools which are specially organised to make special educational provision for pupils with special educational needs.
96. The care services provided by special schools will be regulated by the Commission. The remit of the Commission will not extend to the regulation of education provided in these schools as this is outside the scope of the 2014 Law.

**Children and family community nursing – paragraph 15**

97. Services provided by specialist community public health nurses and other nurses to children and their families in the community, in a family home or in a school would be regulated under paragraph 15 of Schedule 1 to the draft Regulations. This does not include services provided in special schools which will be regulated separately. This definition does cover, for example, the provision of baby clinics, health visiting services and school nursing services.
98. Those services which provide both home care to adults and community nursing to children and their families will be regulated for the performance of these functions separately.

## Consequential Amendments

99. Schedule 2 of the draft Regulations sets out consequential amendments to other legislation necessitated by the coming into force of the draft Regulations. This includes, for example:
- (a) providing references to children’s home services regulated under the 2014 Law under other relevant legislation, including the [Children \(Jersey\) Law 2002](#) and the Adoption (Jersey) Law 1961;
  - (b) ensuring that references to care home, home care and adult day care services in other legislation are updated to reflect the renumbering of paragraphs under Schedule 1 to the 2014 Law; and
  - (c) extending the [Rehabilitation of Offenders \(Exceptions\) \(Jersey\) Regulations 2002](#) to prohibit offenders from working with children in any of the newly regulated activities under Schedule 1 to the draft Regulations.
100. Paragraph 1 of Schedule 2 to the draft Regulations provides updates to the Adoption (Jersey) Law 1961. The nomenclature and references to UK legislation under this Law are currently out of date.
101. Schedule 2 also amends the [Goods and Services Tax \(Jersey\) Law 2007](#) (“the 2007 Law”). The 2007 Law currently makes provision for GST exemptions on goods and services provided by certain categories of provider (for example, doctor, dentist and current regulated activities under Schedule 1 to the 2014 Law). This has been extended to include children’s home services (which are currently excluded from GST requirements, children and young people’s mental health services, care services in special schools and children and family community nursing services. All these services would, in practice, be exempt from GST under the 2007 Law but this express exemption has been added to clarify this point.

## Section 4: Financial and manpower implications

102. As set out in section 2, above, the 2014 Law provides for a number of different fees to be set, including:
- (a) fees associated with making an initial application for registration as a provider or a manager;
  - (b) an annual fee for continued registration;
  - (c) fees associated with applying for a variation on conditions of registration; and
  - (d) miscellaneous fees such as replacement registration certificates.
- Since the 2014 Law came into force, all fees have been set by the Minister under the Regulation of Care (Fees) (Jersey) Order 2018 (the “2018 Order”), although the Law does provide that the Commission may set its own fees.
103. It is proposed that fees continue to be set in this manner – i.e. the fees to be paid by providers of children’s social work and mental health services will be set under amendments to the 2018 fee Order.
104. The 2014 Law was agreed by the States on the understanding that the then inspection team’s budget would be grant-funded to the Care Commission, and that this would represent approximately 45% of the total cost of administering the Law (i.e. fees should generate approximately 55% of total Commission expenditure). 45% is part way between 34% government funding provided to the

- Care Quality Commission (CQC) in England and the 65% provided to the Scottish Care Inspectorate.
105. The established practice of care regulator's income being derived from a combination of direct government funding and fee income speaks to the principle that assurance of good quality care is a matter of public interest, as opposed to solely being of service user / service provider interest. It avoids the necessity of the regulator having to curtail essential inspection to fit budgetary constraints that may arise if the regulator were solely dependent on fee income. This principal accords with OECD good regulatory practice.
106. As set out in section 2, above, it is anticipated that:
- registration fees for providers and managers for the 10 new categories of service will be the same as those charged for the existing registered services (i.e. care homes, home care, adults day care);
  - annual fees for Government of Jersey (GoJ) providers of the new categories of children's services will be 0.8% of total annual budget allocated to those services; and
  - annual fees for non-GoJ providers of the new categories of children's social work and mental health services, of which there are very few, will be broadly based on those paid by comparable regulated services.
107. The Government Plan already provides monies associated with the costs of regulating the children's social work and mental which are provided by the Government of Jersey, this being:
- 2022 – £375,000;
  - 2023 – £450,000.
108. It is anticipated that these monies will provide for:
- (a) the fees to be paid to the Commission by GoJ regulated services (based on 0.8% of total annual budget allocation); and
  - (b) the uplift in government funding to the Commission in line with the 45% / 55% funding ratio, which will cover additional costs incurred by the Commission (for example, increased management and governance overheads associated with extended regulatory reach) and costs incurred by the CYPES in preparing for registration and inspection.
109. The costs of regulating services provided by private and charitable providers will be partially covered by charging fees. However, the majority of services which would be regulated under the draft Regulations are provided by the Government of Jersey. The fees which will be payable by the Government of Jersey to the Care Commission have been provided for under the Government Plan, as set out in the paragraph above.



