

## **Regulation of Care (Jersey) Law 2014: Independent Regulation and Inspection of Hospital and Ambulance Services**

The purpose of this consultation is to offer interested parties an opportunity to be aware of, and comment on, proposed amendments to the Regulation of Care (Jersey) Law 2014 (the “2014 Law”). These would:

- a) include all hospital and ambulance services as regulated activities under the 2014 Law;
- b) provide additional requirements with which these services must conform under the Law; and
- c) strengthen the governance and independence of the Care Commission under the 2014 Law.

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## 1. Responding to the Consultation

The Consultation begins on 8 April 2024 for eight weeks, ending on 3 June 2024. If you wish to take part in this consultation, please complete this form either online at [www.gov.je](http://www.gov.je) or on paper and return it by post or email to the addresses below.

### How we will use your information

The purpose of this survey is to gain your views on the draft Regulation of Care (Amendments) (Jersey) Law 202-. This consultation does not require any personal information to be provided. If any personal information is disclosed this will not be shared outside of the team developing the draft Law within the Cabinet Office or published online as part of the consultation.

The information you provide will be anonymous unless you are providing a response on behalf of an organisation, in which case you may choose to provide the name of that organisation, below. Your responses will be included in any summary of statistical information received and views expressed.

The Government of Jersey may quote or publish responses to this consultation (send to other interested parties on request, send to the Scrutiny Office, quote in a published report, report in the media, publish on [www.gov.je](http://www.gov.je), list on a consultation summary etc.) but will not publish the names and addresses of individuals – comments from organisations may be attributed if they so choose. This will be done in compliance with the Data Protection (Jersey) Law 2018 for the purposes of this consultation. Further information on how we will use this information can be found in the privacy notice. Under the Freedom of Information (Jersey) Law 2011, information submitted to this consultation may be released if a Freedom of Information request requires it, but no personal data will be released.

### Part 1

Are you providing responses as:

1. A private individual
2. The representative of an organisation

If you are a private individual please ignore part 2, below.

### Part 2

If you are providing responses on behalf of an organisation would you like to do so anonymously?

1. Yes
2. No, attributed

Organisation to attribute comments to, if applicable:

If you require any further information about this consultation, please use the following contact information:

Email: [careregulation@gov.je](mailto:careregulation@gov.je)

Tel: 01534 440656

Address: Care Regulation Consultation  
Strategic Policy, Planning and Performance  
Ground Floor  
19-21 Broad Street  
St Helier  
JE2 3RR

## 2. Introduction

### Summary

1. This is a continuation of the long-term project to regulate all health and social care providers in Jersey. This will bring Jersey into line with most other jurisdictions in the British Isles, where independent regulation and inspection has been embedded across care settings for many years. Care services need to be regulated to help keep people safe and to ensure they receive good quality care that meets their needs. Unregulated services place people at risk of harm or abuse (whether that be physical, emotional or financial abuse or at risk of neglect).
2. Jersey has an independent regulator for health and social care: the Jersey Care Commission (JCC). The JCC was established under the [Regulation of Care \(Jersey\) Law 2014](#) (the “2014 Law”) and currently regulates care home, home care and adult day care services as well as children’s social work and children’s outpatient mental health services.
3. This project continues the process of extending the existing framework Law so that hospital, ambulance, and most Government-provided mental health services would be required to meet legally enforceable standards of high-quality care. The JCC would be responsible for enforcing these standards by inspecting services to verify and to publicly report on the quality of care provided. Providers of services which fail to meet those standards would be committing an offence.
4. This consultation relates to a single amendment Law, the draft Regulation of Care (Amendments) (Jersey) Law 202- (the “draft Law”). The draft Law would amend the 2014 Law and the [Regulation of Care \(Standards and Requirements\) \(Jersey\) Regulations 2018](#) (the “2018 Regulations”). Parts 2, 3, 4 and 5 of the draft Law would make key changes to this legislation in the following ways:
  - Part 2 of the draft Law makes amendments designed to strengthen the governance and independence of the JCC;
  - Part 3 describes the characteristics of the new services that will be regulated, including hospital and ambulance services;
  - Part 4 amends the eligibility criteria for members of the Board of the JCC; and
  - Part 5 makes changes to the 2018 Regulations which sets out requirements and regulatory tools to ensure services provide care that is appropriate, safe and of a high quality.
5. These amendments would affect those providing regulated care services, including those that are currently regulated by the JCC and those that it is proposed will become regulated by the JCC, as well as patients and care receivers and their families, friends and carers.
6. Stakeholders are asked for their feedback on all Parts of the draft Law. The draft Law amends the [2014 Law](#) and the [2018 Regulations](#) and must, therefore, be read alongside this existing legislation to be able to appreciate its effect.

## **Definitions and terms used in this consultation document**

The 2014 Law sets out a number of definitions on which the draft Law is based, these include:

Health care: “includes all forms of health care (including nursing care) provided to individuals whether relating to physical or mental health, and also includes procedures that are similar to forms of medical or surgical care but are not provided in connection with a medical condition”

Social care: “means in respect of individuals whose welfare by reason of their age, mental or physical illness, disability, pregnancy, childbirth, dependence on alcohol or drugs, or for any other reason, puts them in need of any of the following –

- (a) services provided under the direction or supervision of a social worker (as defined in Schedule 1) that include, but which are not limited to, assessing the personal needs of individuals and safeguarding individuals from risk of harm,
- (b) any form of personal care and other practical assistance; or
- (c) any form of personal support”

Nursing care: “means services that, by reason of their nature and circumstances, including the need for clinical judgement, should be provided by a nurse, including –

- (a) providing care;
- (b) assessing, planning and evaluating care needs or the provision of care; and
- (c) supervising or delegating the provision of care”

Personal care: “means assistance in daily living that does not need to be provided by a nurse, being –

- (a) practical assistance with daily tasks such as eating, washing and dressing; or
- (b) prompting a person to perform daily tasks”

Personal support: “includes supervision, guidance, counselling (other than counselling that is health care) and other support in daily living that is provided to an individual as part of a programme of such support.”

