

# **STATES OF JERSEY**

## **OFFICIAL REPORT**

**WEDNESDAY, 25th NOVEMBER 2020**

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[9:31]

**The Roll was called and the Dean led the Assembly in Prayer.**

**PUBLIC BUSINESS - resumption**

**1. Draft COVID-19 (Regulation of Care – Standards and Requirements) (Jersey) Regulations 202- (P.160/2020)**

**The Bailiff:**

The final item of Public Business before the Assembly is the Draft COVID-19 (Regulation of Care – Standards and Requirements) (Jersey) Regulations lodged by the Minister for the Environment, P.160. The main respondent for the purposes of the debate is the chair of the Health and Social Security Scrutiny Panel and I ask the Greffier to read the citation.

**The Deputy Greffier of the States:**

Draft COVID-19 (Regulation of Care – Standards and Requirements) (Jersey) Regulations 202-. The States make these regulations under Article 2 of the COVID-19 (Enabling Provisions) (Jersey) Law 2020.

**1.1 Deputy J.H. Young of St. Brelade (The Minister for the Environment):**

It is my duty today as the Minister newly responsible for the regulation of care sector, which is carried out by the fully Independent Jersey Care Commission, changes to the regulations as part of our COVID response. I would like to thank Members for agreeing to take this today in this continuation of a special sitting. I know that Members will be very familiar with the Independent Care Commission's work. They started out in 2018 and of course from their website they are extremely open and there is a huge amount of information there, which I recommend to Members, which will help give a lot more explanatory detail on the issues, I think, we are going to discuss today. Members will have also seen a briefing note, which the Scrutiny Panel and myself requested from the Jersey Care Commission chief inspector, which has been sent round on Monday. I am sure if Members do not have that, that link can be put in, in some way, today. The regulations, the amendment is being brought today because with the increase in infection in COVID in the Island I have had it brought to my attention by the care sector and the Commission, through our officers, that there is now a risk that some care providers will become short-staffed. Obviously that is something which is very important in the standards, which the Commission apply the minimum standards and their part of the regulation. Why am I bringing this amendment today? Of course we know the differences this time, compared with March, is there is a programme of mass testing in place. Especially across the care sector, which is vital to keep vulnerable Islanders and their care homes as safe as is possible from infection. Inevitably, some care workers will test positive for COVID-19 because of the very large numbers of workers being tested and, of course, the increase in its spread as well in our community. If a care worker does test positive for COVID they of course will not be able to return to work for at least 14 days. They have to self-isolate. Of course that also means that a number of co-workers in the same organisation may then also be required to self-isolate for 14 days if they have been in close contact with a colleague who has tested positive. One can see in the event of this happening a care home could easily face the loss of a significant proportion of their key people literally overnight. It is difficult to model just how many care workers are likely to be unable to work during the coming months while the infection is high. Obviously all of us hope that we can keep it under control and the measures we brought in yesterday will help us do that. But it is difficult to predict. Of course what do care homes normally do in normal circumstances when there is a staff shortfall? They are able to, and they do, recruit qualified care workers from care agencies in the U.K. (United Kingdom), which of course we now know all of these frictions together, the U.K. and Jersey and the reduction in flights makes this virtually impossible. Of course the other thing is redeployment between homes is also very challenging because obviously what the Care Commission has to do, and public health

policy has sought to do, is to actively discourage care workers moving or working in multiple care homes for fear of unintentionally spreading any risk of infection. We are in a situation potentially, and I am not hearing information that it is now, but nonetheless that possibility is very much with us. In the absence of the changes proposed in these amendments, what would happen is that the care providers, these are the registered persons under the regulations and there are quite a large number of them, would in the absence not be able to comply with the conditions which are set in the standard conditions ... not standard, they apply individually, there are very careful formulas there, depending on the nature of the care, the size of the home, the number of specialisms required. But those conditions are a vital part of their registration. So the law is very clear. If that were to happen those providers would find themselves in contravention of the law and they would then be faced with some very bad choices. If they could not remedy the situation then that could result in closing services. I am not a lawyer but I looked at the law yesterday. There are very substantial fines, up to £50,000 in this matter, so it is not a minor ... it is there for a purpose, that it is really important. What is proposed? If the regulations today are approved it will enable those care providers for a very temporary period to use lesser qualified staff to perform certain functions; if the provider is short-staffed, if that happens. I mean failing in the numbers that are required of them. Of course the Care Commission absolutely keep a close eye on this and, as one can see if you read the website, all of the reports are there on their inspections in great detail. They are completely open about that. They must be satisfied that it is reasonable and proportionate to allow care providers to employ those staff with lesser qualifications.

[9:45]

That would only be done on a case-by-case basis where we have professionals working in the Jersey Care Commission, who are based here. We also have a board setting policy of top experts as well to guide that. Of course that is a big challenge. Obviously Members will recall, it was not me, it was my Assistant, Deputy Guida, had the difficult task of bringing forward regulations under P.26, which were repealed. But it is not the same debate because the proposition today is not the same, not identical, there are major changes, which I will cover that in a moment. They were brought in and what I am advised is that those regulations were in place by March and September, and the notifications that took place, there were 3 providers that did that. That situation did occur; 3 providers. I think there are about 45, something like that, of care homes. There are a lot more domiciliary and other parts of it. Three providers had to invoke that provision. I am also advised that all 3 were able to recover between 7 and 10 days. I have asked how they managed to do that and of course what I was reminded, because I did meet with the chief inspector of the Commission virtually and the Minister for Health and Social Services. We had a discussion about that. What I was advised is that during the March period when the pandemic broke out, Health were able to recruit and train a number of people who were able to step into those breaches. We should thank all Islanders for responding to that so well. The Minister and I had a recent discussion about that and, at the moment, what the condition of that pool is but the Minister for Health and Social Services has agreed to see what can be done. In case anybody worries that there is a money restriction, the Minister has told me no, there is not. Whatever is necessary will be done. Those regulations, they were not used very much, thankfully, and the situation was managed but they were repealed at the end of September. Having learnt those lessons, the advice given to me and the drafting work that has been done by the officers on the advice of all of the Care Commission, I know there are a number of changes between what was proposed before and what we were doing now. First, the arrangements on the table here, no services that provide care to persons under 18 years of age can rely on this regulation. That means that children's homes must continue to operate inside their usual regulatory conditions and must always have a sufficient number of appropriately qualified staff regardless of what is the impact of COVID-19. The second change is that where we have adult care services they must apply to the Care Commission to vary the conditions of their service on a monthly basis. In other words, previously this means that the Commission must see and verify evidence that the service cannot comply on a

month-by-month basis. Under the previous proposal that period was 3 months. As you can see, that has not been necessary but the monthly variation is what is proposed with very strong policing by the Jersey Care Commission, which has clearly taken place before. The other thing, which is not proposed, as was done before, in March there was a worry that the United Kingdom Disclosure and Barring Service, this is the body that does the checks on people providing those special roles would be overwhelmed with applications for criminal record checks because of the number of new health and social care staff that were being taken on. Those provisions, at that time, would have allowed care providers to employ staff before they obtain the enhanced criminal background check. But what has happened is that those fears were unwarranted. The Disclosure and Barring Service system proved absolutely robust and therefore there is no necessity to do that. It would not be proportionate to do it and it has therefore been removed from the regulation. The other thing is that the draft regulations do not allow the Care Commission to cease its programme of annual inspections. That must continue. One can see why that is strictly important. It is even more important clearly when care homes face that risk. Incidentally, I am told - I am not an expert, I am sure the Minister for Health and Social Services will tell us about this - that there is a very, very wide shortage of care staff. Care staff are very valuable and very important and not easy to recruit. There are big challenges there, and this is why these regulations are sadly necessary. The regulations, if the Members approve them, would only last until 30th April next year. There is an additional element, is that there is a new duty on the Care Commission to report any serious concerns about those staffing levels immediately 2 ways. Both to myself as a Minister but also, I think more importantly, to the Minister for Health and Social Services, and I am delighted that it is in because obviously I do not have operational responsibility but, in my conversations with the Minister for Health and Social Services, I believe that that provision would enable not only us to monitor those staffing levels in the care sector more closely but to deploy net resources where necessary if that situation occurred. I think that is a really valuable provision. During my conversations with the Scrutiny Panel, and I thank them for assisting us with the briefing, which was organised at short notice - thank you - that a couple of questions came up. I think I have already dealt with one: how many times were the regulations used before? Three providers and the period was 7 to 10 days, therefore one month is the most. What about the impact on visitors to the care home? What I am advised is that the issues about the policy, apart from obviously the health advice, which is issued, but the Commission does look at the arrangements for avoiding the spread of infection. Those variations are going to be different and also if there are complaints and issues to be looked at where things are not right, the Care Commission will take that on. I think that is enough for me to start with. I will do my best to answer Members questions. I propose the amendment to the regulations in principle.

**The Bailiff:**

Before I ask them to be seconded there is a point of clarification that is sought from Deputy Ward.