## EXPLANATORY NOTE

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The Regulation of Care (Regulated Activities) (Amendment of Law) (Jersey) Regulations 202-, if passed, will amend the Regulation of Care (Jersey) Law 2014 (the “Law”). The amendments will, for the purposes of Article 2 (regulated activities) of the Law, insert into Schedule 1 to the Law a set of new regulated activities in respect of the provision of health or social care services for, or in respect of, children and young people. These Regulations also make consequential amendments to other enactments as a result of the amendment of Schedule 1 to the Law.

*Regulation 1* is the interpretation provision for these Regulations.

*Regulation 2* amends the definition “social care” in the Law. The existing definition is expanded to include the provision of services by a social worker, including the provision of assessments in respect of individuals to determine their needs and to safeguard them from risk of harm.

*Regulation 3* introduces *Schedule 1*. That *Schedule* substitutes existing Schedule 1 to the Law with a restructured Schedule which contains new regulated activities relating to the provision of services for, or in respect of, children and young people. Substituted Schedule 1 to the Law (“Schedule 1”) is restructured into 3 Parts. Part 1 contains the interpretation provisions for words and expressions used in Schedule 1. Part 2 reproduces, with some minor consequential amendments arising as a result of the new regulated activities in Part 3, the existing regulated activities which are the provision of an adult day care service; a care home service; and a home care service. Part 3 contains 10 new regulated activities, as follows –

- (1) provision of an adoption service either maintained by the Minister for Children and Education under the Adoption (Jersey) Law 1961 (the “Adoption Law”), or provided by a approved adoption society (as defined in the Adoption Law) or independently;
- (2) provision of a children’s home service which provides residential accommodation together with care, whether on a temporary or permanent basis, including accommodation provided by the Minister for Children and Education to children or young people only;
- (3) provision of a fostering service discharging the functions of the Minister for Children and Education in accordance with the Children (Placement) (Jersey) Regulations 2005 and, in relation to privately fostered children, in accordance with the Children (Jersey) Law 2002 (the “Children Law”);
- (4) provision of a social work service for children and young people provided by a social worker including, amongst other things, the provision of assessments to determine a child’s or young person’s social care needs; making arrangements to safeguard a child or young person who may be at risk of harm; or providing any other form of assessment, services, or support;
- (5) provision of a service for the independent monitoring and review of cases of looked after children (as defined in the Children Law);
- (6) provision of a child contact centre service providing premises for facilitating contact between a child and people who do not live with that child, such as a parent, relative or friend;
- (7) provision of a residential family centre service providing residential accommodation for children and their parents and where the parents’ capacity to

- respond to the children's needs and to safeguard their welfare is monitored or assessed, and advice, guidance or counselling is given;
- (8) provision of a children and young people's mental health service providing out-patient mental health or psychological assessment, diagnosis, and treatment services;
  - (9) provision of a care service providing health or social care (as defined in the Law) in a special school (as defined in the Education (Jersey) Law 1999); and
  - (10) provision of a children and family community nursing service providing health care (as defined in the Law) to children and their families by, or under the direction or supervision of, a nurse in a community setting, a family home, or a school.

*Regulation 4* introduces *Schedule 2*. That Schedule amends various enactments as a consequence of the new regulated activities inserted into restructured Schedule 1 to the Law.