Registered provider: refers to the person or organisation that is registered to operate a care service (effectively the business owner)

Registered manager: refers to the person who is registered to manage a care service on a day to day basis

Registered person: refers to both the provider and the manager

Regulated activity: refers to those services which are described under Schedule 1 of the 2014 Law. These services are required to register with the JCC and will be subject to regulation and inspection.

## **Background**

7. The 2014 Law was adopted by the States Assembly on 3 July 2014 ([P.95/2014](#)), and it was set out in the report to the proposition that establishing regulation of previously unregulated environments across Jersey’s health and social care sector is a sizeable and complex task. Implementing regulation across the whole sector overnight would overwhelm both the

regulator and the regulated entities. It is for this reason that amendments to the framework Law have been and will continue to be brought for debate in the States Assembly in phases.

8. Phase 1 of the project was to regulate care home (including children's home), home care and adult day care services. These Regulations were adopted by the States on 20 November 2018 and came into force on 1 January 2019 ([P.126/2018](#)). It was set out under paragraph 43 of this report that further phases of Regulations would be brought forward, which the States Assembly again agreed.
9. The regulation of social work and outpatient mental health services for children and young people represented phase 2 of this project – this was approved by the States Assembly on 25 April 2022 ([P.45/2022](#)). The report accompanying the Regulations made clear and the States Assembly further agreed that future phases of amendments should continue to be brought forward, in line with the Assembly's longstanding commitment to regulate all health and social care provided in Jersey. At paragraph 66 of the report to P.45/2022 it was set out that: "over time, further Regulations will be brought forward for consideration by the Assembly to extend independent regulation and inspection across the health and social care sector."
10. On 15 February 2022, in response to public concerns, including a [public petition](#) and [questions in the States Assembly](#), the Council of Ministers (CoM) committed to bringing forward legislation so that HCS services will be independently inspected and regulated by the JCC from 2024 onwards as a matter of law. This legislation has now been drafted and is the subject of this consultation.
11. Aside from indications of public support for the inspection of hospital services evidenced by a public petition to this effect, there are widely accepted benefits attached to regulating health and social care services. Independent, high-quality regulation is needed for 3 key reasons:
  - a) Protecting adults and children: Care services need to be regulated to help keep adults and children safe and to ensure they receive good quality care that meets their needs. Unregulated services place people at risk of harm or abuse (whether that be physical, emotional or financial abuse or at risk of neglect).
  - b) Ongoing provision of services: Locally registered healthcare professionals, including doctors, nurses and midwives, social workers and other allied health professionals, cannot work in Jersey unless they are registered with a statutory regulator in the UK (for example, the General Medical Council, Nursing and Midwifery Council, Health and Care Professions Council). Many of those registration bodies increasingly expect their members to be working within regulated services. Without an appropriate regulatory framework for all health and social care services in Jersey, there is a very real risk that UK professional regulators will refuse to allow the validation, supervision or registration of healthcare professionals in Jersey.
  - c) Measuring and enhancing service quality: At present, there is no legislation which sets out general standards that health and social care providers are expected to meet to ensure that health care provided in Jersey is effective. In fully regulated

health care systems, all providers must produce data to demonstrate to regulators that they meet legally enforceable standards. This data provides both service users and service providers with clear information about the quality of all services. Service providers in Jersey would be able to benchmark their services against those provided by others and in other jurisdictions, and to identify those services which require improvements more efficiently and effectively.

12. Effective regulation not only assures the quality of health and social care but also improves the quality and safety of care. This would impact positively on the overall health and wellbeing of Islanders.
13. When services are regulated, Islanders will be able to access objective information on the quality of care provided in Jersey. It is important that, in an open, democratic society, citizens have access to transparent information, particularly in relation to publicly funded services, so that the public can have trust and confidence in the quality of the services they receive.
14. Regulating health services will bring Jersey into line with the majority of jurisdictions in the British Isles and all OECD countries, where mechanisms for external evaluation of health care facilities are institutionalised. Regulating health services would, for the first time, provide robust, effective information to measure whether Islanders can access high quality, effective health services.



### **3. Part 2 of the draft Law: Governance of the Jersey Care Commission**

#### **Registered Providers for Government Care Services**

15. Article 4 of the draft Law would amend Article 3 of the 2014 Law to clarify that the registered provider of regulated activities must be the Accountable Officer for the government department that provides this service. This is currently the case, in practice, under the 2014 Law. However, the Law was not updated to reflect changes introduced by the Public Finances (Jersey) Law 2019. The Accountable Officer for Government of Jersey provided services will usually be the chief officer for the Government department that provides the service.
16. The rationale for maintaining the position that registered providers of regulated Government care services must be the chief officer for the relevant Government department (unless otherwise specified in Regulations) is as follows:
  - there will only be parity in the application of the regulatory scheme if all relevant public sector health and social care services are registered and regulated by the JCC in the same way as private services;
  - to ensure that private and public sector services are registered effectively, a clearly identifiable person (whether that be an individual or a legal person such a company) must be accountable under the Law for registering each regulated service and ensuring that standards are met;
  - for the public sector, the provider must be of sufficient seniority to hold control over budgetary decisions for a government department so that it would be reasonable to hold them to account for allocating funding to regulated services to ensure they meet the requirements of the Law; and
  - the provider should not be a minister, as ministers do not make day-to-day operational decisions about services their departments provide – in practice, these decisions are exercised by senior officials.

#### **Registration of Large Services**

17. Large services, such as hospital and government social work services, consist of several subcategories of service, each of which will, in practice, have its own manager. For these services, it would be impractical and unreasonable to expect a single manager to retain effective responsibility for a whole hospital or large-scale social work service. For example, the manager of the Jersey General Hospital cannot, realistically, be held responsible under the 2014 Law for day-to-day management of all of maternity and midwifery, pharmacy, surgical, neurology and dental services. In practice, a separate manager for each of these services must be registered for the JCC to properly regulate each service by holding the appropriate individuals accountable for their leadership of them.
18. New Article 4A of the 2014 Law and the amendments to Article 8 will ensure that separate managers may be registered for each of these services, enabling the JCC to hold the appropriate individuals accountable of their leadership of them. This applies to the following services:

- public hospital services provided by the Government of Jersey;
- any private hospital service which may, in future, be established and which employs more than 50 people; and
- children’s social work services provided by the Government of Jersey.