**Deputy R.J. Ward of St. Helier:**

I was going to ask for clarification on what the Minister means by “lesser qualified”. I was going to ask whether “lesser qualified” means that they will still have a police check. He does seem to have answered that but forgive me if it is a clarification he has already made. But I think the level of clarity around these regulations is so important. It is just what is meant by “lesser qualified”? Do you want me to ask a question of the A.G. (Attorney General) now that I had?

**The Bailiff:**

No, if we wait just a few seconds until we have had the proposition seconded, Deputy. Is the proposition seconded in principle? **[Seconded]**

**The Bailiff:**

You had a question for the Attorney General, Deputy Ward?

**Deputy R.J. Ward:**

It is about liability under these regulations. If the conditions that exist regards the Care Commission for these care homes and other places are no longer applicable what liability is there, should there be problems in the care home, and who is liable? Does it change the legal liability of these homes and these ... I was going to say the word "institution" but I do not mean that word, I just cannot find a better word this morning. The second one is it is clear that this is not applicable to any service for under-18s, including children's care homes. Just to confirm what regulations currently apply to children's care homes and whether there are any exceptions that still exist from the COVID regulations before to children's care homes. I know it is not about this but I think it is important because there is a link between the 2. I hope those questions are clear.

**The Bailiff:**

Mr. Attorney, do you wish time to consider those answers or do you wish to advise the Assembly immediately?

**Mr. M.H. Temple Q.C., H.M. Attorney General:**

In relation to the first question I can answer that immediately but in relation to the question concerning regulation of children's care homes, I would need some more time please.

**The Bailiff:**

Perhaps, Mr. Attorney, if you give all of the advice in one go then that might be a more efficient way of proceeding. Deputy Le Hegarat, you had presumably a point of order of some form?

**Deputy M.R. Le Hegarat of St. Helier:**

I just wanted to clarify a point of order from yourself in that the main respondent was the Health panel but it was not the Health panel that received the briefing but the Environment panel. I just wanted to check whether that was correct.

**The Bailiff:**

Clearly the Environment, Housing and Infrastructure Scrutiny Panel is the panel that would deal with the scrutiny. The advice I have received, Deputy, is that the Health and Social Security Scrutiny Panel was put forward by Scrutiny as the correct responder but I am perfectly happy, in the light of what you say, to also declare that the Environment, Housing and Infrastructure Scrutiny Panel is a main responder as well - we can have more than one - and all that does mean that there is no limit on the speech of the chair of that panel when they are responding.

**Deputy M.R. Le Hegarat:**

Thank you, Sir. I just wanted to ensure that if the Environment panel had obviously made a speech in relation to this that they were not going to be restricted by the time.

**The Bailiff:**

No, that is absolutely fine. Thank you very much. Point of order, Deputy Tadier.

**Deputy M. Tadier of St. Brelade:**

Just while we are on the issue of main responders. Can you clarify that if a panel wishes to delegate a member of the panel that it does not have to necessarily be the chair who can be the main responder?

**The Bailiff:**

That is entirely correct. If someone stands up as the nominated delegate of the panel then they will be able to speak for the period that the panel can speak for. I now open the debate.

**1.1.1 Deputy G.P. Southern of St. Helier:**

That gives me, as a first point, to point out the anomaly that something which is clearly concerned about care in the community has landed on the desk of the Minister for Infrastructure and if he could explain how that has come about. Secondly, we have heard a lot about the regulations as they pertain to care homes.

[10:00]

We have heard nothing or little about domiciliary care in people's homes, so the question is: how are standards to be maintained in the domiciliary care sector? In particular, because nobody has yet taken responsibility for, who will be responsible for the ethical care charter and the standards it contains in order to make sure that the best possible service can be given to domiciliary help in people's homes? That ethical care charter has been passed by this House but has yet to be implemented in the last 2 years. I wondered if the Minister or the Minister for Health and Social Services would give an explanation about who is going to take responsibility for the delivery of the ethical care charter.

### **1.1.2 Connétable M.K. Jackson of St. Brelade:**

I speak in support of the draft regulations. While I have a degree of conflict as chairman of the Parish care home there is no doubt in my mind that these proposals have the effect of allowing the Minister to cut some slack in the event that the COVID situation worsens. There are always unintended consequences of things we do and it seems the very successful track and trace system has the potential to take out - if I can use that terminology - large numbers of staff at a stroke. I certainly hope that will not be the case but these regulations provide for that occurrence. The use of temporary care workers could prove to add a risk in a tightly controlled regime such as their care home, so I would suggest a careful eye needs to be kept on the testing of this sector and the timelines involved. Access to homes by the public and, in particular, relatives is always a challenging area which individual homes have to manage to avoid infection spread. I thank the Minister for the helpful presentation to the panel, as it is for us and him a new area. My experience dictates that proposals should be supported and, in concluding, I would express my gratitude for the useful comments from the Care Commission to assist Members.

### **1.1.3 Deputy M.R. Higgins of St. Helier:**

I have a number of questions that I would like the Minister to answer. Can he tell us whether there are a number of care home workers, working in more than one care home? In other words, going from one to another because that has been a cause of spread in the U.K., and if he can clarify the position on that. Secondly, whether there are arrangements for the hospital to discharge people who perhaps may have come into contact with people with COVID, which was another cause of the spread of the virus in care homes in the U.K. Thirdly, I would like the Minister to tell us the number of visits by the Jersey Care Commission because during the last session we allowed them to suspend their visits; is that intended this time? Looking at their website, it said that they carried out 24 inspections and yet we were just told there are 43 homes covered by the Commission. Have some of these homes never been inspected or how often have they been inspected? The final one is: if I remember correctly, he said that they were not going to be dealing with children's homes but again a look at the website shows that 5 of the 24 homes that were inspected were for children. Perhaps he can clarify that. Those inspections were between 29th June and 10th September. I would like reassurances in those areas.

### **The Bailiff:**

I am having some slight technical difficulty inasmuch as my system cancels on me from time to time and I am not necessarily picking up everything on the chat because it freezes before it cancels. Deputy Ward, I notice in the chat that you have asked when your point of clarification will be answered. I took it as questions to the Minister and I had assumed that there was going to be an answer but I am afraid I did not provide the Minister with the opportunity. I cannot allow the Minister

to have a second speech in the middle because he will be able to respond fully at the end, and I would have thought that that is when those points of clarification and indeed any other points will be answered.

#### **1.1.4 Deputy R.J. Ward:**

The point of clarification I raised was quite important so I will try and make my speech about the answer, which is quite difficult. I think it is very important that we understand what is meant by “lesser qualified”. If it means totally unqualified and the first time that people have gone into a care home, I think that is a very significant change and very difficult to accept. That really does need to be clarified. There are very vulnerable people who would need care, and I thank Deputy Southern for raising the point about domiciliary care. That is equally as important and it can be also very alone without regulation on that. We could be in a real problem here. I also completely understand the difficulty that the Minister faces in bringing these regulations. It is very difficult and I understand the idea that because of mass testing it could uncover infection, which means that isolation needs to happen. However, I will also say that there seems to be a slight inconsistency regards co-workers because if we had the testing process, and we recognise that if co-workers have to isolate for 14 days, it could mean that care homes go into a situation where they are no longer covered by regulation and do not have the staff. Surely what we need to do is direct our testing facility to those individuals as urgently as we can to try and confirm and give people the ability to be at work and know that they are not infected. I think there are ways around that with the testing that we have now, and I wonder whether the Minister could address that and see whether that has been considered. The exemption is one month. I assume this is a maximum exemption and it was mentioned by the Minister that the previous exemptions were only used between 5 and 7 days. I wonder whether the exemption should have been for a shorter time in order to give more reassurance. We must remember that the costs that people incur in care homes and then suddenly their standard of care will drop or could drop. Many people may have to sell their homes, many people are going through financial difficulty in order to pay for the care that their loved ones are receiving. I wonder whether that has been addressed as well. I am pleased to see that it excludes the care of under-18s but again I wait for the Attorney General’s answer as to what that applies to. I understand that the police checks will still apply, so there will not be anybody who are without a police check. That I think is linked to the lesser qualified staff. If you enter into care as a profession then you would be police-checked before you even start. If you are coming from a different discipline, such as hospitality, for example, and that was mooted before when we talked about this previously, you may not have those checks. I think it is really important that we do have those checks. Those were the points I wanted to raise, just my concerns over these parts of the regulation. I think I will leave it at that.