*Regulation 5* gives the title by which these Regulations may be cited and for them to come into force on a day to be specified by Order of the Minister for the Environment.



Jersey

## **DRAFT REGULATION OF CARE (REGULATED ACTIVITIES) (AMENDMENT OF LAW) (JERSEY) REGULATIONS 202-**

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Jersey

## **DRAFT REGULATION OF CARE (REGULATED ACTIVITIES) (AMENDMENT OF LAW) (JERSEY) REGULATIONS 202-**

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

**THE STATES**, after consultation of the Health and Social Care Commission by the Minister for the Environment in accordance with Article 39(1)(a) of the [Regulation of Care \(Jersey\) Law 2014](#), make these Regulations under Articles 1(2) and 2(2) of that Law and Articles 20(3) and 47 of the [Sexual Offences \(Jersey\) Law 2018](#) –

### **1 Interpretation**

In these Regulations “Law” means the [Regulation of Care \(Jersey\) Law 2014](#).

### **2 Article 1 (interpretation) amended**

In Article 1(1) of the Law for the definition “social care” there is substituted –

“ “social care” means any of the services, care, assistance or support described in sub-paragraphs (a) to (c), provided for an individual whose welfare or wellbeing by reason of the individual’s age, mental or physical illness, disability, pregnancy, childbirth, dependence on alcohol or drugs, or for any other reason, puts the individual in need of –

- (a) services provided under the direction or supervision of a social worker (as defined in Schedule 1) which include assessing the personal needs of individuals, formulating plans to meet those needs and safeguarding individuals from risk of harm;
- (b) any form of personal care and other practical assistance; or
- (c) any form of personal support;”.

### **3 Schedule 1 (regulated activities) substituted**

For Schedule 1 to the Law there is substituted the Schedule set out in Schedule 1 to these Regulations.

**4 Amendments consequential on Regulation 3**

Schedule 2 makes consequential amendments to other enactments as a result of the substitution of Schedule 1 to the Law by Regulation 3.

**5 Citation and commencement**

These Regulations may be cited as the Regulation of Care (Regulated Activities) (Amendment of Law) (Jersey) Regulations 202- and come into force on a day to be specified by the Minister by Order.

## SCHEDULE 1

(Regulation 3)

### SCHEDULE 1 TO LAW SUBSTITUTED

#### “SCHEDULE 1

(Article 2(1))

#### REGULATED ACTIVITIES

##### PART 1

Interpretation provisions for Schedule

#### 1 Regulated activities

- (1) The activities described in this Schedule are regulated activities for the purposes of Article 2.
- (2) An activity which is ancillary to, or is carried on wholly or mainly in relation to, a regulated activity is treated as part of that activity.

#### 2 Interpretation

In this Schedule –

“Adoption Law” means the [Adoption \(Jersey\) Law 1961](#);

“adult” means an individual who has attained the age of 18;

“care” means nursing care or social care;

“children” means individuals who have not attained the age of 18;

“children’s home” means a home consisting of a children’s home service that provides residential accommodation only for children;

“Children Law” means the [Children \(Jersey\) Law 2002](#);

“foster care” means a placement described in Article 20(1)(a) of the Children Law;

“Health Care Registration Law” means the [Health Care \(Registration\) \(Jersey\) Law 1995](#);

“hospital” means Jersey’s General Hospital and includes any site from which the hospital provides services;

“looked after children” means children looked after by the Minister for Children and Education as defined in Article 1A of the Children Law;

“Mental Health Law” means the [Mental Health \(Jersey\) Law 2016](#);

“Minister” in paragraphs 6 to 8 and 12, means the Minister for Children and Education;

“parent” has the definition given in the Children Law and includes any individual who has acquired parental responsibility in respect of a child by virtue of an order made by the court under the Children Law, or who is a child’s guardian appointed under Article 7 of that Law;

“parental responsibility” is construed in accordance with Article 3 of the Children Law;

“prison” means HM Prison La Moye;

“registrable occupation” means an occupation set out in the Schedule to the Health Care Registration Law;

“social worker” means a person registered to engage in that registrable occupation.

