

Regulation of Care (Jersey) Law 2014 Draft Regulations for Care Homes, Care at Home and Adult Day Care Services

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1. Introduction

Background

This purpose of this consultation is to offer interested parties an opportunity to be aware of, and comment on, proposed new Regulations supporting the Regulation of Care (Jersey) Law 2014 (the “2014 Law”).

The Regulation of Care Law, adopted by the States Assembly in 2014 provides a modern framework for the regulation of health and social care in Jersey. The 2014 Law cannot come into force, however, until there are Regulations describing what services will be regulated and what those services must do to ensure the care provided is safe and of high quality.

The draft Regulations presented in this consultation apply to Care Homes, Care at Home services and Day Care services for adults which will form the first phase of the new regulatory regime. These draft Regulations were developed taking into account the views expressed by Stakeholders during an earlier consultation¹

This consultation relates to two sets of draft Regulations, which are attached and should be read in conjunction with this consultation report. The first describes the characteristics of services that will be regulated. The second sets out requirements and regulatory tools to ensure services provide care that is safe and of a high quality.

At the end of each section of this consultation document, stakeholders are asked for their feedback on a number of key questions.

¹ Regulation of Care (Jersey) Law 2014, Proposed Care Home and Home Care Regulations, Response to Stakeholder Consultation, October 2015.

Definitions and terms used in this consultation document

The 2014 Law sets out a number of definitions on which the Regulations are 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: “includes all forms of personal care and other practical assistance, and all forms of personal support, provided for individuals who by reason of their age, illness, disability, pregnancy, childbirth, dependence on alcohol or drugs, or by any other reason, are in need of such care, assistance or 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.
Regulation of Care (Regulated Activities) Regulations

2. Regulation of Care (Regulated Activities) Regulations – draft

These Regulations define and describe three types of services; care homes, care at home and adult day care services which will become a ‘regulated activity’ under the new 2014 Law.

Care Home - Regulation 1

The essential feature of a care home is that it offers both care and residential accommodation; care can be personal care, nursing care or personal support.

Care homes can provide both long and short term care such as respite, rehabilitation and reablement services for adults and children with a variety of health and social care needs. This definition covers but is not limited to:

- care homes for older people
- care homes for people with mental health conditions,
- group homes for people with special needs,
- residential rehabilitation services for people with addictions,

- accommodation and support for people who are homeless,
- homes for looked after children, including secure children's homes,
- accommodation where support is provided for people who are vulnerable due to domestic violence

Regulation 1 also specifies services that will not fall within the definition of a care home, in particular:

- acute hospitals,
- schools,
- young offenders' institutions and
- private accommodation

Home Care – Regulation 2

This refers to nursing or personal care or personal support provided to people in their own private home by an agency, States' department or an individual who is paid either in money, or in kind, to provide the care.

Private care agencies, Health and Social Services Department's (H&SSD) domiciliary care, outreach services and individuals privately employed would, for example, fall within this definition. The element of reward is important in the definition as there is no intention to regulate families, friends or good neighbours.

The home care definition also includes professional care provided for free, unless this is part of a service that is only provided by H&SSD. For example, H&SSD's Drug and Alcohol Service, community mental health staff who work as part of the mental health multidisciplinary team, and specialist nurses working as part of a hospital multidisciplinary team (e.g.: cardiac nurse specialist, respiratory nurse specialist) will not be included within the regulatory framework at this stage.

Adult Day Care – Regulation 3

Adult day care facilities will fall within the definition of a regulated activity if they are providing nursing or personal care, or personal support for a limited period of time, in premises that does not offer overnight accommodation. The definition does not include self-help groups, or social/friendship clubs.

Question 1

YES

NO

DON'T KNOW

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|--|--|--|--|
| (a) Do you agree with the definition of a care home? | | | |
| (b) Do you agree with the definition of a home care service? | | | |
| (c) Do you agree with the definition of adult day care services? | | | |

Do you have any comments about the services we propose to include with the regulatory framework?

3. Regulation of Care (Standards and Requirements) (Jersey) Regulations 201- draft

These Regulations aim to give people using care services, and their relatives, confidence that the care they will receive will be appropriate, safe and of a high standard. They include provisions concerning the suitability of people registered to operate and manage care services, the quality of care provided, operational requirements and arrangements relating to inspection.