#### **1.1.5 Deputy M. Tadier:**

I am surprised that these are going through with so few people contributing. I have been very alarmed by some of the things that the Minister has said in presenting this. It seems to me that there is a potential here that we are throwing our elderly under the bus. I do not say that lightly. This is, to a certain extent, a personal matter for me. My mother is in care and I am not alone in this. But this has been a very difficult period for the elderly, in particular, but it is not exclusively the elderly. We know that there are younger people over 18 who are also reliant on high-level care in residential and care homes in Jersey, and it has been very difficult for the family. Part of the reason it is difficult is not just the physical distancing and the fact that we cannot pop in to see our parents and our loved ones as and when we would want to. It is also often the fact that you cannot explain to them why you are not coming in. I think time can seem, at the best of times, in a non-COVID period, very long anyway when you are not seeing people perhaps for days or a week at a time. Luckily most care homes and residencies are communities where there is a bit of coming and going. But that pretty much stops during COVID. I understand that there were lots of pressures in the job and there were lots of pressures for the Care Commission, but when I hear what are supposed to be reassuring

comments saying that the Care Commission would still be able to do their annual visits to care homes, I mean we need to ramp up inspections in care homes during COVID because normally we are the eyes and ears, the family, the friends that visit. We do it in an unobtrusive way but we are always listening, always watching to see what is right and what is not right and we can have that quiet word, 2-way interaction with the staff, to find out what is going on, often gleaning what is going on and reporting little things here and there if they need to be reported. But we cannot do that during COVID so I would say that we need to give the Care Commission the ability and they should be doing it, I would say, being able to drop in unannounced during COVID to make sure that everything is okay. That is not because I think there is any kind of mass neglect going on in Jersey, but for the peace of mind, and also because we know under pressure certain corners get cut. The message we are sending out today is we are saying it is under-18s who are going to be protected. There is an exemption for institutions that provide for under-18s. Why is that? Why have we put a carve out for under-18s? It is because we want to put children first as a Government, presumably. It is because we do not want to take any chances with our children and young people who are vulnerable. So we are not going to let them be looked after by unqualified or lesser qualified individuals. But it is okay for the elderly to be looked after by lesser underqualified people because it might provide an inconvenience. Of course we know that the testing scheme will flag up people who have got COVID, or potentially have got it, and cannot go to work. That happens across the board. The fundamental problem here is we do not have enough qualified carers in the Island to deal with our ageing population and that it is still an under-valued job because it is one of the most tiring, and I am sure rewarding in a lot of ways, jobs but it is one that tends to attract workers who are perhaps not paid as well as they should be. It is not an aspirational job that a lot of people in Jersey would want to do for the prestige and certainly not for the money but it is one that we should all value. Why is it that we do not have enough care workers to step into the breach? We would not accept it if it was in our schools and of course teachers, for example, can be subject to the same testing requirements. They can get a message too on their phone saying: "We have noticed you have been in contact with someone who has got COVID and we need you to isolate." We do not then say: "But let us introduce somebody with no teaching qualifications just to babysit your children for you because we are in a crisis."

[10:15]

My concern is that by doing this we are setting a precedent again saying: "What is the next pandemic going to be? What is the next crisis going to be?" Now it is a medical crisis but in the future it could be a recruitment crisis. When we are 30 or 50 years older or 10 years older and we are the ones who are required to be in care homes and we cannot walk and we cannot move, and we need other people to prepare our meals, maybe to feed us, maybe to bathe us, there will be another States Assembly saying: "Do not worry, we will just let anyone look after them but we are looking after the under-18s so that is okay." I am pretty disgusted that we are in this position today where we are in this position to pass this. It is done for the right reasons, sure, but it highlights that there is a more systemic problem here about getting qualified and a big enough number of qualified people. I think that may have provoked a response from Government, so I accept that I do not have all the answers and they will say that some of what I have said is unfair, but it is important to speak from the heart and highlight the issues as many people in the Island would see them.

#### **1.1.6 Deputy G.C. Guida of St. Lawrence:**

I thought it might be useful to remind people of what this actually is. This is a crisis regulation to alleviate worst problems. In this particular case, we are talking about the situation where a care home would not be generally deficient in staff but would not have enough staff to care for its people. What is the alternative? Either you put more people in, more staff, or you close the place. If you close the place down where are the people cared for going? Where do you send them? The hospital? Another care home which is also above capacity. So we are talking about in the remote possibility, but existing possibility given COVID, of a crisis. How do you deal with this? So, yes, of course there

is a chronic shortage of care helpers and we need to work on that and there are other problems. But this particular proposition is only in the worst-case scenario what do you do? Remember the alternative to having lesser qualified carers is to close the home altogether.

#### **1.1.7 Deputy D. Johnson of St. Mary:**

Like Deputy Tadier, I have cause to visit a care home from time to time and at the moment they are not allowing in visitors and they are not allowing residents to be taken out for an afternoon, as was previously the case, and I am sure for good reason. The point I am making is in some ways I wish this particular proposition had been debated yesterday prior to those regarding gatherings and the wearing of masks. I shall of course be supporting this particular proposition, and I appreciate the reasons it is being made, but I hope that the Minister will liaise with the Minister for Health and Social Services in press notices to establish and emphasise one of the reasons for the propositions passed yesterday was to influence public behaviour to allow the elderly, in particular, to live the best lives possible and that antisocial behaviour by some members of the public are in fact having an adverse effect on the elderly, and I wish and hope that that point is well made.

#### **The Bailiff:**

Does any other Member wish to speak on the principles? If no other Member wishes to speak on the principles then, Mr. Attorney General, are you in a position to advise the Assembly?

#### **The Attorney General:**

Yes, Sir. In relation to Deputy Ward's questions. His first question, I think, was in relation to what was the liability in the event that, as I understand it, the relaxation of the conditions of registration requirements, which are set out in Article 3 of the regulations, were to be suspended for a period of one month, which this amendment would allow in Article 3A of these amending regulations. My answer to that is that while, yes, any of the conditions of registration, which is set out in Article 3 of the 2018 regulations, would be relaxed during that period of one-month suspension so that the regulatory jurisdiction of the Care Commission would not have the teeth to enforce it during that one-month period of the relaxation or suspension of those conditions. I do not read that as suspending any civil law or private law rights of occupants against the provider of the care home. While the public law regulatory aspect would be suspended, private law or civil remedies against the provider of the care home would still be available. In relation to the second part of Deputy Ward's question, that concern, as I understand it, what are the regulatory requirements or provisions as regards children's homes and providers of children's homes. These amending regulations preserve or carve out children's homes from those regulatory requirements. The regulatory requirements, as regards children's homes, are set out in part 5 of the 2018 regulations. So all of those would remain in place. The examples of the sorts of actions that can be taken under part 5 is that, for example, there is an independent person who is required to visit children's homes at least once a month and that they can make unannounced visits and that they have a requirement to provide reports in relation to their visits and the activities of children's homes. As I see it, all of that would remain in place. I hope that answers the Deputy's 2 questions.

#### **1.1.8 Senator K.L. Moore:**

I really just speak following some of the excellent comments that have been made previously this morning by Members, which have given rise to a distinct sense of unease in my own mind, but also it has raised a number of questions that I would like to put to the Minister. I would be grateful if the Minister could address what alternatives have been sought to ensure that there is adequate safeguarding and oversight of care homes during this period, noting of course the obvious difficulties for them to continue as normal. But we do live in a digital world and we have excellent ability to access not only the premises themselves remotely but also to offer staff any opportunities to feed back and raise concerns with care commissioners over their time. If he could address that I would

be grateful. Also it would be helpful to understand what work Government is doing at the moment to offer training to those people who have found themselves unemployed during this time and particularly with regards to encouraging them to skill themselves and look for roles in the care sector.

**The Bailiff:**

Do you have a question for the Attorney General, Deputy Tadier?

**Deputy M. Tadier:**

I was going to ask in the same way that he explained about the Care Commission being able to visit or rather the appropriate body being able to visit children's homes once a month and doing an unannounced visit. Is that also the case for elderly care homes and other care homes?

**The Bailiff:**

Are you able to assist with that, Mr. Attorney?

**The Attorney General:**

If I could have a moment to check that please, Sir.

**The Bailiff:**

I do not know if anyone else wishes to speak on the principles. Yes, it is all right, we have at least one other person wishing to speak.

**1.1.9 Deputy J.M. Maçon of St. Saviour:**

It is to respond to the question from Senator Moore. Just to let her know, speaking with my Social Security hat, which has now gone; under the Back to Work team they had already been putting on classes to train people into the care sector so that work has already been going on. If anyone is interested in that particular area please contact either the Back to Work team or the Skills Jersey team and we can help and assist them in that. But I just want to assure Members that we have been working through the Skills Jersey team with this care sector about raising the profile of skills and opportunities in this sector going forward. We are developing a strategy in that area as well because we do see it as a key area of the workforce that is needed by the Island. I hope that brings some clarity to that matter.

**1.1.10 Deputy R.J. Renouf of St. Ouen:**

I just wanted to explain to Members some of the actions that have taken place since COVID came to us in March. In H.C.S. (Health and Community Services) we were able to co-ordinate with care homes and care providers and, at the height of the emergency, we were able to redeploy staff across the sector to ensure that as far as possible any emerging problems were handled. That was done as a result of co-operation with everybody concerned because Government does not have a large degree of control over the independent care homes. H.C.S. itself operates one care home at Sandybrook but otherwise others are run by Parishes or are independent. But it is clear that everybody is willing to co-operate in this and co-ordinate efforts and redeploy staff across the sector where that might be needed. There are challenges in that of course. The same situation in domiciliary care, and I have seen good instances of our social services co-ordinating with domiciliary care providers where, for any reason, one provider was unable to continue temporarily with the service that was being provided to somebody in their home. Social Services are notified and every effort is made to continue that care. There is not a compulsion around it. It requires a lot of logistical exercise but it has worked and, as Deputy Guida has said, this has been put in place because we need to ensure that we do not fall back on the alternative, which is simply to cease the provision and where do those people go?