19. In practice, these legal provisions will ensure that the JCC must accept a single registration application from the provider for each of those services listed above, regardless of the number of premises the service operates from. For example, the Department for Health and Community Services will be able to make a single application to register hospital services at the Jersey General Hospital, the Enid Quenault Health and Wellbeing Centre and its other sites.

20. The provider of these services must set out the subcategories of services they provide (e.g. maternity and midwifery, emergency care, diagnostic testing, pharmacy etc.) and the location where each of these subcategories of services are provided from (e.g. Jersey General Hospital, Overdale, Orchard House etc.). The JCC will make the final determination of the subcategories of service which are provided. The JCC may require each subcategory of service to have a separate registered manager, and the provider must conform with this.

### **Restrictions on Health and Social Care Services**

21. Article 14 of the 2014 provides the States Assembly with powers to make and amend Regulations to require regulated care services to provide services that conform with legally enforceable standards. The 2018 Regulations have been brought into force under this Article. Article 8 of the draft Law introduces a small but important power for the States Assembly to restrict or prohibit the provision of services to a certain class or description of persons. For example, this would enable Regulations to be brought into force to prevent certain cosmetic procedures from being provided to those under the age of 18.

### **Regulation Services in Other Jurisdictions**

22. Article 10 of the draft Law would add in a new Article 38A to the 2014 Law to allow the JCC to provide services in other jurisdictions, providing that this would not have any impact on the JCC’s regulatory activities in Jersey. The JCC would be able to and be expected to charge for the services it provides to other jurisdictions.

23. This would enable other small jurisdictions, such as the Isle of Man and Guernsey, which do not yet have an independent health and social care regulator to use the JCC to conduct inspections of its health and social care services. This would benefit Jersey’s relationship with these jurisdictions and assist the Island to collaborate in the delivery of health and social care across the Crown Dependencies.

### **Funding**

24. The new Article 40A of the 2014 Law (introduced by Article 11 of the draft Law) places a duty on the Minister for the Environment to provide funding for the JCC under the Government Plan to cover the costs of regulating Government provided health and social

care services. In conjunction with this new duty, fees may no longer be charged to Government services by the JCC under Articles 9 and 41 of the 2014 Law.

25. The purpose of these changes is to simplify the way that fees are charged. At present, the JCC is funded by way of both fees and Government grant. This was a sustainable position when the JCC first commenced regulating services, as it was mainly regulating care home, home care and adult day care services, the majority of which are maintained by private and charitable providers. From 2019 onwards, the JCC has been funded on the basis that 45% of its income would be derived from public funds and 55% from providers.
26. However, when the Government's hospital service becomes subject to regulation, the majority of the JCC's work will be focused on regulating this and other children's social care services which are provided by the Government of Jersey. In these circumstances it becomes increasingly challenging to retain the original funding model for the JCC when the public sector provides the majority of the JCC's funding by way of a grant and not, in practice, through fees.
27. These amendments would support this reality by requiring the Minister for the Environment to assess the funding which the JCC requires to regulate Government of Jersey provided services, and to include this in the Government Plan. The Minister must ensure that the JCC is provided with the funding it requires to regulate these services economically, effectively and efficiently. In this regard, the Minister will be acting purely in accordance with their responsibilities to fund the JCC effectively and they will not take account of wider considerations. The Council of Ministers will, under Article 10(2) of the Public Finances (Jersey) Law 2019, be able to indicate whether it agrees with this assessment, but they will not be able to amend the amount. It will ultimately be for the States Assembly to approve or to amend the Minister's assessment under the Government Plan.
28. In addition, the Minister may include in this assessment the resources that they think are reasonable to subsidise the regulation of non-government providers of health and social care by the JCC. This should enable the Minister to decide on public policy grounds to subsidise – as is currently the case – the regulation of health and social care by other providers. The Minister and the JCC would still have the power to levy fees on non-Government providers of health and social care to register and maintain registration with the JCC. It is still envisaged that fees will be levied on non-government providers, but that these will not cover the full costs of regulation, which is currently the case.
29. This is designed to be a fully transparent process so that all stakeholders can see how much money the JCC thinks it requires, and then, ultimately, how much it is provided with by the States Assembly. This will be achieved by requiring the JCC, under new Article 42A, to produce a strategic plan in advance of the next financial year that will set out its funding requirements. The plan must be published by the JCC.
30. The Minister for the Environment must consult the JCC and consider its strategic plan before they decide how much funding the JCC should be allocated under the Government Plan that is submitted to the States Assembly. This will be a separate line item in the Government Plan (and it would also feature as a separate item in the States of Jersey's annual accounts). As stated above, while the Minister for the Environment will be solely responsible for this

decision, the States Assembly, as with all funding decisions, must ultimately determine the level of funding provided to the JCC.

31. In association with this change, the JCC would be included under the list of bodies under Schedule 6 to the Public Finances (Jersey) Law 2019 – see Article 44 of the draft Law.

### **Accounts, Audit and Annual Reporting**

32. The annual reporting and accounting requirements for the JCC are being updated to bring them into line with current best practice standards. A new Article 43 of the 2014 Law (inserted by Article 13 of the draft Law) will ensure that:
  - the JCC's annual report must be published in a timely fashion and conform with prevailing standards and requirements for the contents of annual reports which will be set out under the Public Finances Manual;
  - the JCC must publish its strategic plan alongside its annual report to provide transparency on its projected financial requirements for the next financial year;
  - the JCC must include annual accounts in its annual report which conform with the statutory standards for the annual accounts of the States of Jersey; and
  - the JCC's annual accounts must be audited by an auditor appointed by the Comptroller & Auditor General but that, where the JCC's accounts are included in and audited as part of the States of Jersey's accounts, it will not be required to appoint separate auditors.

