



Jersey

REGULATION OF CARE (JERSEY) LAW 201-

Report

Explanatory Note

This Law makes new provision for the regulation of health and social care.

Part 1 - Preliminary

Article 1 is the interpretation provision. In particular, it defines “health care” and “social care”. These definitions set the scope of what may be regulated under the Law, although not all descriptions of care will be regulated under the Law when the requirement to register under the Law is first brought into force. The scope of the regulatory regime will be expanded over a number of years, and the States are given a power to amend the definitions “health care” and “social care”. The descriptions of health care and social care that are regulated under the Law, and the services connected with them, are defined as “regulated activities”, specifically, in *Article 2*.

Article 1 also defines “Commission” as the Health and Social Care Commission established under *Article 35*.

Article 2 gives effect to *Schedule 1* in which a range of descriptions of regulated activities will be set out. These will be added to, over time, by amending Regulations.

Part 2 – Requirement and procedure for registration

Article 3 creates the requirement for a provider to be registered in order to carry on a regulated activity and for a manager of a regulated activity to be registered in order to act as such. Carrying on the activity or acting as manager when not registered is an offence liable to imprisonment for up to 12 months and/or an unlimited fine. It is also made an offence for a person to hold himself or herself out as registered when he or she is not, or to hold out premises as premises on which a registered activity may be carried out, when they are not. The penalty for the offence is a fine up to level 4 on the standard scale (currently £5,000).

Article 3 also empowers the States to make Regulations for determining which of 2 or more persons is the provider of an activity, in a case where the activity is carried on by them, acting in different capacities. In addition, it provides that, where an activity is carried on by a Minister, the officer who is the accounting officer for that Ministry is the person who is required to register as the provider of the activity.

Article 4 sets out the process for applying for registration in relation to a regulated activity, whether as the provider or as the manager.

Article 5 requires the Commission to register a provider in relation to a regulated activity if the Commission is satisfied that the provider is a fit person to carry on that activity, has or will have a registered manager in relation to the activity and will comply with requirements imposed by Regulations made under *Article 14*. The same criteria apply to the registration of a manager.

Article 6 requires the Commission to notify an applicant if it intends to refuse an application or grant it on conditions other than those sought by the applicant. In such a case, the applicant has 14 days to make representations to the Commission, and the Commission must have regard to the representations in reaching its final decision. However, if the applicant signifies that he or she accepts the Commission's proposed decision, there is no need to wait 14 days before it becomes final.

Article 7 requires the Commission to register a successful applicant and, in the case of a provider, issue a certificate. An unsuccessful applicant must be informed of the reasons for refusal of his or her application and how he may appeal against the refusal.

Article 8 requires the Commission to keep a register under the Law, enter specific information in it, and make it available to the public. *Article 8* also provides for the information to be contained in a certificate issued to a registered provider.

Article 9 requires a registered provider or a registered manager to pay an annual fee for his or her continued registration. A surcharge will be imposed for late payment, and a failure to pay could lead to cancellation of registration.

Part 3 – Conditions and requirements of registration

Article 10 empowers the States, by Regulations, to set criteria to be applied by the Commission when determining whether a person is a fit person to be a provider or manager in relation to any regulated activity. The Regulations may further require the Commission to take certain steps in making such a decision – for example, requiring the Commission to obtain an up-to-date criminal record check from an applicant for registration.

Article 11 makes it a condition of the registration of every provider, in relation to a regulated activity, that there is also a manager registered in relation to the activity.

Article 11 also empowers the States to make Regulations specifying the circumstances in which the registered provider and registered manager in relation to an activity may be one and the same person. Regulations may specify further mandatory conditions of registration. For example, if a person is registered to carry on the provision of personal care combined with accommodation, there would be a mandatory condition that the registration would specify the numbers and descriptions of persons for whom the care may be provided at a given location. The requirement to impose a condition as to the number of persons cared for would be mandatory, but it would be for the Commission to fix the number.