## PART 2

### Regulated activities: provision of care services

#### **3 Adult day care service**

- (1) The provision of an adult day care service is a regulated activity.
- (2) An “adult day care service” is a service providing premises other than private accommodation –
  - (a) for adults only;
  - (b) for a limited number of hours in any one day without overnight accommodation; and
  - (c) for care that is not limited to social activities, self-help or advice.

#### **4 Care home service**

- (1) The provision of a care home service is a regulated activity.
- (2) A “care home service” is a service providing residential accommodation together with care, whether on a temporary or permanent basis, to people who have no choice as to the provider of the care.
- (3) The provision of accommodation and care in the following settings does not constitute a care home service –
  - (a) foster care;
  - (b) the hospital, subject to sub-paragraph (4);
  - (c) the prison; or
  - (d) private accommodation (not being accommodation provided purely in the context of the provision of a care home service by the same person who provides that accommodation) occupied exclusively by an individual receiving care and the individual’s family.
- (4) The following services constitute a care home service even if they are operated from the hospital –

- (a) hospice services;
- (b) long-term or respite nursing care services;
- (c) residential or respite services for people with learning difficulties or mental health problems.

(5) Nothing in this paragraph constitutes the provision of a children's home service regulated under paragraph 7 or a residential family centre service regulated under paragraph 12.

## 5 Home care service

- (1) The provision of a home care service is a regulated activity.
- (2) However, the provision of a home care service that is carried on exclusively by a Minister is not a regulated activity.
- (3) A "home care service" is a service consisting of the provision of care by a person to an individual in private accommodation (not being accommodation provided purely in the context of the provision of a care home service by the same person who provides that accommodation) –
  - (a) for reward (whether in money or in kind and whether or not that person is a relative or friend of the individual in receipt of the service); or
  - (b) as part of a professional service offered to the individual free of charge.
- (4) However –
  - (a) services provided by an employment agency through which the provider of a home care service is introduced to an individual requiring that service without the provider being subject to any ongoing management or control, do not constitute the provision of a home care service by that agency; and
  - (b) the following do not constitute reward –
    - (i) the giving of birthday, Christmas and other celebratory or thank-you gifts, the reimbursement of expenses or the payment of, or a contribution towards, the cost of shared meals or travel by an individual in receipt of the home care service to or for the benefit of the person providing that service,
    - (ii) receipt of the special component of income support under Article 5(3)(d) of the [Income Support \(Jersey\) Law 2007](#) (the carer's component) or the home carer's allowance under Article 18A of the [Social Security \(Jersey\) Law 1974](#), or
    - (iii) any part of the value of an approved care package within the meaning of Article 7 of the [Long-Term Care \(Jersey\) Law 2012](#) that is paid directly to an unpaid carer who is caring otherwise than as the carer's employment to provide respite for the carer instead of

being used to provide alternative care to the individual receiving care.

- (5) Nothing in this paragraph constitutes the provision of a children and family community nursing service regulated under paragraph 15.

### PART 3

Regulated activities: provision of health or social care services for, or in respect of, children and young people

#### 6 Adoption service

- (1) The provision of an adoption service is a regulated activity.
- (2) An “adoption service” is –
- (a) the Adoption Service maintained by the Minister under Article 2 (establishment of Adoption Service) of the Adoption Law; or
  - (b) a service provided by an approved adoption society (as defined in sub-paragraphs (b) and (c) of the definition of that expression in the Adoption Law) whether provided as part of the Adoption Service under Article 2(1) and (3) of the Adoption Law, or independently.

#### 7 Children’s home service

- (1) The provision of a children’s home service is a regulated activity.
- (2) A “children’s home service” is a service –
- (a) providing residential accommodation together with care, whether on a temporary or permanent basis, including accommodation provided by the Minister under Article 17 of the Children Law, to children or young people only; and
  - (b) in the case of a child, where the day to day delivery of care under that service is discharged solely by the registered person and is not discharged in conjunction with the child’s parent.
- (3) The provision of accommodation and care in the following settings, which are defined in the Children Law, constitute the provision of a children’s home service –
- (a) a children’s home;
  - (b) a voluntary home; and
  - (c) secure accommodation.
- (4) However, the provision of accommodation and care in the following settings does not constitute a children’s home service –
- (a) foster care;
  - (b) the hospital, subject to sub-paragraph (5); or
  - (c) private accommodation (not being accommodation provided purely in the context of the provision of a children’s home

service by the same person who provides that accommodation) occupied exclusively by a child receiving care and the child's family.