### **Transitional Arrangements**

33. Article 14 of the draft Law introduces transitional arrangements for services when the draft Law comes into force. Hospice services are currently regulated as both care home and home care services under the 2014 Law. They may also be required to register as adult day care and children's home services under the 2014 Law, depending on the nature of some of the services the hospice provides. In future, it is intended that hospice services should be required to register as hospital services only – this single registration would capture all the activities of the hospice service. New Article 49A of the 2014 Law reduces the administrative burden for both the JCC and those hospice services that are already registered, regulated and inspected. It ensures that they will become registered as hospital services automatically and will be exempt from paying a registration fee.
34. New Article 49B of the 2014 Law requires providers of hospital and ambulance services that will become regulated to make an application to register with the JCC within 6 months of the draft Law coming into force. A service provider will not be liable to be convicted of the offence of carrying on a regulated activity without having registered with the Commission, if they have made an application within that 6-month period and until that application has been approved (or declined) by the Commission, including the time taken for any appeals process.

**Question 1**

Do you have any comments on any of the proposed amendments in Part 2 of the Regulation of Care (Amendments) (Jersey) Law 202- (the “draft Law”), including in relation to:

- a) Registered Providers for Government Care Services
- b) Registration of Large Services
- c) Restrictions on Health and Social Care Services
- d) Regulation Services in Other Jurisdictions
- e) Funding
- f) Accounts, Audit and Annual Reporting
- g) Transitional Arrangements?

## **4. Part 3 of the draft Law: New Regulated Activities**

35. The draft Law defines and describes four new categories of service which will become 'regulated activities' under the 2014 Law, including certain laser clinic services which are currently regulated under the Nursing Homes (Jersey) Law 1994. All the services described below will become subject to independent regulation and inspection by the Jersey Care Commission.
36. In England, the legislation that establishes the Care Quality Commission (CQC) and its powers are the Health and Social Care Act 2008 and the Health and Social Care Act 2008 (Regulated Activities) Regulations 2014 (the "HSC Act Regs"). The 2014 Law and the 2018 Regulations in Jersey draw significantly on features of this English legislation. Schedule 1 to the HSC Act Regs sets out the activities which are regulated by the CQC and Schedule 1 to the 2014 Law sets out the activities which are regulated by the JCC.
37. Schedule 1 to the HSC Act Regs establishes 14 types of activity which are regulated by the CQC. As Jersey has and will continue to take a phased approach to extending regulatory requirements across the health and social care sector, it has not been possible to mirror this under the 2014 Law. The phased approach adopted in Jersey continues to require services to be defined in a more targeted fashion under the 2014 Law, so as not to include too many services under regulation simultaneously. However, as far as possible, the definition of health care services under the English Law has been drawn on to assist in defining hospital services under the amendments proposed to Schedule 1 of the 2014 Law.

### **Hospital Services**

38. Article 16 of the draft Law introduces a new definition of a "hospital". To be regarded as a hospital service under the 2014 Law, that service must provide inpatient health care. This means that those services such as GP services or clinic services provided by independent medical practitioners which provide outpatient care only would not be regarded as a "hospital". However, outpatient services are included as part of a regulated hospital service, providing that service also provides inpatient care. Prison health care services are excluded from this definition and would not be required to register with the JCC.
39. Article 17 of the draft Law inserts new Parts 4, 5 and 6 of Schedule 1 to the 2014 Law. Part 4 of Schedule 1 to the 2014 Law defines hospital services. Providers of services that fall into this category must register with the JCC and will be regulated and inspected. This includes all health care services provided by the Government of Jersey at or from the Jersey General Hospital and its satellite sites, including the Enid Quenault Health and Wellbeing Centre, Orchard House and any other sites at which the Department for Health and Community Services operates or may operate health care services in future. This would also include private hospital services should any operate in Jersey in the future.
40. New paragraph 16 of Schedule 1 to the 2014 Law excludes some services from being required to register with the JCC that may otherwise be captured by this definition of hospital services, including:

- health care services provided in care homes and children’s homes (these are already regulated);
- children and young people’s mental health services provided to outpatients that are already regulated (e.g. CAMHS);
- services that are already regulated as children and family community nursing services;
- ambulance services – providers of these services must register under new paragraph 30 of Schedule 1; and
- the out of hours GP service that is provided on hospital premises. This will become regulated when the rest of the Island’s GP practices become regulated and inspected.

41. New paragraphs 17 to 29 of Schedule 1 to the 2014 Law list those services that are regulated if carried out in a “hospital” as defined under Article 16 of the draft Law. To be clear, these services, if not carried out as part of a wider hospital service (i.e. services provided in GP and independent clinics), would remain unregulated for the time being. However, if these services are carried out within a hospital service – including if they are provided by a private clinic that is renting hospital facilities – they will be regulated as part of the hospital service. It would be for the registered provider and managers of the hospital service to ensure that any private clinics operating in the hospital conform with the requirements under the 2018 Regulations and the JCC’s standards.
42. New paragraph 17 of Schedule 1 to the 2014 Law establishes a broad definition for the treatment of disease, disorder or injury. In practice, most services provided by a hospital will fall to be regulated under this paragraph. This captures treatment for all mental and physical health conditions by or under the supervision of a health care professional. “Health care professional” is defined under Article 16 of the draft Law and includes all health and social care professionals who are required to register under Jersey Law (e.g. medical practitioners, dentists, nurses, midwives, pharmacists, allied health care professionals etc.).
43. New paragraph 18 will capture most other health care services provided in a hospital under the broad category of “diagnostic and screening procedures”. This will include the use of scans and X-rays, and the taking of samples from the human body. This category will also capture the hospital’s laboratory services.
44. The provision of most mental health services will be regulated under paragraph 17 of Schedule 1. Assessment or treatment provided to persons detained under the Mental Health (Jersey) Law 2016 would be regulated under paragraph 19.
45. New paragraph 20 captures surgical procedures carried out in a hospital service. This includes all surgery provided by a health care professional for any purpose, including treatment of a person’s disease, disorder or injury or cosmetic purposes.
46. The management of blood, tissue and organs is regulated under new paragraph 21 of Schedule 1 to the 2014 Law. This would ensure that blood donation is regulated and that the use and storage of blood, tissue and organs can be inspected and controlled appropriately.