Article 12 gives the Commission a discretion to impose conditions on registration. For example, a condition might be imposed requiring a manager to complete certain training by a given date, or a condition might set a ratio for the number of workers required in relation to a specified number of persons being cared for. Discretionary conditions may be imposed indefinitely, for a specified period of time or until the occurrence of a particular event.

Article 13 makes it an offence for a registered provider or registered manager to fail, without reasonable excuse, to comply with a condition of his or her registration. The penalty for the offence is a fine of up to level 4 on the standard scale (£5,000).



Article 46 creates a defence to an offence under this Law where the contravention is due to the act of another person and the provider or manager took all reasonable steps to prevent the commission of the offence.

Article 14 empowers the States, by Regulations, to specify requirements that must be complied with in the conduct of a regulated activity. The Regulations may require that either or both of the provider and manager comply with the requirements. Paragraphs (2) to (4) describe in detail, the kind of requirements that may, in particular, be imposed. A failure to comply with a requirement may be made an offence (paragraph (6)). Further, the Commission may be empowered to serve improvement notices allowing a provider and/or manager a period of time to rectify shortcomings. The Regulations may provide that an offence may not be prosecuted unless an improvement notice has been served first, and the provider or manager given the opportunity to rectify a shortcoming, as described. The Regulations may further make provision for the prevention and control of health care associated infections.

A Minister must consult with the Commission, and with such other persons as he or she considers appropriate, before lodging Regulations.

Article 15 provides that the Commission may, after consultation with interested parties, publish standards for compliance with requirements imposed by Regulations made under *Article 14*. Non-compliance with the standards does not, of itself, make a person liable for an offence or in any civil proceedings. However, the standards must be taken into account by the Commission, when making decisions under this Law, by a court, when hearing an appeal against a decision of the Commission, and in any proceedings for an offence under this Law. In addition, a standards may be admitted in evidence in any criminal or civil proceedings that do not arise under this Law.

Article 16 empowers the States to make Regulations regarding what happens if, for any reason, there ceases, at short notice, to be a registered manager, or that person is not able, for any reason, to carry out the duties of that role. The Regulations may permit a person to act as temporary manager without being registered. However, if a person acts in that capacity, he or she may be made liable under the Law as if he or she were registered.

Part 4 – Variation of conditions, suspension and cancellation

Article 17 provides for the variation of conditions imposed on a registered person (being either a registered provider or registered manager). The registered person may apply for a variation of a condition or the Commission may, itself, decide to vary a condition. A variation may be permanent or temporary. The Commission must notify the registered person of the variation it is proposing to make, and the registered person is allowed 14 days in which to make representations regarding the variation. The Commission must have regard to any representations, in reaching its final decision. However, there will be occasions where the registered person applies for a variation and the Commission is prepared to grant it on the terms requested. In such a case, there is no need for the Commission to give advance notice of its decision, and await the registered person's representations, before the variation takes effect. A variation will not take effect until the registered person's rights of appeal are exhausted, unless he or she agrees otherwise.

Article 18 provides for a case where the need to vary the conditions of a person's registration is so urgent that the procedures in *Article 17* should not be followed. The case is one where any delay would be a serious risk to the life, health or well-being of an individual. In serving notice of the variation, the Commission must give its reasons for relying on this Article to impose the variation with immediate effect.

Article 19 gives the Commission power to suspend a registered manager. The grounds for suspension are described in paragraph (1). The Commission may only decide to suspend a manager for up to 3 months, but may make further decisions to extend a period of suspension by up to 3 months at a time. The manager has a right of appeal against each decision.

Article 20 gives the Commission a discretion to cancel a registered manager or registered provider's registration. The grounds for doing so are set out in paragraphs (1) and (2). The Commission must notify both the person whose registration is to be cancelled and the registered provider or registered manager, as the case requires. Both persons notified have 14 days in which to make representations regarding the cancellation. A cancellation cannot take effect until the person's rights of appeal are exhausted, unless he or she agrees otherwise.