[10:30]

The system is responding, and I note that the Care Commission has said that the regulations coming forward are an appropriate measure to allow that flexibility that we have already demonstrated. I do hope that it will receive the support of the Assembly.

**The Bailiff:**

Does any other Member wish to speak on the principles? Mr. Attorney, are you able to give the further advice that had been requested of you?

**The Attorney General:**

The powers of inspectors to visit elderly care homes or adult care homes are not set out in the 2018 regulations but they are, rather, in the law itself. There are not express powers or duties to conduct monthly visits to adult care homes, and I do not see an express power to conduct an unannounced visit, unlike with children's homes. But the powers to carry out inspections are still there and I do not see that they are proposed to be suspended by this amendment to the regulations.

**The Bailiff:**

Thank you very much, Mr. Attorney. If no other Member wishes to speak on the principles, then I close the debate and call upon the Minister to respond.

**1.1.11 Deputy J.H. Young:**

I would like to thank all Members who have spoken because I think all Members' hearts are absolutely clear. We have to find ways of coping with the current problems but not by compromising standards for those who are in greatest need. Now, I will try to answer questions. It is going to take me a while, if Members will forgive me, because I kept notes as we went through. I have also had the ability to talk to the chief inspector of the Care Commission on a number of issues that Members have raised in what I think is a wider debate, but I will do my best. Firstly, Deputy Southern asked how it was that the Scrutiny arrangement came about. Well, there I think we are in a situation where obviously this whole regulation of care crosses boundaries. The work was originally commenced in 2014 under the Chief Minister's team. That was advanced to the point whereby the regulations were created in 2018 and the Commission was put in place and appointed I think through the States with the Appointments Commission. So that was the process and, as I said, 2019 was their first full year of operation. Obviously, I was not party to the previous discussions of Scrutiny, but as soon as the issue came up I did ask that both Scrutiny Panels were notified and the meeting that took place ... we had the Environment Scrutiny Panel members, not all but I am grateful, and you have heard from the chairman. Obviously, there were invitations to other Members but the timescale has been extremely short. On the question of domiciliary, nothing has been said about domiciliary. I do agree that the main focus of what I said was, in fact, the care homes but, of course, there are 28 or 29 individual companies in Jersey who are providing home care. Generally speaking, they provide an individual or individuals in people's homes. Of course, what I have been told is that the regulations for domiciliary care or home care, we have a much more robust regulation than in the U.K. So, all home carers are required to register and be regulated and, of course, I am sure Members will have looked at the Jersey Care Commission's very, very rich website. You will see for each area of care there is a published standard which is extremely detailed, covering the requirements of people, the training they have to have, and the qualifications and their practices, into the most nth degree of detail. So, the regulation system seeks to have checks in place to make sure those things are complied with. There is absolutely no intention that you would have unregulated, unregistered care going on. Deputy Southern raises this issue, which he has told me about, he gave me notice of it, this ethical care charter. I cannot at the moment, because it is not my area of knowledge, give a full answer but I will undertake to the Deputy to discuss that with the Care Commission and come back with a report published, *et cetera*, responding to that. Moving to the Constable of St. Brelade, I am very grateful for his support for this because obviously, as one of our Parishes running care homes and providing

a fantastic service, he has told me that at times there have been situations where he has had to take on an input into the running of the home which is more than would normally be. I think that is something which everybody tries to do. Although we create these government structures and we put things in boxes, this Minister is responsible for that, this is regulation, we have to have it ... when the chips are down and there are problems, what does Jersey do as a community? People come on board and help each other and provide care. I see there is a request for confirmation. I wonder, Sir, would you like me to stop at that point and see if there is a request for clarification or shall I continue and do that at the end?

**The Bailiff:**

Well, as you have already made note of the fact ... normally, I would leave you to speak until the end, but as you have already taken a pause to note it, Minister, would you give way for a point of clarification?

**Deputy J.H. Young:**

Yes, I will, Sir, yes.

**Deputy G.P. Southern:**

The point of clarification: I thank the Minister for his assurances that he will investigate the application of the ethical care charter to domiciliary care, but can he put a timeline on that, please? When might he get back to me?

**The Bailiff:**

So the point of clarification is, in fact, you are asking the Minister to clarify when he might revert to you on that particular aspect. Are you able to give that clarification, Minister?

**Deputy J.H. Young:**

No, Sir, I cannot put the timeline until I have had that discussion with the Care Commission, which I will do. But I undertake to come back most certainly to the Deputy and to the whole Assembly through an email if you wish to give them the timeline proposed, but the Deputy has raised that point previously. I think it is a wider issue that I think requires a separate response outside, beyond the regulations, but I undertake to do as I have said.

**The Bailiff:**

Thank you very much indeed. If you would like to continue, then, with your speech, Minister.

**Deputy J.H. Young:**

Now, Deputy Higgins, he asked about the number of care workers that are going from home to home, and I have asked the chief inspector about that. She has told me that they have taken the view on absolute directions from Health that that should not take place. The reason is for prevention of infection. What they also said to me is that as part of their inspection remit, they have taken on the role. Their inspections include, and the work they do includes, the critical thing of infection control regimes within those homes. So that was the answer I have been given about workers going from one care home to another. Obviously, the Care Commission are going to have to take on board the instructions and the directions they are given from the Health team, presumably the acting M.O.H. (Medical Officer of Health) and colleagues. I cannot answer at the moment the arrangements for transfer from hospital. I am sorry, again I am going to have to come back on that one to have discussions with the Minister for Health and Social Services. Deputy Higgins spoke about the fact that I had mentioned, I cannot remember, 24 inspections and a number of infections. I am sorry, I just need to refer to another paper. Now, what I am advised is that as at 24th November the Commission has undertaken inspection visits to 40 registered care homes, 7 care homes for children and young people, 8 care homes it says here carried on by the Government of Jersey. I suspect in

view of what the Minister said that a number of those are Parishes. There are another 15 inspections of care homes to be undertaken before the end of 2020 and 8 care homes have been deferred until early in 2021. Other Members asked about the arrangements for those visits and I would like to cover those when I get to those Members, if I may, please. Then I think Deputy Ward did make a good point about shall we have a shorter time in the regulations. I think this is a question of judgment and balance. Obviously, everybody is pleased that despite the fact that we gave 3 months it was not necessary to use that and that the period was 7 to 10 days. Here we are talking about one month and you have heard from the Minister for Health and Social Services - and I am grateful for what he said because we have discussed this - that the sectors do try and help each other and will. I think with that willingness, whether we like it or not we are in a crisis and we have to respond flexibly. Now, Deputy Ward did ask a really important question: what is meant by lesser standards? If I used the word "lesser" I think that was a mistake and I want to correct it, because that probably implies a lower ... probably lack of my familiarisation with the operation of this sector was responsible for that. What I have asked is what happens in this situation, and again the chief inspector has told me first of all we are talking about nursing staff and senior care staff. If one looks at appendix 5 in the standards published on the Commission about minimum staffing requirements, you can see there how complex it is because it is all about the ratios of nursing and senior care staff, day time and at night time, according to whether or not there are persons with dementia, persons with high levels of personal needs and where there are special arrangements where you have more than one support worker. So it is very complex. There is an arrangement there about the number of hours, and generally speaking, that is one way in which cover can be dealt with by people within those roles working longer hours than they would under the normal published standards. The other one is the skill mix obviously of those people, because they all have qualifications and that skill mix would need to be adapted and changed. By using the word "lesser" I think that was the wrong word to use. There are also requirements to have dedicated members of staff for co-ordinating social and leisure and so on. It is a very complex thing. Of course, every situation on that is dealt with on a case by case basis. Deputy Tadier asked about inspections. There I have asked and I have been told yes, they do have the right to do spot checks and it is known they can.

[10:45]

But what they generally find is that they get more out of a visit if they give notice because what it means is the key staff are there. All of the information they want, for example, under infection control, they get more from it. I am told that a visit can last anything from 2 hours to a full day and we have not just the chief inspector but we have 5 regulators who are all based at Hill Street. They are very much in close contact with the care providers. From what I have been told, if the impression is that somehow this is a box-ticking exercise, it is certainly not, from what I have been told.

**The Bailiff:**

Sorry, I want to interrupt you, if I may. A number of points of clarification have been posed and it might be convenient, I think, for you to take them now before you move on to any other topic.

**Deputy J.H. Young:**

Yes, Sir. Sorry, I was looking at my notes and I should have been looking at my screen to see.

**The Bailiff:**

No, there is no reason why you should. That is my job when the screen works. But the first point of clarification comes from Deputy Higgins.

**Deputy M.R. Higgins:**

There are really 2 points I would like clarified. One, the Minister has mentioned about the number of visits they have done and what they are planning on doing. It is a suspicion of mine, and perhaps he can dispel it, that the Care Commission since they were formed have not yet visited all the homes

for which they are responsible. That is one point: can he clarify whether they have? Secondly, how has this prohibition on staff working in more than one home been put out? Have they sent out messages to all homes and told them or is it just when they go round on the visits, saying it is not something you should be doing? I would like the Minister to clarify that, please.