Criteria for Registration

The Regulations set out the criteria against which a provider or manager will be judged to be 'fit' to be registered and the conditions applied to a registration to ensure the service is appropriate for the people receiving care. It is essential that those trusted to provide care to people who, by the nature of their circumstances may be very vulnerable, are suitably qualified, competent, in good health and of good character.

Where the provider is a body corporate (company, trust, voluntary agency etc.) each of the directors, trustees, board members are liable under the 2014 Law for the proper performance of the regulated activity and are required to be a 'fit person'.

People who apply to provide or manage a regulated activity must:

- be of good character
- be physically and mentally fit to carry out the regulated activity
- have the necessary qualifications, knowledge, skills and experience

Disqualifications from registration

A person shall be deemed unfit to be registered to carry on or manage a regulated activity if:

- he or she has been sentenced to imprisonment (whether immediate or suspended) without the option of a fine and is in the reasonable opinion of the Commission unsuitable to be registered
- His/her name appears on the barring list held under the UK safeguarding vulnerable adults' legislation, the protection of vulnerable groups scheme in Scotland
- s/he has ever been declared bankrupt
- s/he is disqualified for holding office as a company director in Jersey or elsewhere

In addition, a person shall be deemed unfit to be a registered manager if the person is:

- required as part of his or her employment as a manager to hold a professional registration but does not hold that registration, for example; nurse, social worker etc.
- not physically or mentally fit to carry out the regulated activity

Question 2

Yes

NO

DON'T KNOW

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| Do you agree with the proposed criteria for assessing the fitness of providers and managers of care services? | | | |
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Do you have any comments about the proposed criteria?

Conditions of Registration

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 Commission wishes to apply that is not already agreed with the provider as part of their registration.

The proposed Regulations oblige the Commission 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.

In general, the conditions applied to a registration will be based on information supplied by providers in their Statement of Purpose which forms part of the application process. The Statement of Purpose will include the aims and objectives of the service, the type of care offered by the service, the number people provided care and details of how the service will operate.

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. Providers will also be required to operate the service in accordance with the Statement of Purpose and pay an annual fee each year.

The Regulations also specify that a registered manager will be required for each location at which a service is provided, however in certain circumstances the Commission has discretion to permit a manager to be registered for more than one location if it is safe and appropriate to do so.

Question 3

YES

NO

DON'T KNOW

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| Do you agree with the proposed conditions to be applied to a registration? | | | |
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Do you have any specific comments about the proposed registration conditions?

Service Requirements

To ensure care is of a suitable standard and quality regardless of where it is delivered, registered providers and managers will be obliged to meet a range of requirements described in the Regulations. A number of these requirements focus on ensuring that care is appropriate, safe, personalised and respectful, others relate to specific elements of care, some to the environment in which care is delivered and several refer to staffing and other administrative functions.

Requirement to meet standards

The Commission is charged with the responsibility of publishing standards against which a regulated activity will be judged and the Regulations require registered persons to ensure that the quality of the service they provide meets these standards.

Conduct of a service

Registered persons are required to conduct the service in such manner that the health, safety, welfare and particular needs of people receiving care are properly met.

Openness and transparency

Those registered to operate and manage a regulated activity are required to be open and transparent in relation to the care and treatment they provide. As part of this, a registered person must inform anyone who is receiving care (or their representative) of any incident affecting their health or well-being and provide them with support.

Respect and involvement

Registered providers and managers must ensure that the people for whom they provide care are

- treated with dignity and respect
- enabled and supported to be as independent and autonomous as is practicable
- enabled to participate in making decision about their support, care and treatment, and
- where possible supported to manage their own care and treatment

Care and welfare

There is an obligation on the registered person to ensure that people receiving care are protected from inappropriate or unsafe care by demonstrating that their needs are assessed and regularly reviewed, and that where practicable this is done with the involvement and assistance of the person receiving care or their representative.

Furthermore, a registered person can only provide care if they can meet the person's needs care and, when planning and delivering that care, they must ensure it is based on good practice and professional guidance.

Personal plan and care records

A personal plan must be prepared in consultation with the person receiving care or their representative setting out how their, care, safety and welfare needs will be met and this should form part of the person's comprehensive contemporaneous care record.

Safeguarding

Registered providers are required to make provisions to ensure those in their care are safeguarded from abuse or ill treatment by

- having in place an appropriate safeguarding policy
- taking steps to identify risks and preventing abuse occurring
- responding to allegations of abuse
- ensuring care workers have safeguarding training
- adhering to local safeguarding policies
- participating in investigations
- preventing care workers who pose a risk of harm from contact with those receiving care
- avoiding employing anyone who is on a barred list or who has been cautioned or convicted for an offence against someone receiving care

There is also an obligation to share information with other registered providers, regulatory bodies or law enforcement agencies where this would assist in safeguarding people who are receiving care.