Article 21 allows the Commission to apply to the Bailiff for a provisional order for the immediate cancellation of a person's registration, whether as a provider or manager. An application is made without the person being notified of it. The Bailiff make a provisional order to cancel the person's registration with immediate effect if he or she is satisfied that there are grounds for cancellation and that there is prima facie evidence that there will be serious risk to the life, health or well-being of an individual if the cancellation does not have immediate effect. The order takes immediate effect, but the matter is then referred to the Royal Court for consideration. The Royal Court may cancel, vary or confirm the order. It also has power to make such other order as it thinks appropriate in the interests of users of the regulated activity to which the cancellation relates.

Article 22 applies only to "essential services". These are regulated activities which have only one provider, being a Minister. An example would be the provision of the acute hospital service by the Minister for Health and Social Services. If the Commission considered that there are grounds for cancellation of either the registered provider or registered manager in relation to the essential service, the Commission may, as an alternative to cancellation, prepare a report under this Article. The draft report must be sent to the Minister in question, the registered provider and the registered manager, each of whom has 28 days to make representations regarding the report. The Commission, in preparing the final draft, must have regard to any representations made. The final report is then sent to the Council of Ministers, and must make recommendations as to actions that should be taken in relation to the essential service. The Commission must also publish the report.

Article 23 allows a registered provider or registered manager to apply for his or her registration to be cancelled. The Commission may refuse or defer granting an application pending any investigation of a suspected failure to comply with any conditions of registration or requirements imposed by Regulations under *Article 14*.

Part 5 – Inspections, investigations and complaints

Article 24 provides for the Commission to appoint inspectors.

Article 25 provides that inspectors carry out inspections as directed by the Commission, for the purposes of the discharge of its functions under the Law or under Regulations made under *Article 30* (for example, a requirement to inspect a regulated activity at least twice a year, whether or not any non-compliance is suspected).

An inspector submits his or her findings to the Commission.

Article 26 defines an inspector's powers of inspection. The purpose of an inspection is to check whether the conditions and mandatory requirements of registration are or



being will be complied with and whether any associated standards published by the Commission under *Article 15* are being or will be met.

An inspector cannot enter a private dwelling without the occupier's consent. However, there is an exception to this rule if the occupier is incapable of giving consent and if the inspector believes that it is in the best interests of the occupier that an inspection is made.

An inspector must produce proof of his or her authority to conduct an inspection, if requested.

An inspector may be accompanied by other persons when making an inspection, including a police officer, and may take any equipment needed to conduct the inspection.

Paragraphs (6) to (8) describe the sort of investigation and enquiry that an inspector may make during the course of an inspection.

In addition, if the inspector is a doctor or a nurse, the inspector may examine a person who receives care, or is accommodated, on the premises, if the inspector has reason to believe that the person is not being cared for properly. The person's consent is required for the examination, if he or she is capable of giving such consent.

Article 27 requires the Commission to prepare a report following an inspection that is carried out pursuant to a requirement imposed by Regulations made under *Article 30*. The report shall include the Commission's conclusions as to whether the requirements of the Law are being complied with and any standards issued by the Commission being met. The Commission must send a draft of the report to the registered provider and register manager, each of whom has 28 days to submit a response to the draft report. The Commission then prepares and publishes the report and sends a copy to the registered provider and registered manager.

Article 28 gives the Commission power to require a registered provider or registered manager to provide documents or information that the Commission needs to discharge its functions as the regulator.

Article 29 makes it an offence for a person, without reasonable excuse, to obstruct an inspection or to fail to comply with a requirement imposed by an inspector conducting an inspection or by the Commission, under *Article 28*. The penalty for the offence is a fine of up to level 4 on the standard scale (£5,000).

Article 30 gives the States power to make Regulations regarding the investigation of complaints and the conduct of investigations. The Regulations may either require the Commission to investigate complaints or require the Commission to ensure that complaints are dealt with. The Regulations may further require the Commission to inspect regulated activities, either at specified intervals, or upon the occurrence of specified events.

Part 6 – Use of information

Article 31 is concerned with the disclosure of confidential personal information. Such information is defined as information which has been obtained by the Commission and which must be held in confidence, and which relates to and identifies an individual. Any person who knowingly or recklessly discloses the information during the individual's lifetime is guilty of an offence. The penalty for the offence is a fine of up to level 4 on the standard scale (£5,000).