**The Bailiff:**

Minister, can you clarify those 2 points?

**Deputy J.H. Young:**

I think I would need to be the chief inspector, but they are good questions. I would need to have that operational knowledge, but I will undertake again ... all I would say is here we are at the back end of 2020. The Commission has been live a full year since 2019. There is the annual report on the website. All of the homes they have visited, all their reports are there on the website. I have not had the opportunity to check them to see whether they have been checked. I cannot believe that that has not happened. But I will undertake to get specific confirmation and make that known. I will do that. One possibility is I think clearly the Care Commission will need to do a special report, I think, a further report on their activities. They would do one at the end of 2020 anyway, but I think we are going to have to provide an interim one. So, on the second question, I am sorry, I do not know where that has come about. I am not a member of the Health team but it seems to be sensible that this question of cross-infection is dealt with. So, I have to accept what the inspector said to me. This is a direction that has come from the Health team and they, therefore, see that as an essential point of their infection control checks. I happen to know, for example, as well, I certainly have knowledge that staff at at least one home that I know of are not allowed to do work in people's homes. They have to spend all their time in the care home. So that clearly is in place. That is as far as I can go on Deputy Higgins' point, I am afraid.

**The Bailiff:**

Then, Deputy Tadier, did you have a point of clarification?

**Deputy M. Tadier:**

Yes, the point of clarification is: can the Minister confirm, he said that they have the power to do unannounced visits, but can he confirm whether they have ever done an unannounced visit?

**Deputy J.H. Young:**

I cannot, but I have been told the questions that arose ... do they speak to the staff? Absolutely, yes, that is the whole point of giving notice so the staff are there. Again, if you read the report you will see that the conversations with staff and their concerns are reported in the published reports of the Commission. I have seen that on an individual basis.

**Deputy M. Tadier:**

But is the Minister saying that he does not see the value of unannounced visits? I know this is not question time but ...

**Deputy J.H. Young:**

No, not at all. What I am saying is you asked me now, this minute, can I confirm that they have never done one or not; I cannot, but I will undertake to get that specific information for the Deputy. I see the value and I can see the point. It seems to me there will be circumstances when a visit unannounced is the best way of dealing with it if there are problems and complaints, for example, or the alternative is an organised visit for a particular purpose. You get more out of it. There is a choice and my expectation would be the chief inspector and the team would make that decision on a case-by-case basis as necessary.

**Deputy M. Tadier:**

The Minister has not fully answered the point that I wanted. Does the Minister accept that you do an unannounced visit not in reaction to a complaint but to find out how the place is run when they do not know you are coming?

**The Bailiff:**

I think we are straying out of the strict point of clarification. I will give the Minister the opportunity to answer that point, Deputy, but it does have to be a proper point of clarification.

**Deputy J.H. Young:**

I think I have illustrated the choice. Both types of visits are necessary and they will be used on the appropriate occasions. Again, I will come back to what their current policy is and when they will do both types of visits.

**The Bailiff:**

The final point of clarification I think is Deputy Ward.

**Deputy R.J. Ward:**

I thank the Minister for trying to answer the clarification I asked and in addressing the issue of the word “lesser”, and I understand the wrong use of the word. I used the word “institution” when I did not mean to in my speech, so I do understand that. I just want a clarification on one thing regarding that. I am now understanding that you are really referring to less staff doing more hours, or could it be that healthcare assistants, for example, who are just starting and may be as yet unqualified are being given more duties that they would not normally have? I think we really need to understand this lesser qualified staff, even though it is the wrong word, to have clarity before we vote. Can I just push a little bit more on that, please? I am not trying to catch the Minister out, it is genuinely for clarity.

**Deputy J.H. Young:**

I cannot guarantee it but my reading of the minimum staffing requirements, particularly in care homes, is there are very specific provisions, as I said, that are related to the level of qualification for the particular type of people within that care unit, for people who need that personal care, dementia, people with brain injury and physical disabilities and mental health needs. I cannot see a situation where you are not going to find a way where that care is taking place where a person in that sort of key role is not there. So, I would be concerned if cover is not obtained, and certainly when I met with the Minister for Health and Social Services, he gave me assurances that if these situations potentially did occur he would do his best within the resources available to him, which is I think probably thousands of staff, to find ways of avoiding that situation. I am sure all concerned would want to avoid it. Can I guarantee that it will never happen? No, I cannot, but I will agree to take that forward again with the Minister for Health and Social Services as to what steps can be taken to make sure it does not, where we get that shortfall of key skills in the most important positions.

**The Bailiff:**

Thank you very much. Do you wish to continue with your speech, Minister?

**Deputy J.H. Young:**

I am trying to make sure I deal with Members’ concerns. Why is it that we do not have enough care workers? Well, the points that Deputy Tadier raises are right. We have undervalued care workers as a society and they have been treated as low skilled. It is absolutely not the case. This whole issue shows that. They are poorly paid and that is something which society has to take on board. I am very pleased with Deputy Maçon saying about the training and commitment and education because

we can see here we have a situation where we cannot rely on agency staff coming in from the U.K. Now, Senator Moore, the alternative. I think I spoke about the alternative. I think there are 2 that I have been told about: the extra hours of current staff, changing the skill mix of staff, and indeed reliance upon the healthcare team from Health to be able to fill gaps, if it is that there are no people that can be brought in through agency routes. Do staff offer feedback concerns to the inspector? Absolutely, yes. I think there is plenty of evidence of that when one looks at the published inspection reports. That is absolutely part and parcel of that. Unannounced visits, I think we have dealt with that. I am afraid, because I was taking a call from the chief inspector, I missed Deputy Johnson raising a point. I apologise to him. If I have not covered him, maybe he might want to seek clarification if I missed it. I am not seeing anything. Okay, with that, I think I will ask for the principles of the regulations to be put to *appel*, please.

### **The Bailiff:**

Thank you very much, Minister. I ask the Greffier to put a link into the chat. I open the voting and ask Members to vote in the normal way. If Members have had the opportunity of casting their votes, I ask the Greffier to close the voting. The principles have been adopted:

<b>POUR: 40</b>	<b>CONTRE: 6</b>	<b>ABSTAIN: 0</b>
Senator L.J. Farnham	Senator I.J. Gorst	
Senator S.C. Ferguson	Senator S.Y. Mézec	
Senator J.A.N. Le Fondré	Deputy M. Tadier (B)	
Senator T.A. Vallois	Deputy J.H. Perchard (S)	
Senator K.L. Moore	Deputy R.J. Ward (H)	
Senator S.W. Pallett	Deputy C.S. Alves (H)	
Connétable of St. Helier		
Connétable of St. Clement		
Connétable of St. Brelade		
Connétable of Grouville		
Connétable of St. John		
Connétable of Trinity		
Connétable of St. Peter		
Connétable of St. Mary		
Connétable of St. Ouen		
Connétable of St. Martin		
Deputy J.A. Martin (H)		
Deputy G.P. Southern (H)		
Deputy of Grouville		
Deputy K.C. Lewis (S)		
Deputy M.R. Higgins (H)		
Deputy J.M. Maçon (S)		
Deputy S.J. Pinel (C)		
Deputy of St. Martin		
Deputy of St. Ouen		
Deputy L.M.C. Doublet (S)		
Deputy R. Labey (H)		
Deputy S.M. Wickenden (H)		
Deputy of St. Mary		
Deputy G.J. Truscott (B)		
Deputy J.H. Young (B)		
Deputy L.B.E. Ash (C)		
Deputy K.F. Morel (L)		
Deputy G.C.U. Guida (L)		
Deputy of St. Peter		

Deputy of St. John			
Deputy M.R. Le Hegarat (H)			
Deputy S.M. Ahier (H)			
Deputy K.G. Pamplin (S)			
Deputy I. Gardiner (H)			

**The Deputy Greffier of the States:**

Those voting *contre*: Deputies Perchard and Ward, Senator Mézec, Deputy Tadier, Senator Gorst and Deputy Alves.

**The Bailiff:**

Connétable of St. Brelade, does your panel wish to call this matter in?

**The Connétable of St. Brelade (Chair, Environment, Housing and Infrastructure Scrutiny Panel):**

No, thank you, we were satisfied with the presentation given by the Minister.

**The Bailiff:**

Thank you very much indeed. Minister, how do you wish to deal with the matter in Second Reading?

**1.2 Deputy J.H. Young:**

I am going to ask for the regulations to be *en bloc* but I think I would like to say a few words about the regulations first, please.

**The Bailiff:**

Yes, indeed.

**Deputy J.H. Young:**

There are, I think, 3 major regulations. One is a change to Regulation 3 in the substantive regulations, which is about the requirement that they must notify the Commission that they are in that situation and where that happens the Commission must suspend the condition for one month. So, I think that is item 2 in the amendment. Item 3 deals with a person where there is a plan in place to mitigate the effect of a shortage of persons. That is an additional registration. It is about workers. There is a separate regulation there for workers. One relates to the conditions on the care provider and the other one relates to the registration of workers. The last one is the exiting, which I mentioned.