Question 4

YES

NO

DON'T KNOW

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| Do you agree with the proposed requirements to ensure that care is appropriate, safe, personalised and respectful? | | | |
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Do you have any comments about the requirements relating to the character and ethos of care?

Specific aspects of care

Registered providers will be expected to ensure that any premises provided as part of the care service are clean and free from odour and there are proper arrangements in place to manage infection control risks. There are a number of obligations to meet the nutritional needs of those receiving care and to have safe systems in place to manage medicines.

Shared responsibilities

To facilitate interagency support for people receiving care, there is a specific requirement for providers and managers to work collaboratively with the wider community team.

Control and restraint

There are provisions within the Regulations to ensure that any control and restraint that takes place within a Regulated Activity is lawful and in line with appropriate policies.

Question 5

YES

NO

DON'T KNOW

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| Do you agree with the requirements relating to specific aspects of care and shared care with other agencies? | | | |
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Do you have any comments about these requirements?

Staff and workers

Registered providers and managers are obliged to ensure that every worker employed by the service has integrity, is of good character, is suitably qualified, skilled and competent for the role and is both mentally and physically fit for their duties. The Regulations also include disqualifications for working in a Regulated Activity including convictions resulting in a term of imprisonment (with the qualification that the manager is also of the opinion the person is unsuitable) and anyone who is on a barred list or has been convicted of an offence against a person receiving care.

The registered person must ensure that there are sufficient staff employed to meet the needs and ensure the health, welfare and safety of those receiving care and that staff receive appropriate training, professional development and supervision.

The Regulations place an obligation on registered persons to have, and adhere to, a recruitment and disciplinary policy and to keep adequate staff records.

Question 6

YES

NO

DON'T KNOW

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| Do you agree with the requirements applying to the recruitment and employment of staff working in a Regulated Activity? | | | |
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Do you have any particular comments about the staff recruitment and employment requirements?

Premises and equipment

Where premises are provided as part of a regulated care service, the provider must ensure that they are fit for purpose and able to meet the aims and objectives in the Statement of Purpose. In particular the premises must be:

- located and designed to meet the number and needs of the people who will be using the service
- designed to facilitate privacy, dignity and independence
- soundly constructed and in a good state of repair
- adequately heated, lit and ventilated
- decorated to an appropriate standard for those using the service

The Regulations also set out obligations to ensure that any premises provided as part of the service, is suitably equipped and has adequate fire safety measures in place.

Question 7

YES

NO

DON'T KNOW

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| Do you agree with the requirements relating to premises and equipment? | | | |
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Do you have any comments about the requirements for premises and equipment?

Reviewing the quality of service and updating the Commission

The Regulations require those operating a care service to have in place a system to review the quality of the regulated activity. This must include consulting and seeking the views of those using the service or their representatives, staff and other professionals who are involved in the provision of care as well as taking into account the outcome of any complaints. A report of the review must be published.

In services where a provider employs a registered manager for day-to-day management, the provider must arrange for a representative to review the service and provide a report on the quality of care and compliance with the regulatory requirements, a copy of which should be available to the Commission.

The Commission must be kept up-to-date, by way of an annual return, about any changes in the information it holds in relation to the provider, manager and the service.

Notification of incidents, accidents and other events

There is a requirement to notify the Commission of accidents, incidents and other events that have caused harm or posed a risk to those using the service. The details about what specifically should be provided will be set out in the standards.

Complaints

The registered person is required to have in place a complaints procedure that includes keeping adequate records and advising the complainant, and if requested the Commission, of the outcome of the investigation into their complaint.

Service Records

The Regulations make it a requirement to keep records relating to the service, the details of which will be set out in the standards produced by the Commission. The Regulations also specify how long records should be kept.

Financial Viability and charges

Registered providers are required to operate the business in such a way as to ensure that it is financially viable and able to meet the aims and objectives of the service. To demonstrate that the service is financially viable, a copy of the annual accounts must be provided to the Commission and the registered person must have adequate insurance cover. There is also an obligation to inform the Commission of any substantial and imminent risk to the viability of the organisation. The requirements about financial viability do not apply, however, to any service provided by a States' department or to any individual who is directly employed or provides care for reward.