47. Hospital pharmacy services will be regulated as part of the hospital service under new paragraph 22. The supply and storage of medicines is a key service provided by hospitals to patients. It is, therefore, necessary to be able to regulate the pharmacy to ensure that the services it provides are effective, safe and appropriate.
48. New paragraph 23 of Schedule 1 to the draft Law captures patient transport services, and triage and medical advice provided remotely. This would ensure that transport services provided directly by regulated hospital services would be regulated. However, distinct ambulance services are only required to register under paragraph 30. The provision of care to patients who are being transported off the Island by air or sea by the hospital service will be regulated under both this paragraph and under paragraphs 17 and 27 as the hospital would be providing those patients being transported with treatment and nursing services.
49. New paragraphs 24 to 29 of Schedule 1 to the 2014 Law provide regulated activities that are not otherwise captured by those broader services categories described above. The following specific services provided by a hospital would be regulated:
- maternity and midwifery services;
  - termination of pregnancies;
  - slimming clinic services;
  - nursing care provided in the hospital or outside a hospital by the hospital service;
  - the insertion or removal of intrauterine contraceptive devices; and
  - assisted reproduction services.

**Question 2**

Do you have any comments on the proposed definition of “hospital services” and the services this includes?

**Ambulance Services**

50. New paragraph 30 of Schedule 1 to the 2014 Law defines those ambulance services that would be required to register with the JCC. This would include ambulance services provided on a private or charitable basis, as well as the Government of Jersey’s Ambulance Service. Any individual or organisation providing the following services will be regulated:



- services providing care to patients while they are being transported to or from a place of medical treatment;
- services providing pre-arranged medical treatment at public events; and
- services provided by a call centre with the purpose of despatching ambulances to patients.

51. It should be noted that, in Law, providers of those services that comprise or include the above will be required to register. It is recognised that ambulance services will provide other care services, for example, ambulance workers will attend call outs to patients, provide them with care and may not then be required to transport those some patients to hospital or other places of medical treatment. This and other activities will be regulated as part of the ambulance service if that service undertakes any or all of the three services set out in new paragraph 30(2) of Schedule 1 to the 2014 Law.

52. Under new paragraph 30(3)(a), the provision of care primarily to those who are taking part in sporting events is not regulated as an ambulance service. This will ensure that, for example, team doctors and physiotherapists attending to players at football or rugby matches would not be required to register. The provision of ambulance services for spectators at sporting fixtures (as well as participants) would be regulated. Lifeboat services and ambulance services provided in Jersey from other jurisdictions will also be exempt from registering with and being regulated by the JCC, providing that they are either:

- an air or sea ambulance that is regulated in another jurisdiction by a regulator that has equivalent powers and responsibilities to the JCC (e.g. the CQC in England or an agence régionale de santé in France); or
- mutual aid or assistance provided under an arrangement made with a Minister from neighbouring jurisdictions that do not regulate health and social care services, provided that service operates in Jersey for less than 60 days per year.

### Question 3

Do you have any comments on the proposed definition of “ambulance services” and the services this includes?

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### Controlled Techniques

53. New Part 6 of Schedule 1 to the 2014 Law has been introduced to enable certain specialist, controlled technique services to be regulated. This will include specialist health care

services that may be provided by those who are not otherwise regulated for their medical practice's services (i.e. services provided outside GP and dental surgeries).

54. When the 2014 Law was enacted and care home services became regulated by the JCC, the Nursing Homes (Jersey) Law 1994 became largely redundant. However, it has been kept in force as laser clinic services continued to be regulated under it. It also provided a potential way to regulate any private hospital services, should any have been established. To enable the Nursing Homes (Jersey) Law 1994 to be repealed (see Article 43 of the draft Law), laser clinics will be regulated under the 2014 Law.
55. New paragraph 32 defines laser and intense pulsed light procedures that will be required to register with the JCC. This definition ensures that those services that are currently regulated will continue to be regulated under the 2014 Law. In this way, medical practitioners and dentists who provide services with medical grade lasers will continue to be exempt from regulation – ultimately they will eventually be regulated for all the services that they provide.
56. The provision of hyperbaric oxygen therapy would also become subject to regulation under new under paragraph 33. Given the potential risks to patients if these services are performed improperly and the fact that there are no other statutory restrictions on who may carry out hyperbaric oxygen therapy, it is considered necessary to regulate these services at this stage.

**Question 4**

Do you have any comments on the proposals to include provisions to regulate:

- a) Laser Clinic Services
- b) Hyperbaric Oxygen Therapy?

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## 5. Part 4 of the draft Law: Care Commission Office Holders

### Term Limits

57. Articles 20 and 21 of the draft Law amend paragraphs 2 and 3 of Schedule 2 to the 2014 Law to prevent the Chair of the JCC and other commissioners from serving on the Commission for more than 9 years in total, while they may be appointed for individual terms of between 3 and 5 years in length. Currently, there is no maximum term limit for commissioners which is at odds with the [Jersey Appointments Commission's Guidelines](#). Article 23 of the draft Law amends paragraph 5 so that a commissioner's term will end automatically after 9 years.
58. The effect of these changes is to ensure that an individual may serve for a maximum of 9 years as a commissioner, including as chair i.e. an individual who serves for 5 years as a commissioner and is then appointed chair may only serve for 4 years in that role, as this will bring their total time as a commissioner to 9 years. This term limit applies regardless of whether the individual's service on the Commission is in broken, separate, or as unbroken consecutive terms i.e. a commissioner who serves for 4 years and has 2 years off the Commission would be able to hold a further 5-year term, or combination of terms up to a total of 5 years only.