[11:00]

Where this happens, where there are serious risks occurring, I think then there is absolutely this publication and notification to the Ministers which will trigger, if you like, what should be a failsafe device. That is the new thing in this amendment. With that, I will ask for the regulations, if I may, to be taken *en bloc*, please.

**The Bailiff:**

Are the regulations seconded in Second Reading? **[Seconded]** Thank you very much. Does any Member wish to speak on the regulations or any of them?

**1.2.1 Deputy R.J. Ward:**

In regards to regulations ... forgive me, Sir, I cannot pick it out now. I have been scrolling through the document. But in terms of, to get back to this point about suitably qualified, when we debated this area last time, it was suggested that people from areas such as hospitality could be trained, taken into the care profession and given training in order to transfer into that profession if they wanted to.

Can I ask how many are involved in that situation, whether those people are being kept on and are now considered to be suitably qualified, even if they have had a shorter training time and perhaps only just through their training? Have we extended that period of non-qualified staff working by ... I say by stealth but I do not mean it that way to the Minister. It is the only word I can think of, or by accident perhaps I should say. Can he reassure that that is not the case? Because we seem to have a compounding of issues growing through this piece of regulation, even though I am pleased to see that some of these regulations take away some of the powers from before. It is just that training issue and how we are left with a legacy of untrained staff continuing in our care homes beyond the COVID-19 emergency that could go into the future. I hope that makes sense, Minister.

#### **1.2.2 Deputy G.P. Southern:**

My point is, too, about training. It sounds like a very smooth operation but it cannot possibly be. You cannot train to handle a 2-person hoist to get somebody in and out of bed and into the bath where that is required and you cannot just send a body along to do that, because without the training who knows where the person who is being moved will end up, suspended in mid-air in the worst case. Yet I hear tales of people untrained in such matters being sent along to cover and being of no use whatsoever. So it is not an easy, smooth process, I think, and I think we have to be very aware that you just cannot train up some people in a brief space of time just to fill a vacancy that may be occurring. We have a recruitment and retention issue that is building up. It seems to me that what we are doing here is covering up with a plaster what is a serious recruitment wound.

#### **1.2.3 Deputy M.R. Higgins:**

In fact, following up on this, my memory may deceive me but in March when we came up with the original regulations, it was my understanding that other health professionals could be moved to assist. For example, concern was expressed about the police checks and so on, and I know in the case of Children's Services and social workers, they were talking about being able to move them into filling gaps. Does the Minister know if there is any provision for that to happen this time rather than allow them to run shorthanded?

#### **1.2.4 Deputy M. Tadier:**

The regulations which bring into force the lower standards is an area of concern, as I have said in the principles, and it is worth reiterating here. I have little reassurance or comfort from the Minister. To be fair to him, I know this should not be his area. This is a health issue which is given to the Minister for the Environment. As Deputy Southern said earlier, this should be the first thing that rings alarm bells. We have elderly people who are in care homes dealing with health matters, who are being regulated by the Minister for the Environment. What is all that about? Secondly, he seems to fail to recognise why you would have an inspection unannounced. If you do it in children's homes, it is for a reason. It is the same reason that the police do speed checks and they do not put an advert out in the paper the night before. They do not say: "Oh, by the way, we are doing a speed check between the stretch from St. Ouen's Manor to the village so please slow down", even though they might find it more productive. They might find that everyone they encounter is extremely well-behaved and a model driver. They do it when they want to find a problem. It is not simply satisfactory to say: "Oh, but they have the ability to do this if they want." That is not even necessarily the case. The Attorney General told us that there is nothing in the law that gives them the ability to do unannounced visits, so I do not think that is necessarily true. Even if they do have the power, they do not do it. It is remarkable that at this time, and I am saying this as a concerned citizen, the Minister should be giving an assurance that he will be asking the Care Commission to do unannounced visits into all of these care homes. We have had Deputy Higgins saying that he does not even think that all of the care homes have ever been visited even once by the Care Commission. So, seriously worrying things that we are passing today and it is effectively going through on the nod. I know Senator Gorst did not vote for it, Deputy Perchard has not, but these are really serious matters and we are not getting the

assurance from the Minister that I think our constituents in their older years ... and, as I said, it is not all of them, of course. I have constituents who are reliant on care, some of them at home, some of them in the community in special residences, and it is a really harrowing time. These lack of assurances that we are getting are simply not satisfactory for many people who do not have a voice of their own. So, I am very unhappy still with the Minister.

#### **1.2.5 The Deputy of St. Ouen:**

I do wish to try and clarify the confusion in the minds of Deputy Tadier and perhaps some other Ministers when they say this is a health issue and why on earth is the Minister for the Environment involved, seemingly perhaps suggesting that I should be the one in control of this. But H.C.S. and the Minister for Health and Social Services are the providers of care. Members would not wish me also to be regulating the care that is provided under my oversight. I would be wholly criticised if I attempted to undertake that role, and quite rightly. Regulation has to sit outside of the people who provide the care. Furthermore I, as Minister for Health and Social Services, because I have that title, it does not mean to say that I have the levers of control of the whole health economy. What we are talking about here is an independent sector of care providers who do an excellent job in our Island and certainly work with government but they are independent providers. For that purpose, therefore, we have a regulator set up by the States Assembly, which is the Jersey Care Commission. So what we are dealing with here is a regulatory issue, which is not within the remit strictly of myself and is brought forward by the Minister for the Environment as the delegated Minister on behalf of Government to oversee regulatory issues. The Minister for the Environment is regulating other areas of regulatory capacity as well, only in the sense that he is responsible for the legislation on regulation. The important thing here, I believe, is that these regulations are brought forward with the agreement and after consultation with the Jersey Care Commission and they are alive to the problems that might arise in this COVID emergency. They wish to make adequate provision for the continued care of the vulnerable that the sector, not just Government but throughout the sector within the Island, provides for. They are satisfied with what is proposed here as an emergency interim measure which would be applied for by providers month by month and which has to have the express consent of the Care Commission to provide. If they do not approve the mitigations proposed by any care provider they will not authorise it. So the regulator is regulating, is doing its job. It is just meeting the circumstances that could well arise during this COVID emergency and ensuring that services continue in the best way they can. So, this seems to me to be the most appropriate way of proceeding. It is approved by the regulator, who we have appointed to examine and supervise this sector. Therefore, I think that this deserves our support because it is really the only way of ensuring that care can be provided for those that we love and we ask to be placed into care.

#### **1.2.6 Senator S.C. Ferguson:**

I just wonder, Deputy Southern refers to requiring to use a hoist. There is also the necessity to use up-to-date equipment; for instance, a sort of lift mechanism to get people in and out of the bath. What is the provision for ensuring that efficient equipment is used? There is a lot of efficient equipment which is not expensive and would make life a lot easier, particularly with regard to not having to have long training sessions for people with hoists. I wonder if the Minister has any idea about that, please.

#### **The Bailiff:**

Does any other Member wish to speak on the regulations or any of them in Second Reading? If no other Member wishes to speak, then I close the debate and call on the Minister to respond.

#### **1.2.7 Deputy J.H. Young**

I am trying to answer Deputy Higgins. I do encourage Members who have raised really important questions to please take time after the debate to look at the Jersey Care Commission's excellent website. It is full of information.

[11:15]

I am looking here at the 2019 annual report that says in respect of care homes: "There are 47 registered care homes and 43 of those were visited in 2019." As far as 2020, then I gave the numbers as at 24th November in my previous answer to the Deputy. Now, Deputy Higgins also spoke about the police checks but, of course, as I have made plain, they are not discontinued. There was no need to do that. It has been in place throughout. There is no reason why there is any change there. That will continue, so that is it. Now, Deputy Tadier. I am sorry that Deputy Tadier does not think or does not really get the point of independent regulation. As the Minister for Health and Social Services has said, the Minister runs services. The whole point about having independent reporting is transparency. Now, what this debate has done is I think it has certainly highlighted that, but if one reads the reports that are published on the website, there is a huge amount of information there disclosed. I certainly am going to follow up to make sure. I think there is a case for an interim report and perhaps not to wait until the end of 2020, with a particular focus, I think, on these questions of filling the staffing gap. Because Deputy Ward and Deputy Southern raise really important issues about training. I cannot believe that there is a legacy of untrained staff, Deputy Ward. Look, the point of training is that people get experience under supervision and gain qualifications which then makes them equipped to act unsupervised. I would have thought if there has been recruitment going on, then those people would be on training programmes. So, I cannot believe that we are operating but again I will ... I think what is needed is a profile of what we know about the base of employees within the care homes and their training and skills and levels and what is in place to do something about this recruitment and retention issue, which I think Deputy Southern is right to stress. So I cannot today reassure and say everything is well. I cannot, but I agree that those points will have to come back and it may well be that at some point there will be another debate on that progress. But I think independent regulation, these are safeguards. Why are they there? They are trying to help us achieve the standards. Every area of care has published standards on that website. They are extremely detailed. What the question is now is how we can be confident that they are all being fulfilled 100 per cent. I take that on board and that, I think, is a matter that will have to come back to the Assembly on another occasion. But today I ask please approve those regulations to allow us at least to deal or be equipped to be able to deal with a short-term situation and not face a situation where we would end up losing a facility that has to cease operation because of our failure to prepare for this eventuality. Thank you, I propose them *en bloc*.