Providers, other than individuals directly employed to provide care, must publish the fees that will be charged to those using the service.

Commissioned services

Where a care service is commissioned or contracted by the States or another agency, the registered person must ensure that in the contract or agreement there is a detailed specification of what should be provided and how they can raise concerns about any deficiencies or limitations that pose a risk to those in receipt of care. Where such deficiencies are identified these must be notified to the Commission and the commissioning body.

Absence of a manager

The Regulations set out the requirements and arrangements that must be put in place if a registered manager is to be absent for more than 28 days.

Question 8

YES

NO

DON'T KNOW

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| Do you agree with the requirements about the operational aspects of the regulated services? | | | |
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Do you have any comments about operational requirements for regulated care services?

Children's homes and support services

The Regulations make some specific requirements for care services provided for children.

In particular, the registered person must make provision for educational and leisure activities including:

- ensuring access to appropriate educational facilities
- providing opportunities and support for private independent study

- maintaining effective links with schools
- enabling and encouraging leisure interests and activities
- in cases where a child is over the age of 16 assisting and supporting the child with further education, training or employment

The person registered must also ensure that children are protected from inappropriate disciplinary measures and restraint practices, or other behaviour management practices, in particular no child should be subjected to:

- any form of corporal punishment
- deprivation of food or drink
- restriction on contact with, friends, family or other relatives
- restriction on contact with his or her solicitor, appointed guardian, social worker, independent visitor or authorised person

The service must also have in place a behavioural management policy that includes how unexplained absence or absconding will be managed.

Independent persons for children’s homes

Where the regulated activity is a children’s care home, the provider is obliged to appoint an independent person to visit and report on the service. The functions of the independent person include reviewing and reporting on how effectively children are safeguarded and how well the home promotes the children’s well-being.

The Regulations set out a number of requirements about the appointment to this role to reduce the likelihood of any conflicts of interest and ensure independence.

The appointed independent visitor is required to visit at least once a month and as part of this visit must be able to meet in private with any children, parents, relatives and staff. In their report of the visit the independent person may make recommendations with timescales that must be considered by the registered person and a copy of this report must be provided to the Commission, the Minister for Health and Social Services, the provider and manager.

Question 9 YES NO DON'T KNOW

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| do you agree with the requirements that apply to children’s homes? | | | |
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Do you have any comments about the requirements that apply to children’s homes?

Inspections, compliance and offences

The Regulations require the Commission to carry out an inspection of a regulated service 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 to encourage improvements.

The Regulations clarify that, other than where specified, both the registered provider and registered manager are responsible for complying with the requirements.

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 Commission may serve an improvement notice to give providers opportunity to address any deficiencies. 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. If convicted the penalty for non-compliance with registration requirements is a fine up to £50,000

Question 10 YES NO DON'T KNOW

| | YES | NO | DON'T KNOW |
|---|-----|----|------------|
| Do you agree with the Regulations for inspection and offences for non-compliance? | | | |

Do you have any comments about the inspection and offences Regulations?

Do you have any other comments you wish to make about the proposed Regulations?

4. Responding to the Consultation

The Consultation begins on 27 February 2017 for eight weeks ending on 24 April 2017. If you wish to take part in this consultation, please complete this form and return it either by post or email to the addresses below.

How we will use your information

The information you provide will be processed by Christine Blackwood in compliance with the Data Protection (Jersey) Law 2005 for the purposes of this consultation. The States of Jersey may quote or publish responses to this consultation including (*sent to other interested parties on request, sent to the Scrutiny Office, quoted in a published report, reported in the media, published on www.gov.je, listed on a consultation summary etc.*) but will not publish the names and addresses of individuals without consent. Confidential responses will still be included in any summary of statistical information received and views expressed. 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 may be released.

Do you give permission for your comments to be quoted?

1. No
2. Yes, anonymously
3. Yes, attributed

Name to attribute comments to:

Organisation to attribute comments to, if applicable:

Briefing Session

A briefing session where stakeholders will have an opportunity to ask questions about and comment on the proposals will be held on:

Thursday 16th March 2017

Venue: Jersey Hospice

Time: 7pm – 9pm

If you require any further information about this consultation please contact:

Christine Blackwood

Head of Professional and Care Regulation

Email: c.blackwood@health.gov.je

Tel: 01534 445798

Address: Professional and Care Regulation
Maison Le Pape
The Parade
St Helier
JE3 3PU