### Disqualifications from Office

59. Paragraph 4 of Schedule 2 to the 2014 Law sets out certain disqualifications from a being commissioner. These are important provisions to maintain the independence of the JCC. Article 22 amends paragraph 4(1) to prevent both sitting members of the States of Jersey or of the States of Guernsey or Tynwald and recent members of those legislative bodies from being commissioners. Those who are a member of those bodies or have been a member of those bodies at any point during the current or previous election cycle would now be prohibited from being appointed as a commissioner. The reason this provision includes members of the Guernsey and Isle of Man parliaments is so that the JCC may operate in those jurisdictions with effective independence from their political leadership, should the JCC be contracted to do so.
60. Paragraph 4(1) of Schedule 2 has also been amended to prohibit those who have, at any time, served as senior officials in the Departments for Health and Community Services, Children, Young People, Education and Skills, and Justice and Home Affairs from being appointed as commissioners. This, again, is to safeguard the independence of the JCC and ensure that those who have held senior leadership roles in these departments and ran services that the JCC regulates cannot then, in later years, influence the way that these services are regulated.
61. Amendments have been made to paragraph 4(2) of Schedule 2 as, in practice, these disqualifications have been found to be too restrictive as they are not time limited. This has led high quality candidates for the role of commissioner being deemed ineligible, even though their time of employment or contract with the States of Jersey was over twenty years ago and they held junior roles at that time.

62. To remedy this, the blanket restrictions under each of paragraph 4(2)(a) and (c), which prevent those who were employed in or have held an interest in Government of Jersey health or social care services at any time from being commissioners, have been limited to the last 9 years. This will mean that those who have worked in Government of Jersey provided health or social care within the last 9 years will be ineligible from being appointed as a commissioner.
63. In addition, the same restrictions that are currently in place on those who worked in public sector health or social care services in Guernsey or the Isle of Man would be removed. This is because it is not currently anticipated that the JCC will operate on a statutory basis in those jurisdictions. It would, therefore, be disproportionate to continue to apply these restrictions. If this position changes, these provisions may be amended by Regulations under the new power to amend Schedule 2 which is set out in Article 9 of the draft Law.

### **Status of JCC Employees**

64. Article 24 of the draft Law amends Paragraph 9 of Schedule 2 to the 2014 Law to confirm that any individual who works for the JCC but is employed through the States of Jersey will be treated as a member of the JCC's staff. This will enable regulation officers to benefit from the employment protections, pay structure and pension scheme provided by being an employee of the States of Jersey. However, it will confirm that in all other respects they will be regarded as staff of the JCC and cannot be directed by public officials or States members in the performance of their work.

#### **Question 5**

Do you have any comments on any of the proposed amendments in Part 4 of the draft Law, including in relation to:

- a) Term Limits for Care Commissioners
- b) Disqualifications from Office for Commissioners
- c) Status of JCC Employees?

## **6. Part 5 of the draft Law: Amendments to the Regulation of Care (Standards and Requirements (Jersey) Regulations 2018**

65. Part 5 of the draft Law makes amendments to the Regulation of Care (Standards and Requirements) (Jersey) Regulations 2018 (the “2018 Regulations”). The 2018 Regulations give people using care services, and their loved ones, confidence that the care they will receive will be appropriate, safe and of a high standard. They include provisions concerning the suitability of people who are registered to operate and manage care services, the quality of care provided, operational requirements and arrangements relating to inspection.
66. The core requirements of the 2018 Regulations – from Regulation 2 to Regulation 27 – largely apply equally to all regulated activities. They have been purposefully based on the Health and Social Care Act 2008 (Regulated Activities) Regulations 2014 (the “HSC Act Regs”) which establish the requirements for health and social care providers that are regulated by the CQC in England. Few amendments are, therefore, required to make them fit for purpose to regulate hospital and ambulance services. Those amendments that have been deemed necessary are explained below.

### **Registration of Providers**

67. The process for applying conditions to a provider’s registration is set out in the 2014 Law. This includes a right of appeal against any condition the JCC wishes to apply that is not already agreed with the provider as part of their registration.
68. The 2018 Regulations oblige the JCC to apply specific registration conditions for the purpose of ensuring that, once registered, a service remains appropriate for the needs of the people receiving care. The 2014 Law, however, is sufficiently flexible to enable a registered provider or manager to apply for a change or variation in the registration conditions should the circumstances or needs of a service change.
69. In general, the conditions applied to a registration are based on information supplied by providers in their Statement of Purpose which forms part of the application process. The Statement of Purpose includes the aims and objectives of the service, the type of care offered by the service, the number of people provided with care and details of how the service will operate.
70. The conditions applied to a provider’s registration include administrative details such as having a local address and providing the addresses of each location from which the service operates. They also include quality and safety features intended to ensure the service is capable of meeting users’ needs. This includes, for example, setting a maximum number of people for whom the service can provide care, the age ranges of people using the service and the types of care that can be provided.
71. Article 28 of the draft Law amends Regulation 2(2)(b) of the 2018 Regulations to ensure that it is practicable. Currently, the requirement for all providers of regulated health and social care services to obtain an enhanced Disclosure and Barring Service (DBS) check to ascertain whether all providers appear on the barred list is unenforceable. This is because

the UK's DBS policy does not permit enhanced DBS checks for those people who are not directly working in care environments. This means that the requirement for providers which are the board of a company or the governors of a charity (and who have no further direct involvement in delivering care services) to obtain an enhanced DBS check cannot, in practice, be carried out.

