

STATES OF JERSEY



DRAFT REGULATION OF CARE LEGISLATION (P.125/2018, P.126/2018, P.127/2018, P.128/2018 AND P.129/2018): COMMENTS

**Presented to the States on 16th November 2018
by the Health and Social Security Scrutiny Panel**

STATES GREFFE

COMMENTS

The [Regulation of Care \(Jersey\) Law 2014](#) (from [P.95/2014 \(re-issue\)](#)) was adopted by the States Assembly on 3rd July 2014. The “2014 Law” provides a legislative framework for the independent regulation of health and social care in Jersey. This Law will be underpinned by a series of Regulations, each focusing on a distinct type of health and social care provision.

The Regulations will introduce new rules for the independent inspection and regulation of health and social care. Regulatory functions will be fulfilled by the Care Commission, which has already been established under the 2014 Law. Care providers – whether a States of Jersey provider of a service, a private sector provider, or a charitable sector provider – will be required to register with the Care Commission and demonstrate that they provide services that are well-conducted, provide good care, and protect clients from harm.

On 23rd October 2018, the Government lodged draft Regulations to cover care home services, home care services and adult day care services.

The draft legislation

The Government has lodged a draft Appointed Day Act and 4 sets of draft Regulations.

The **Draft Regulation of Care (Jersey) Law 2014 (Appointed Day) Act 201-** ([P.125/2018](#)) will bring into force relevant Articles of the Regulation of Care (Jersey) Law 2014, and in turn the Regulations set out below.

The **Draft Regulation of Care (Regulated Activities) (Jersey) Regulations 201-** ([P.126/2018](#)) specify that regulated activities will include –

- **Care home services** – nursing, personal care or personal support, provided together with accommodation (including children’s residential care).
- **Home care services** – nursing, personal care or personal support provided to people who live in their own accommodation, be that owner-occupied, leased or rented.
- **Adult day care services** – nursing, personal care or personal support provided in premises other than a private home during daytime hours.

The **Draft Regulation of Care (Standards and Requirements) (Jersey) Regulations 201-** ([P.127/2018](#)) specify the requirements to be imposed on registered care providers and applicants for registration under the 2014 Law. These include, for example –

- **Conditions of registration** – fit and proper person criteria, statement of purpose, number and description of care receivers, category of care to be provided, etc.
- **Service requirements** – compliance with standards, conduct of service, developing quality assurance systems, etc.
- **General requirements** – record keeping, complaints processes, ensuring financial viability of the service, etc.

- **Additional requirements for children’s homes and children’s support services** – meeting educational and support needs, greater levels of quality assurance and safeguarding, etc.

The draft Regulations also set out the offences for non-compliance with the requirements, and the penalties for committing an offence.

The Care Commission will inspect providers at least once a year. It will publish detailed standards setting out what providers must do to meet the requirements.

The **Draft Regulation of Care (Transfer of Functions) (Jersey) Regulations 201-** ([P.128/2018](#)) are technical Regulations which will transfer a range of registration, inspection and regulation functions from the Minister for Health and Social Services to the Care Commission.

The **Draft Regulation of Care (Transitional and Transfer) (Jersey) Regulations 201-** ([P.129/2018](#)) are technical Regulations which set out the transitional arrangements with regard to services that are already regulated under the [Nursing Agencies \(Jersey\) Law 1978](#) and the [Nursing and Residential Homes \(Jersey\) Law 1994](#), at the point at which the 2014 Law comes into force.

Fees

The 2014 Law allows the Government to charge fees to pay for the new system of regulation. These will be made by the Chief Minister via Order, in the first instance. If the States adopt the Regulations, the Government intends for the fees to come into force on 1 January 2019.

Fees may be charged for –

- making an initial application for registration as a care provider or a manager;
- an annual fee for continued registration;
- fees associated with applying for a variation on conditions of registration; and
- miscellaneous fees such as replacement registration certificates.

More information about how the fee structure was developed, and a detailed breakdown of the fees, can be found in the report accompanying [P.126/2018](#) (pages 6–15).