### **The Bailiff:**

Thank you very much indeed, Minister. I ask the Greffier to put a link into the chat. The vote is on adopting the regulations in their totality on Second Reading. I ask the Greffier to open the voting and for Members to vote in the normal way. If Members have had the opportunity of casting their vote, then I ask the Greffier to close the voting. The regulations have been adopted in Second Reading:

<b>POUR: 36</b>	<b>CONTRE: 9</b>	<b>ABSTAIN: 0</b>
Senator L.J. Farnham	Senator I.J. Gorst	
Senator S.C. Ferguson	Senator K.L. Moore	
Senator J.A.N. Le Fondré	Senator S.Y. Mézec	
Senator T.A. Vallois	Deputy G.P. Southern (H)	
Senator S.W. Pallett	Deputy M.R. Higgins (H)	
Connétable of St. Helier	Deputy J.M. Maçon (S)	
Connétable of St. Clement	Deputy J.H. Perchard (S)	
Connétable of St. Lawrence	Deputy R.J. Ward (H)	

Connétable of St. Brelade		Deputy C.S. Alves (H)	
Connétable of Grouville			
Connétable of St. John			
Connétable of Trinity			
Connétable of St. Mary			
Connétable of St. Ouen			
Connétable of St. Martin			
Deputy J.A. Martin (H)			
Deputy K.C. Lewis (S)			
Deputy M. Tadier (B)			
Deputy S.J. Pinel (C)			
Deputy of St. Martin			
Deputy of St. Ouen			
Deputy L.M.C. Doublet (S)			
Deputy R. Labey (H)			
Deputy S.M. Wickenden (H)			
Deputy of St. Mary			
Deputy G.J. Truscott (B)			
Deputy J.H. Young (B)			
Deputy L.B.E. Ash (C)			
Deputy K.F. Morel (L)			
Deputy G.C.U. Guida (L)			
Deputy of St. Peter			
Deputy of St. John			
Deputy M.R. Le Hegarat (H)			
Deputy S.M. Ahier (H)			
Deputy K.G. Pamplin (S)			
Deputy I. Gardiner (H)			

### **The Deputy Greffier of the States:**

The 8 voting in the link are: Deputy Ward, Senator Gorst, Deputies Tadier, Perchard and Higgins, Senator Mézec, Senator Moore and Deputy Alves. In the chat Deputy Southern.

### **The Bailiff:**

Do you propose ... sorry, Deputy Southern, you have indicated a desire to speak. Presumably, that is after they have been proposed in Third Reading, is it? Do you move the regulations in Third Reading, Minister?

### **1.3 Deputy J.H. Young:**

Yes. Before I do, I had the opportunity to look at my second screen here now and I have had a response from the chief inspector on a number of points. Would it be in order for me to just mention those as part of my Third Reading proposal?

### **The Bailiff:**

Well, I think you can deal with the matter in Third Reading as you wish. You are asking the Assembly in Third Reading to adopt the regulations, are you not? So yes, you can.

### **Deputy J.H. Young:**

Thank you. The reply I have had is that the Commission, that is the Care Commission, prior to COVID completed most inspections unannounced: "In response to the guidance issued by Government re visitor and healthcare professionals visiting care homes, the Commission took the decision to adjust its inspection methodology prior to resuming inspections in June." That is this

year, of course: “These adjustments took into account the infection prevention and control risk associated with having footfall in care settings and Commission staff providing some notice of their inspection visit. This is to ensure that the home is able to facilitate the inspection, that there are not active cases in the home which would prevent the visit going ahead, and ensure that regulation officers follow infection prevention and control protocols in the home. Further, a measure taken has been to reduce the duration of the inspection visit and the area of footfall within the home while maximising opportunities for care receivers [care receivers, that is the people that are being cared for] to safely interact with regulation officers during the visit. Announcing inspections allows the regulation officers to review electronically some of the information that might be ordinarily reviewed on site. The regulation officers seek to balance the risk associated with having footfall into care homes with the importance and benefits of undertaking independent inspections.” The final line: “The law does not require the Commission to undertake announced visits. It is the community view that this is the proportionate approach to ensuring that the programme of inspections that was interrupted can be sustained.” So, I am sorry about taking up the Assembly’s time but I felt that my answers were not entirely as ... but that now is the view or the information from the Inspection Commission. I will ensure that a more detailed and full report on the questions that people have asked will be available to Members of the Assembly. I make the Third Reading.

**The Bailiff:**

Is it seconded in Third Reading? **[Seconded]**

**1.3.1 Deputy G.P. Southern:**

I cannot let this opportunity go without mentioning wider issues that this partially addresses, which is, in effect, the privatisation of these particular services. We used to have a subsidised body that provided inexpensive care in the homes, which was called the Jersey District Nursing Association. They worked under States of Jersey terms and conditions and were a highly skilled, highly trained and highly efficient organisation. What we did in the last regime, 3 or 4 years ago, was to scrap that system and let the market run and regulate that market. So what we have is, I believe, a reduction in terms and conditions, a reduction in pay, a less efficient service, and a less well-trained service than what we used to have. This all comes down to this Government’s fascination and obsession with the free market, the private market. This privatisation I think has done these particular services no favours whatsoever.

**1.3.2 Deputy M.R. Higgins:**

I think that one thing that has come out of this debate is the concern of quite a number of Members regarding this sector. Now, we spent a lot of time looking at the Children’s Service, and rightfully so, and we will continue to do so, but I do believe that we need to spend more time looking at this sector in particular. I would ask the Scrutiny Panel to conduct a review of the Care Commission and its work, and I for one will start taking a more active interest and asking a lot more questions.

**1.3.3 Deputy R.J. Ward:**

I was just jotting down some notes. I thought the other 2 might take a bit longer. I just want to say, and I think in Third Reading is the place to say this, that what we are seeing here is this is the inevitable consequence of not doing anything about what is a low-wage and undervalued yet vital service that is provided to so many that it cares for and that is valued by those who receive that care. But we want to do it on the cheap and we are not addressing the real value of the members of our society that we may all become reliant upon at some time. Until we address that issue, it is inevitable that we will have to take these desperate measures. I think there is an increasing desperation in the measures that we are having to take when we encounter a pandemic such as this or other circumstances that could arise as regards recruitment or whatever else. This has exposed that issue in its broadest sense and I have serious concerns. There is no understanding of what happened with

the previous regulations, how many people may have moved from one sector into the care sector without the relevant qualifications and training and have remained there. That should have been addressed and it has not been addressed. That is why I found myself voting against this, and again a gun is being held to our heads. If we do not vote for this, we could be in a situation where care homes cannot function. That situation has arisen through years of a lack of funding, a lack of training and a lack of respect for the people who are working there, and it is inevitable when it faces pressures. That is the responsibility of this Government and previous Governments and we should be doing something about that. But we cannot put the safety and well-being of those people who are so reliant upon care on the back burner. I am very disappointed with what we have had to vote for today.

#### **1.3.4 The Connétable of St. Brelade:**

I would just like to really speak in support of the Care Commission, who have really only been in full operation for a couple of years now. My experience of their dealings is that their inspections are extremely comprehensive. I would suggest that the care homes, perhaps it is the wrong word, but may be in fear and trepidation of their inspections and reports. I receive reports and I am very grateful for that. They always pick up something which is dealt with inside the home and it is regarded as an improvement of the care that is provided to those residents that we have under our umbrella. They look at areas for improvement identified during previous inspections. They look at the statement of purpose and conditions on the registration for safeguarding of adults. They look at complaints. They look at recruitment and staffing arrangements, including induction, training, supervision and staffing levels. They look at care plans and they also look at the monthly quality reports which the homes have to produce. So there is a bit of self-regulation involved and those monthly reports will be criticised if they do not come up to standard. Finally, I think the point needs to be understood in terms of costs. I think Deputy Tadier makes the point through his experiences. The costs are significant.

[11:30]

The costs of running a home are significant and that in turn translates to the cost to the client being significant. I can only say from a Parish point of view we certainly do not take a profit out of it, but I am well aware of the costs and they are eye-watering. It is principally driven by staff costs, so Members need to be aware that if staff costs increase, charge-out costs will increase. But we also are fully cognisant of the fact that if we do not pay our staff properly, well, we simply will not get them because, as has been alluded to before, it is an extremely competitive market and we have to look after our staff who we wish to keep. So, I look forward to supporting the proposition in Third Reading.