- (5) The following services constitute a children's home service even if they are operated from the hospital –
  - (a) hospice services;
  - (b) long-term or respite nursing care services;
  - (c) residential or respite services for children or young people with learning difficulties or mental health problems; or
  - (d) services provided in a children's home, voluntary home or secure accommodation.
- (6) In this paragraph "young people" means individuals who have attained the age of 18 but are under the age of 22.

## **8 Fostering service**

- (1) The provision of a fostering service is a regulated activity.
- (2) A "fostering service" is a service –
  - (a) discharging the functions of the Minister in accordance with the [Children \(Placement\) \(Jersey\) Regulations 2005](#); and
  - (b) which includes the functions of the Minister in relation to privately fostered children under Articles 60 (power of Minister to impose requirements and prohibitions) and 61 (functions of Minister in relation to welfare of privately fostered children) of the Children Law.
- (3) In sub-paragraph (2)(b) "privately fostered children" has the meaning given in Article 58 of the Children Law.

## **9 Social work service for children and young people**

- (1) The provision of a social work service for children and young people is a regulated activity.
- (2) A "social work service for children and young people" is a service provided by a social worker or a person under the direction or supervision of a social worker which may include any of the following activities –
  - (a) providing assessments for the purpose of determining a child's or young person's social care needs;
  - (b) providing assessments for the purpose of determining whether a child, young person or their carer is in need of financial support;
  - (c) making arrangements to safeguard a child or young person who may be at risk of harm;
  - (d) making arrangements for health care assessments to be carried out by a registered health care professional or doctor employed, or contracted, to provide those assessments as part of a social work service for children and young people; or

(e) providing any other form of assessment or services for children or young people.

(3) The activities described in sub-paragraph (2) –

(a) include any which may be required in the discharge of any Minister’s functions under any enactment in relation to children or young people; but

(b) do not include the activities regulated under paragraphs 13 and 14.

(4) In this paragraph –

(a) “registered health care professional” means a person registered to engage in a registrable occupation;

(b) “young people” has the definition given in the [Commissioner for Children and Young People \(Jersey\) Law 2019](#).

## **10 Independent monitoring and review service in respect of looked after children’s cases**

The provision of a service under the direction or supervision of a social worker for the independent monitoring and review of looked after children’s cases, is a regulated activity.

## **11 Child contact centre service**

(1) The provision of a child contact centre service is a regulated activity.

(2) A “child contact centre service” is a service providing premises for facilitating contact between a child and any of the following people who do not live with the child –

(a) the child’s mother or father;

(b) a relative (as defined in the Children Law); or

(c) a friend.

(3) However, the provision of premises, by a social work service for children and young people, for facilitating contact between a child and any of the people mentioned in sub-paragraph (2), does not constitute a child contact centre service.

## **12 Residential family centre service**

(1) The provision of a residential family centre service is a regulated activity.

(2) A “residential family centre service” is a service providing residential accommodation for children and their parents at which –

(a) the parents’ capacity to respond to the children’s needs and to safeguard their welfare is monitored or assessed; and

(b) the parents are given such advice, guidance or counselling as is considered necessary.

(3) In sub-paragraph (2) “parent” includes –

- (a) in relation to a child who is not looked after by the Minister, any person who is looking after that child;
  - (b) in relation to a child who is looked after by the Minister, any person described in Regulation 6(1)(a) to (c) of the [Children \(Placement\) \(Jersey\) Regulations 2005](#).
- (4) In sub-paragraph (3) “looked after by the Minister” is construed in accordance with Article 1A of the Children Law.
- (5) Nothing in this paragraph constitutes the provision of a children’s home service regulated under paragraph 7.