72. The amendment to Regulation 2(2)(b) maintains the current requirement that providers of care services must not appear on the barred list. However, it modifies the duty on providers to clarify that they can only perform an enhanced DBS check in the circumstances that are permitted by the UK's Disclosure and Barring Service.
73. Article 29 of the draft Law inserts a new Regulation 3 of the 2018 Regulations to amend the powers of the JCC to impose conditions on regulated care services. As Jersey is a small island jurisdiction, it would not be appropriate for the JCC to be able to apply conditions to public hospital and ambulance services to limit the services that they provide. This is because they are both providers of last resort in Jersey – there is no option for Islanders to seek alternative acute hospital and ambulance services from elsewhere within the jurisdiction. Therefore, Regulation 3(1AA) disapplies Regulations (1)(d) and (i) of the 2018 Law, so that the JCC may not impose conditions regarding the categories of care and the ages or persons to which those categories of care may be provided by public hospital or public ambulance services.
74. In the case of private or charitable hospital and ambulance services, as well as controlled technique services (including laser clinics and hyperbaric oxygen therapy), under Regulation 3(1C), the JCC must impose conditions on these services in relation to:
- the treatments and services which may be provided by the regulated activity; and
  - the categories of service user to whom the treatment and services may be provided.
75. This will enable the JCC to limit the health care services that these services may provide to ensure that they are providing appropriate care to patients. This would, for example, prevent a private hospital from providing an acute care service unless the provider could demonstrate to the JCC that they have sufficient expertise, experience and equipment to deliver that service.

### **Duty of Candour**

76. With the extension of the 2014 Law to cover hospital services, Article 31 of the draft Law enhances Regulation 6 of the 2018 Regulations so that it reflects the equivalent provision in English legislation, Regulation 20 of the HSC Act Regs. This establishes a duty of candour, which is a duty that health and social care services in Jersey should also be expected to comply with.
77. The duty of candour requires registered providers and registered managers to act in an open and transparent way with people receiving care or treatment from them. The Regulation also defines 'notifiable safety incidents' and specifies how registered persons must apply the duty

of candour if these incidents occur. A crucial part of the duty of candour is the apology. Apologising is not an admission of liability.

78. In relation to regulated hospital and ambulance services, “notifiable safety incident” means any unintended or unexpected incident that occurred in respect of a service user during the provision of a regulated activity that, in the reasonable opinion of a health care professional, could result in, or appears to have resulted in:

- the death of the service user, where the death relates directly to the incident rather than to the natural course of the service user’s illness or underlying condition; or
- severe harm, moderate harm or prolonged psychological harm to the service user.

79. In relation to all other regulated health and social care services, “notifiable safety incident” means any unintended or unexpected incident that in the reasonable opinion of a health care professional appears to have resulted in:

- the death of the service user, if the death relates directly to the incident rather than to the natural course of the service user’s illness or underlying condition;
- an impairment of the sensory, motor or intellectual functions of the service user which has lasted, or is likely to last, for a continuous period of at least 28 days;
- changes to the structure of the service user’s body;
- the service user experiencing prolonged pain or prolonged psychological harm; or
- the shortening of the life expectancy of the service user.

Or, requires treatment by a health care professional in order to prevent:

- the death of the service user, or
- any injury to the service user which, if left untreated, would lead to one or more of the outcomes mentioned above.

80. If an event satisfies any of the indicators outlined above, then duty of candour applies. The key procedures regulated services are then required to carry out are set out in new Regulation 6(2)(a) and (b):

- the service user or lawful representative should be notified in writing that a “safety incident” has occurred; and
- reasonable support should be offered over the incident (the nature and content of which will depend on the situation).

81. New Regulation 6(4) specifies the notification process to be followed. The written notification must include:

- an accurate, truthful account of what has happened;
- a description of how the matter has been dealt with and of any enquiries carried out or to be carried out;
- any further steps being taken to follow up the incident; and
- an apology, which is described later in the regulation as “an expression of regret”.

## **Access to Visitors**

82. Article 32 of the draft Law provides a new Regulation 7A to the 2018 Regulations that requires services that provide accommodation and care (e.g. hospital, care home and children's home services) to support service users' involvement in the community. This Regulation is designed to ensure that service users have access to and social contact with other people, which is important to secure their wellbeing and mental health needs. In addition, it is important that those accommodated in hospital and care homes can access professional support, including from lawyers, priests, hairdressers, chiropodists etc.
83. While this should, as far as possible, be an absolute requirement for registered persons to provide service users with access to visitors, it is recognised that it may not always be possible for visitors to be admitted. This includes the need to prohibit parents and others from accessing children in children's homes where this may be pursuant to a court order. There may be a need to restrict access to visitors to protect service users in other circumstances – for example, women's refuge services would not be required to enable visits from service user's abusive partners. Therefore, Regulation 7A(3) enables registered care providers and managers to restrict a visitor's access where it would or might adversely affect the mental or physical health or wellbeing of the service user.

## **Effective Communication**

84. Article 33 introduces a new Regulation 8A to require regulated services to communicate with service users and their representatives effectively regarding their care and treatment. The registered person must have in place systems of communication to ensure that any changes made in arrangements for the care and treatment of service users, including any appointments and planned admissions, are provided in a clear and timely manner to service users and, where appropriate, their representatives. This would require, for example, a hospital service that had to cancel a patient's appointment at short notice to have a system in place to inform that patient as soon as possible by email, telephone or text message.

## **Access to Care and Health Records**

85. Article 34 of the draft Law amends Regulation 9(3)(b) and (6) of the 2018 Regulations, as these currently provide that the registered person is responsible for considering whether it is appropriate to allow the service user's representative to access their personal plan and care record. Instead, in virtually all cases, registered persons must provide the service user's representative access to personal plans (under Regulation 9(3)(b)) and care records (under Regulation 9(6)) providing the service user consents to their representative being able to review these.
86. However, there is an important caveat under Regulation 9(8) that if the service user is accommodated in a children's home or under the care of a social work service for children and young people provided by the Minister for Children and Families, or lacks capacity, the registered person may prevent a representative from viewing the service user's personal



plan or care record if they think it is appropriate to do so. Regulation 9(9) clarifies that in cases when a service user lacks capacity, as defined within the meaning of Article 4 of the Capacity and Self-Determination (Jersey) Law 2016, a registered person cannot deny access to personal plans or care records to an individual who has a lasting power of attorney in respect of the service user's health and welfare under Article 14 of that Law.