Consultation

The report accompanying [P.126/2018](#) sets out an account of the consultation process leading up to the draft Regulations. In summary, the Government consulted on the following dates –

- **November 2007** – consultation on the principles of a new regulatory framework
- **May 2013** – report setting out proposals relating to the 2014 Law issued to stakeholders
- **March – April 2014** – further consultation on the 2014 Law, including stakeholder meetings

- **March 2015** – stakeholder workshop on initial development of draft Regulations
- **February – April 2017** – consultation on draft Regulations relating to activities and standards and requirements, including stakeholder briefings
- **July 2018** – secondary round of consultation on amended draft Regulations
- **June – August 2018** – consultation on proposed fees, including a stakeholder meeting.

The account identifies when changes were made to the draft Regulations following stakeholder feedback, including changes made following the fees consultation.

Scrutiny

Our predecessor Panel highlighted the Regulation of Care Regulations in its legacy report ([S.R.10/2018](#)) as a possible area of future work.

We received a briefing on 12th July on the draft Regulations from Officers at the Chief Minister’s Department (now the Department for Strategic Policy, Performance and Population). We received a second briefing from the same Officers on 20th September, who updated us on the responses it had received following its consultation on the proposed fees and Regulations. The Officers explained the changes they were making as a result. More detail about the changes made are set out in [P.126/2018](#) (page 16).

Prior to our second briefing, we wrote to several private and charitable care providers asking if they had any comments to make on the draft Regulations, including on the content of the Regulations themselves or the process of developing and consulting on the Regulations.

We received 3 responses. None commented on the consultation process. One respondent highlighted concerns around the detail of the regulatory system, including the arrangements for staff training, managing complaints, and suitability of the inspectors. The other 2 respondents highlighted concerns around the fee structure, and how these were applied to care providers.

We put these concerns to Officers at our briefing on 20th September and were generally satisfied with the responses we received.

We are also aware of concerns which have been raised about the impact on individuals requiring care when the organisations providing that care do not comply with the new Regulations. This could ultimately lead to services being withdrawn, resulting in individuals having to find alternative arrangements. The impact of the Regulations on the care market in Jersey is something we intend to monitor closely as the new regulatory regime is established.

Future developments

The report within [P.126/2018](#) (pages 16–18) sets out what the Regulations do not cover. The Government highlights that the 2014 Law is a framework Law, and that the Regulations only cover care home services, home care services, and adult day care services. The Government envisions that, over time, further Regulations will be brought forward to extend independent regulation and inspection to other health and social care services, including for example –

- children’s social work services (considered a priority)
- other children’s environments (some crèches, nannies, single activity provision, etc.)
- social work services;
- hospitals and hospital services, including medical, surgical, psychiatric and rehabilitation services;
- dental services;
- cosmetic procedures;
- paramedic services;
- general medical practice.

In light of this, we note the Comptroller and Auditor General’s (“C&AG”) recent report, [Governance Arrangements for Health and Social Care \(R.120/2018\)](#). The report looked at the adequacy of arrangements for the governance of health and social care.

In relation to independent regulation and inspection, the C&AG stated (page 9) –

“Independent regulation and inspection, including of health and social care directly delivered by government, is an essential component of effective governance. Although I welcome the plans to extend the regulation and inspection of health and social care to the full range of provision, I am concerned that there is no clear timetable for all services to be covered. This would mean that some services, including crucially those provided in the General Hospital, would for some time not be covered by independent regulation and inspection. In my view such a situation cannot be allowed to persist.”

The C&AG concluded (page 37) –

“... there has been insufficient impetus to implement independent regulation and inspection of all health and social care provision, including that provided by the States, as an essential means of securing quality and providing assurance.”

The C&AG recommended that the Government (page 10) –

“Publish a timetable for the extension of independent regulation and inspection to all elements of health and social care, including services directly provided by the States.”

Conclusion

Independent regulation and inspection is an important component of effective governance. We welcome these Regulations, which will cover care home services, home care services and adult day care services. We hope that the Government will note the C&AG's conclusions and recommendations, and prioritise extending independent regulation and inspection of all health and social care provision.

The Panel would like to thank the Officers from the Department for Strategic Policy, Performance and Population for providing helpful briefings, and to stakeholders for taking time to share their views regarding the draft Regulations.