### **13 Children and young people’s mental health service**

- (1) The provision of a children and young people’s mental health service is a regulated activity.
- (2) A “children and young people’s mental health service” means a service providing out-patient mental health or psychological assessment, diagnosis and treatment services, whether at an approved establishment or elsewhere, for –
- (a) children; or
  - (b) young people –
    - (i) who received those services before the age of 18 and for whom there is ongoing provision of treatment services after the age of 18, and
    - (ii) who have not been referred for treatment as an adult.
- (3) A children and young people’s mental health service must be delivered by, or under the direction or supervision of, a medical practitioner or a person registered to engage in a registrable occupation.
- (4) However, the provision of any mental health or psychological assessment, diagnosis or treatment by, or under the direction or supervision of, a general medical practice does not constitute a children and young people’s mental health service.
- (5) In this paragraph –
- “approved establishment” is construed in accordance with Article 5 of the Mental Health Law;
  - “general medical practice” has the definition given in Article 1(4) of the [Health Insurance \(Jersey\) Law 1967](#);
  - “treatment” has the definition given in the Mental Health Law;
  - “treatment services” includes services provided in the community for the family of a child or young person in connection with that child’s or young person’s mental health condition;
  - “young people” means individuals who have attained the age of 18 but are under the age of 25.

#### **14 Care service in special schools**

- (1) The provision of a care service in a special school is a regulated activity.
- (2) In this paragraph –
  - (a) “care service” means a service providing health care or social care;
  - (b) “special school” has the definition given in Article 4(4) of the [Education \(Jersey\) Law 1999](#).

#### **15 Children and family community nursing service**

- (1) The provision of a children and family community nursing service is a regulated activity.
- (2) A “children and family community nursing service” is a service providing health care to children and their families by, or under the direction or supervision of, a specialist community public health nurse, or a nurse –
  - (a) in a community setting;
  - (b) in a family home; or
  - (c) in a school.
- (3) In this paragraph a “specialist community public health nurse” is a person registered to engage in that registrable occupation holding a qualification prescribed in the Schedule to the [Health Care \(Registration\) \(Prescribed Qualifications\) \(Jersey\) Order 2003](#).
- (4) Nothing in this paragraph constitutes the provision of a care service regulated under paragraph 14.”.

## SCHEDULE 2

(Regulation 4)

### CONSEQUENTIAL AMENDMENTS

#### 1 [Adoption \(Jersey\) Law 1961](#)

In the [Adoption \(Jersey\) Law 1961](#) –

- (a) in Article 1(1) (interpretation) –
  - (i) before the definition “adoption order” there is inserted –  
““Adoption and Children Act” means the Adoption and Children Act 2002 of the United Kingdom;”,
  - (ii) in sub-paragraph (b) of the definition “approved adoption society”, “(c.38) of the United Kingdom” is deleted;
- (b) in Article 5 (duty to use approved adoption societies) –
  - (i) in the heading, for “approved”, there is substituted “registered”,
  - (ii) for “an adoption society approved under the Adoption Act 1976 (c.36) of the United Kingdom” there is substituted “a registered adoption society as defined in section 2 of the Adoption and Children Act”;
- (c) in Article 33 (meaning of protected child), in paragraph (2)(b)(ii), for “a care home service within the meaning of paragraph 1(2)” there is substituted “a care home service within the meaning of paragraph 4 or a children’s home service within the meaning of paragraph 7”.

#### 2 [Lodging Houses \(General Provisions\) \(Jersey\) Order 1962](#)

In Article 2(e) (exemptions from registration provisions) of the [Lodging Houses \(General Provisions\) \(Jersey\) Order 1962](#), for “paragraph 1(2)” there is substituted “paragraph 4, or children’s home service within the meaning of paragraph 7”.

#### 3 [Inquests and Post-Mortem Examinations \(Jersey\) Law 1995](#)

In Article 2(4)(b) (duty to notify death) of the [Inquests and Post-Mortem Examinations \(Jersey\) Law 1995](#) for “paragraph 1(2)” there is substituted “paragraph 4”.