#### **1.3.5 Deputy K.F. Morel of St. Lawrence:**

I am quite intrigued by some of the comments that have been made. I, like many people, have worried about levels of pay in certain sectors of the care industry. I share Deputy Higgins' concern that elderly residential care is perhaps taking second place to other areas of care in not just the Government's mind but the whole public and society's minds, and that genuinely worries me. I think perhaps there is a case that the care sector needs to be looked at, elderly care particularly needs to be looked at, and Jersey needs to take stock a bit more. But that all said, I cannot understand how the arguments have been set up today to say that these regulations are a direct result of those concerns, underinvestment, *et cetera*, deregulation, which is just not correct, that has not happened. I do not understand those arguments have been made. These regulations are here to deal with the pandemic situation. They are here to deal with the situation where staff fall ill and are unable to work. No situation would create new people to suddenly pop up out of nowhere and be available for working in care homes. It is ridiculous to think that there is any previous action by the Government that has caused the situation we see today with the pandemic and the need to have these emergency regulations in place to deal with the very unwanted and hopefully unlikely event that staff in care

homes fall ill and are, therefore, unable to do the work and have to isolate themselves from those care homes. So, I get the feeling some Members of the States are bringing some very well-founded concerns that they have in general about the care sector and they are trying to apply them to these regulations today, and I just do not think those arguments stack up. I remember in the first debate that we had earlier on in this pandemic situation with similar regulations I raised lots of concerns as well, but that is not right to then extend the concerns with specific regulations to more general concerns about the care industry. I believe there is definitely a place for possibly the Environment Scrutiny Panel, of which I am a member, looking into the care industry as a whole if that is the right panel to do it. If not, the Health and Social Security Scrutiny Panel would be the one. It depends whether you are looking at the regulatory side or the actual implementation of care. I do believe there is a role there for further investigation, but these regulations are not, in my view, in any way related to the concerns that have been raised by certain Members of the States today. I feel that these are emergency regulations, purely there to deal with the emergency pandemic situation where possibly the worst may happen and the regulator needs to have a legal framework within which they are able to deal with the worst happening. That is what this is about. It is not about the general conditions in the care sector.

### **1.3.6 Deputy M. Tadier:**

I am juxtaposed well to respond to the previous speaker because, contrary to what he said, there is most definitely an interplay and an interrelationship between what we are debating today, the COVID situation, and the more general problems that there are in the care sector. You cannot divorce the 2. We cannot as politicians, who have a responsibility for all of our community, divorce those 2. One of the reasons that we are having to make these most unsatisfactory decisions ... and I think even those who have not voted against so far will admit that they do not like being in this situation where they are having to apply lesser standards to a certain section of care in the community versus ... sorry, I probably should not call it care in the community but care more widely versus the care that we would expect for our children. That is because we have not invested properly in care in our Island for the elderly and other adult vulnerable people. The fact that Deputy Morel talked about the care industry I think puts it in perspective. This is the problem. He is not necessarily wrong, but we do have a care industry there and what is industry? Industry's prime motivation is to make money, yet we do not apply the same standard to our children. I do not think it is any over-exaggeration to say that if we treated our children in the same way that we treat some of the elderly that are locked up, some of them perhaps without family or friends to visit them, there would be nothing short of a revolution in Jersey. My concern is that with all the good work that the care inspectorate do, the bar will probably be relatively low. When they go into care homes, they are probably looking to make sure that physical health is cared for, that people are well dressed, everything looks great, but what about the psychological welfare, the emotional welfare of those people? It is not necessarily the job of the care inspectors to look at that. I think it is a wider societal issue. If we went into a school situation where schoolchildren who did not have parents and loved ones to look after them were there and they were okay, they were dressed, we would make enquiries about their psychological welfare. They would be engaged with regularly to make sure that not just their physical needs, the fact that they are fed and dressed and washed, but the fact that they are leading fulfilled lives. It is not the fact that you get to the age of, I do not know, 80, 90, you have a stroke, you have some other issue and, therefore, it does not matter anymore, you do not have those psychological and emotional needs, because they are still there. But unfortunately you are living in the situation perhaps 10 or 15 years and you want that to be a fulfilled life. I cannot imagine what that must be like for people who are in that situation. It is linked to COVID because COVID has laid bare all the good and all the bad in our society. In some ways it has exemplified it. It shows where the fissures are in our community and it also reminds us of the things that we need to do. So it is absolutely right that during these kinds of debates where the problems are highlighted that we do not just nod through matters that are completely unsatisfactory, saying: "Look, we would not want to be in this situation, in an ideal world

we would like to value our care workers more.” I know those care workers in different homes throughout the Island have to travel. We know that care workers are still not treated properly. They still do not get paid for their travel time, those who have to work in the community, not exclusively in residential areas. We do not even pay them for the work that they actually do and they are not even necessarily getting a living wage. So these are fundamental issues that we do need to get to grips with. I remember talking to carers who then have to make representations to the Parishes because they have parking fines because they have needed to park somewhere and they get a parking fine. They might live in Town but they cannot park anywhere anyway because they are waiting for their residents parking to come through. I think the whole way that we value people in that sector, as well as valuing the people who are being cared for themselves, just needs to fundamentally change. I make no apologies for raising it during this debate because it is inherently linked to the COVID situation, which is making the problems that exist even more acute. But it is also right to acknowledge the great work that still goes on in those places under much more difficult circumstances, and I suspect the staff are having to work probably longer, a lot more pressure, and they are still doing a great job by and large. So let us not forget that, but we cannot simply be rubberstamping legislation and regulations which are far from satisfactory simply because we are being told there is no alternative. There is an alternative but it is going to be difficult. It is going to require lots of hard work, lots of new and positive thinking, but fundamentally perhaps much more investment, not simply in terms of money but in terms of valuing those that are stakeholders in the care system.

#### **The Bailiff:**

Thank you very much, Deputy. Could I remind Members, although I have allowed considerable leeway up to now, Standing Order 75(3) provides, with regard to Third Reading: “The debate shall be confined to the contents of the draft as adopted in Second Reading,” which means that we really should not stray far beyond the corners of the draft that the States has adopted in Second Reading and whether or not those should be adopted. Does any other Member wish to speak in Third Reading? If no other Member wishes to speak in Third Reading, then I close the debate and call upon the Minister to respond.

#### **1.3.7 Deputy J.H. Young:**

I think the last few speeches there kind of sums up today’s dilemma. I am grateful to Deputy Morel for reminding us that the purpose of today is that we are having to bring in emergency regulations which none of us hope we have to need and we will do our best to make sure we will not have to do that. Of course, I do not like it any more than any other Members or Deputy Tadier of being in this situation, but we have to address the reality. This is a set of regulations, the law, as far as the way we do regulations. Constable of St. Brelade, thank you so much because what you said I think is really important. The message that should go out from today is we really value the Jersey Care Commission. If there are issues there, we want them to go and look at a broader range of policy areas and we want to have a lot more input into what is going on because we really care about this sector. It is really important to us. It is economically important that as we have an ageing society it is going to be even greater. I think all those are wider issues. I do not think now is the time. There will need to be another debate in another time about those social care issues, those wider issues that have been raised, but for now I make the proposition in Third Reading to deal with these regulations and hopefully adopt them.

#### **The Bailiff:**

Thank you very much. I ask the Greffier to place a link into the chat. The link is now posted. I ask the Greffier to open the voting and Members to vote in the usual way. If Members have had the opportunity of casting their votes, I ask the Greffier to close the voting. The regulations have been adopted in Third Reading:

<b>POUR: 38</b>	<b>CONTRE: 7</b>	<b>ABSTAIN: 0</b>
Senator L.J. Farnham	Senator S.Y. Mézec	
Senator S.C. Ferguson	Deputy G.P. Southern (H)	
Senator J.A.N. Le Fondré	Deputy M. Tadier (B)	
Senator T.A. Vallois	Deputy M.R. Higgins (H)	
Senator S.W. Pallett	Deputy J.H. Perchard (S)	
Connétable of St. Helier	Deputy R.J. Ward (H)	
Connétable of St. Clement	Deputy C.S. Alves (H)	
Connétable of St. Lawrence		
Connétable of St. Brelade		
Connétable of Grouville		
Connétable of St. John		
Connétable of Trinity		
Connétable of St. Peter		
Connétable of St. Mary		
Connétable of St. Ouen		
Connétable of St. Martin		
Deputy J.A. Martin (H)		
Deputy of Grouville		
Deputy K.C. Lewis (S)		
Deputy J.M. Maçon (S)		
Deputy S.J. Pinel (C)		
Deputy of St. Martin		
Deputy of St. Ouen		
Deputy L.M.C. Doublet (S)		
Deputy R. Labey (H)		
Deputy S.M. Wickenden (H)		
Deputy of St. Mary		
Deputy G.J. Truscott (B)		
Deputy J.H. Young (B)		
Deputy L.B.E. Ash (C)		
Deputy K.F. Morel (L)		
Deputy G.C.U. Guida (L)		
Deputy of St. Peter		
Deputy of St. John		
Deputy M.R. Le Hegarat (H)		
Deputy S.M. Ahier (H)		
Deputy K.G. Pamplin (S)		
Deputy I. Gardiner (H)		

### **The Bailiff:**

That concludes the business for which this Assembly has been sitting this week, and we accordingly stand adjourned until 2.30 p.m. on Monday, 30th November.

### **ADJOURNMENT**

[11:44]