### **Minor Amendments**

87. Article 35 amends Regulation 18 of the 2018 Regulations to enable the JCC to regulate vehicles used by health and social care providers. This is a crucial addition to enable the JCC to regulate ambulance and other patient transfer services effectively.
88. Article 36 provides updated drafting for Regulation 19(4) of the 2018 Regulations. This currently provides an erroneous reference to Regulation 80.
89. Article 37 of the draft Law introduces a new Regulation 20A to require registered persons to display the fact of their registration with the JCC prominently, together with the JCC's contact details, in any premises operated by the regulated activity and on any written or electronic communication relating to the regulated activity. This is to ensure that service users are made aware that they are using regulated services and that they may raise concerns with the JCC as easily as possible, by clicking through to the JCC's website from the service's website or email. This will also highlight services that are and are not regulated to service users.
90. Article 38 inserts a new Regulation 21 into the 2018 Regulations which requires registered service providers and managers to notify the JCC when a service user has had a significant restriction placed on their liberty or if a service user has been detained under the Mental Health (Jersey) Law 2016. In practice, the JCC already requires regulated services to provide notifications in these cases. However, it is important to place this in the Law so that Jersey may meet its obligations under international law in relation to those who have been detained or deprived of their liberty. The JCC will retain the discretion, under Regulation 21(1)(c), to require services to notify them of other incidents or relevant matters that occur within a regulated service.
91. The requirement for regulated services to provide the JCC with information on their financial liability, under Regulation 24 of the 2018 Regulations, would not apply to controlled technique services (laser clinics and hyperbaric oxygen therapy). This is because the impact on service users if these types of service were to close due to their lack of revenue is minimal. This Regulation is designed to enable the JCC to monitor the financial viability of key care services, such as care homes, which would, if they suddenly closed, have a significant impact on residents and their families.
92. Article 40 of the draft Law inserts a new Regulation 79A into the 2018 Regulations to enable the JCC to ensure that services provided under the Mental Health (Jersey) Law 2016 adhere to the code of practice for mental health services which is issued by the Minister for Health and Social Services. This provision allows the JCC to regulate and inspect against the code of practice – it does not allow the JCC to amend the code of practice.

## Mandatory Inspection Periods

93. Currently, the 2018 Regulations require the Care Commission to carry out an inspection of all regulated services at least once a year. The inspection regime does not apply to an individual who is directly employed to provide care as this would be overly intrusive. The annual inspection may cover monitoring compliance, reviewing the effectiveness of the service or may be to encourage improvements. This is the mandatory minimum requirement placed on the JCC, but the JCC has powers to inspect services more than once per year and to do so on an announced or an unannounced basis. The JCC's powers to inspect are provided under Article 26 of the 2014 Law.
94. Article 41 of the draft Law amends Regulation 80(1) so that the JCC must continue to inspect all services that are currently regulated at least once every year. These services are:
- Adult day care services
  - Care home services
  - Home care services (except for services provided by individual carers, as above)
  - Adoption services
  - Children's home services
  - Fostering services
  - Social work services for children and young people
  - Independent monitoring and review services in respect of looked after children's cases
  - Child contact centre services
  - Residential family centre services
  - Children and young people's mental health services
  - Care service in special schools
  - Children and family community nursing service
  - Hospice services (which, though these will be regulated as hospital services, will continue to be regulated once per year)
95. In addition, it is proposed that the following newly regulated services must be inspected at least once per year:
- Ambulance services
  - Laser clinic services
  - Hyperbaric oxygen therapy
96. Under Regulation 80(1A)(a), the JCC would be required to inspect all of the regulated activities provided by a hospital within a 3 year period. To be clear, it is envisaged that, for hospital services, the JCC will conduct annual inspections of parts of each service (i.e. maternity and midwifery, pharmacy, neurology, dentistry etc.), but not every aspect of the hospital service will be looked at every year. However, within 3 years, the JCC must have inspected every part of a registered hospital service. In addition, the JCC must inspect all hospital wards in which individuals may be deprived of their liberty or detained under the Mental Health (Jersey) Law 2016 at least once per year. This is consistent with international

best practice and is an important safeguard to ensure that the treatment of those who are deprived of their liberty in health and social care settings is monitored independently, consistently and effectively.

## Offences

97. Regulation 82 of the 2018 Regulations provides that, where non-compliance with the requirements is identified following an inspection or complaint investigation, and where there is no risk of serious harm or neglect, the JCC may serve an improvement notice to give providers an opportunity to address any deficiencies in their services. Where, however, there is a risk of serious harm or neglect, or where serious harm or neglect has occurred, the registered person may be prosecuted without the need to serve an improvement notice. Prosecution decisions are for the Attorney General to consider. If convicted, the penalty for non-compliance with registration requirements is a fine of up to £50,000.
98. Article 42 of the draft Law amends Regulation 82 to include a defence for registered persons who may be charged with an offence under Regulation 18 for deficiencies in their premises. If registered persons can prove that they took all reasonable precautions and put in place all reasonable procedures to mitigate deficiencies in the premises provided as part of a care service (e.g. care home or hospital premises), they will not be guilty of an offence.

### Question 6

Do you have any comments on the proposed amendments to the requirements for regulated care services under the Regulation of Care (Standards and Requirements) (Jersey) Regulations 2018 under Part 5 of the draft Law, including in relation to:

- a) Registration of Providers
- b) Duty of Candour
- c) Access to Visitors
- d) Effective Communication Requirements
- e) Access to Care and Health Records
- f) Mandatory Inspection Periods
- g) Offences

**Question 7**

Do you have any further comments on the draft Law?

**Question 8**

Do you have any comments on the parts of the Regulation of Care (Jersey) Law 2014 and the Regulation of Care (Standards and Requirements) (Jersey) Regulations 2018 that we are not proposing to amend?