#### 4 [Children \(Jersey\) Law 2002](#)

In the [Children \(Jersey\) Law 2002](#) –

- (a) in Article 1(1) (interpretation) –
  - (i) for the definition “care home service” there is substituted –

- “care home service” is construed in accordance with paragraph 4 of Schedule 1 to the [Regulation of Care \(Jersey\) Law 2014](#);
- (ii) after the definition “children’s home” there is inserted –
  - “children’s home service” is construed in accordance with paragraph 7 of Schedule 1 to the [Regulation of Care \(Jersey\) Law 2014](#);
- (b) in Article 20(1)(b) (provision of accommodation and maintenance by Minister for children whom Minister is looking after), “exclusively or” is deleted;
- (c) in Article 21 (advice and assistance for certain children) –
  - (i) in paragraph (2)(c), for “any nursing home” there is substituted “children’s home service”,
  - (ii) in paragraph (6)(b), after “care home service” there is inserted “or children’s home service,”;
- (d) in Article 46(1)(a) (refuges for children at risk), for “care home service that is exclusively or mainly for children” there is substituted “children’s home”;
- (e) In Schedule 4 (disqualification for caring for children), for paragraph 1(f) there is substituted –
  - “(f) the person carried on, or was otherwise concerned in the management of, or had any financial interest in –
    - (i) a care home service which provides services to children as well as adults or a children’s home service which the Commission has refused to register under Article 5 of the [Regulation of Care \(Jersey\) Law 2014](#), or the registration of which the Commission has cancelled under Article 20 of that Law, or
    - (ii) a voluntary home which the Minister has –
      - (A) refused to register under Article 54(4) of this Law or Article 52(3) of the 1969 Law, or
      - (B) removed from the register under Article 54(5) of this Law or Article 52(4) of the 1969 Law;”.

## 5 [Day Care of Children \(Jersey\) Law 2002](#)

In Article 1(1) (interpretation) of the [Day Care of Children \(Jersey\) Law 2002](#), for sub-paragraph (c) of the definition “day care accommodation” there is substituted –

- “(c) a place which, in respect of those children, is operating as –
  - (i) a school, hospital or nursing home,
  - (ii) a home consisting of a care home service within the meaning of paragraph 4 of Schedule 1 to the [Regulation of Care \(Jersey\) Law 2014](#) (the “2014 Law”), or
  - (iii) a home consisting of a children’s home service, child contact centre service or residential family centre

service within the meanings given to those expressions in Part 3 of Schedule 1 to the 2014 Law.”.

**6 [Rehabilitation of Offenders \(Exceptions\) \(Jersey\) Regulations 2002](#)**

For Regulation 17(1)(a)(iv) (work with children) of the [Rehabilitation of Offenders \(Exceptions\) \(Jersey\) Regulations 2002](#) there is substituted –

- “(iv) a home consisting of a care home service within the meaning of paragraph 4 of Schedule 1 to the [Regulation of Care \(Jersey\) Law 2014](#) (the “2014 Law”) which provides services to children as well as individuals who have attained the age of 18,
- (v) a home care service within the meaning of paragraph 5 of Schedule 1 to the 2014 Law which provides services to children as well as individuals who have attained the age of 18, or
- (vi) to the extent not already covered by clauses (i) to (v), any service regulated under Part 3 of Schedule 1 to the 2014 Law;”.

**7 [Children \(Secure Accommodation\) \(Jersey\) Order 2005](#)**

In Article 7(1)(b) and (3) (children to whom Article 22 of the Law shall apply and have effect subject to modifications) of the [Children \(Secure Accommodation\) \(Jersey\) Order 2005](#), in each place, for “a care home service within the meaning of paragraph 1(2)” there is substituted “a care home service within the meaning of paragraph 4 or a children’s home service within the meaning of paragraph 7”.

**8 [Restriction on Smoking \(Workplaces\) \(Jersey\) Regulations 2006](#)**

In Regulation 5(3)(c) (smoking in certain workplaces) of the [Restriction on Smoking \(Workplaces\) \(Jersey\) Regulations 2006](#), for “paragraph 1(2)” there is substituted “paragraph 4”.

**9 [Goods and Services Tax \(Jersey\) Law 2007](#)**

In Schedule 5 (exempt supplies) to the [Goods and Services Tax \(Jersey\) Law 2007](#), in paragraph 4(1)(e) (group 4 – medical and paramedical supplies) for “paragraph 1, 2 or 3” there is substituted “paragraph 3, 4, 5, 7, 13, 14 or 15”.

**10 [Social Security \(Television Licence Benefit\) \(Jersey\) Regulations 2009](#)**

In Regulation 1 (interpretation) of the [Social Security \(Television Licence Benefit\) \(Jersey\) Regulations 2009](#), for the definition “domestic premises” there is substituted –

““domestic premises” means a dwelling used for residential accommodation that is not part of –

- (a) a nursing home within the meaning of Article 1A of the [Nursing Homes \(Jersey\) Law 1994](#); or
- (b) a home consisting of –
  - (i) a care home service within the meaning of paragraph 4 of Schedule 1 to the [Regulation of Care \(Jersey\) Law 2014](#) (the “2014 Law”), or
  - (ii) a children’s home service or residential family centre service within the meaning given to each of those expressions in Part 3 of Schedule 1 to the 2014 Law;”.

#### **11 [Control of Housing and Work \(Jersey\) Law 2012](#)**

In Article 1(2) (interpretation) of the [Control of Housing and Work \(Jersey\) Law 2012](#) for “within the meaning of paragraph 1(2) of Schedule 1 to the [Regulation of Care \(Jersey\) Law 2014](#)” there is substituted “within the meaning of paragraph 4 of Schedule 1 to the [Regulation of Care \(Jersey\) Law 2014](#) (the “2014 Law”), or a children’s home service or residential family centre service within the meaning given to each of those expressions in Part 3 of Schedule 1 to the 2014 Law.”.

#### **12 [Fire Precautions \(Designated Premises\) \(Jersey\) Regulations 2012](#)**

In Regulation 1(1) (interpretation) of the [Fire Precautions \(Designated Premises\) \(Jersey\) Regulations 2012](#), for sub-paragraph (a) of the definition “care or nursing home” there is substituted –

- “(a) a home consisting of –
  - (i) a care home service within the meaning of paragraph 4 of Schedule 1 to the [Regulation of Care \(Jersey\) Law 2014](#) (the “2014 Law”), or
  - (ii) a children’s home service or residential family centre service within the meaning given to each of those expressions in Part 3 of Schedule 1 to the 2014 Law; or”.

#### **13 [Long-Term Care \(Jersey\) Law 2012](#)**

In Article 1 (interpretation) of the [Long-Term Care \(Jersey\) Law 2012](#), in the definition “home care service” for “paragraph 2(2)” there is substituted “paragraph 5”.

#### **14 [Long-Term Care \(General Provisions\) \(Jersey\) Order 2014](#)**

In Article 13(1) (approved care homes) of the [Long-Term Care \(General Provisions\) \(Jersey\) Order 2014](#) for “paragraph 1(2)” there is substituted “paragraph 4”.

#### **15 [Sexual Offences \(Jersey\) Law 2018](#)**

In the [Sexual Offences \(Jersey\) Law 2018](#) –

- (a) in Article 19(2)(b) (positions of trust) after clause (iv) there is inserted –
- “(v) where a child contact centre service, within the meaning of paragraph 11 of Schedule 1 to the Regulation of Care Law, is being provided,
  - (vi) where a residential family centre service, within the meaning of paragraph 12 of Schedule 1 to the Regulation of Care Law, is being provided, or
  - (vii) where a children and young people’s mental health service, within the meaning of paragraph 13 of Schedule 1 to the Regulation of Care Law, is being provided.”;
- (b) in Article 20(2) (interpretation and amendment of Article 19) –
- (i) for sub-paragraph (b) of the definition “children’s home”, there is substituted –
- “(b) a home consisting of a care home service, within the meaning of paragraph 4 of Schedule 1 to the Regulation of Care Law, which provides services to children as well as adults; or
  - (c) a home consisting of a children’s home service within the meaning of paragraph 7 of Schedule 1 to the Regulation of Care Law;”;
- (ii) after the definition “nursing home” there is inserted –
- “ “Regulation of Care Law” means the [Regulation of Care \(Jersey\) Law 2014](#);”.