Article 32 provides 2 defences to the offence in *Article 31*. The first defence is that either one of the circumstances described in paragraph (2) applies or that the

defendant reasonably believes that one of them applies. The second defence is described in paragraph (3).

Article 33 allows the Commission, having obtained information in connection with a function under this Law, to use it in connection with another of its functions.

Article 34 allows the Commission to disclose information that it has obtained in connection with any of its functions. Information that identifies an individual may be disclosed with the individual's consent. Otherwise, any information may be disclosed as permitted by paragraph (3).

Part 7 – Establishment and general functions of Commission

Article 35 establishes the Health and Social Care Commission as a body corporate with perpetual succession. The Commission must have at least 4, but not more than 8, Commissioners. The States may, by Regulations, amend these minimum and maximum figures. *Article 35* also gives effect to *Schedule 2*, which makes further provision as to the Commission.

Article 36 declares the Commission's independence from the Minister for Health and Social Services, the Chief Minister (who appoints the Commissioners) and the States.

Article 37 requires the Commission to discharge the functions conferred on it, whether by this Law or any other enactment. In addition, the Chief Minister may lodge Regulations transferring a function of regulating health or social care from a Minister to the Commission.

Article 38 requires the Commission to prepare a report on health and social care, as and when requested by the Minister for Health and Social Services. The Commission may prepare and publish a report on any aspect of health and social care, as it sees fit. The Commission is also required to publish information and advise the public regarding this Law and other matters relevant to the functions of the Commission.

Article 39 requires a Minister to consult the Commission upon proposals for the preparation of legislation concerning health or social care. The Minister may also consult the Commission on any other matter relating to the provision of social care.

Article 40 limits the liability of the Commission, the Commissioners, its employees and other appointees for acts done in the discharge of the Commission's functions. There is no limitation of liability if the act is done in bad faith. Nor is there any avoidance of liability for an award of damages if the act was in breach of the European Convention on Human Rights.

Article 41 gives the Minister for Treasury and Resources to prescribe fees and any surcharge payable to the Commission under this Law. If no fees or surcharge are prescribed, the Commission may set them, having first published its proposals and then consulted with the Minister for Treasury and Resources.

Article 42 makes the Commission's income exempt from income tax.

Article 43 requires the Commission to produce an annual report, which must include its accounts. The Commission must publish the report and send a copy to the Chief Minister.

Part 8 – Appeals, General Offences and Closing

Article 44 confers a right of appeal against any decision of the Commission under the Law. Any appeal must be made within 28 days of being notified of the decision in question.

Article 45 makes it an offence to provide false or misleading information in connection with an application under this Law or when required by the Commission or



an inspector to provide information. The penalty for the offence is a fine of up to level 4 on the standard scale (£5,000).

Article 46 makes the standard provision as to the liability of the officers of a body corporate, or of the partners of a partnership that has separate legal personality for offences committed by the body corporate or partnership.

Article 47 provides a defence in proceedings for an offence under the Law. The defence is available where the defendant can prove that the commission of the offence was due to the act or omission of another person, or an accident or other cause beyond the defendant's control, and that the defendant took reasonable precautions and exercised due diligence to avoid the commission of the offence.

Article 48 makes provision for the manner in which documents may be served under the Law.

Article 49 gives the States power to make Regulations which make transitional provisions for the commencement of the Law and provision for the transfer of staff to the Commission, once established.

Article 50 provides for the citation and commencement of the Law. Once the Law is registered in the Royal Court, the Regulation making powers in it will come into force straight away. The Commission will also be established but, initially, only for the purpose of preparing any standards required under *Article 15*. The remaining provisions of the Law will subsequently be commenced by Appointed Day Act.

Schedule 1 will describe regulated activities. Regulated activities will be added to Schedule 1, over time, by Regulations made under *Article 2*.

Schedule 2 makes provision as to the appointment of Commissioners, the resources of the Commission and the manner in which its business is conducted.



Jersey

REGULATION OF CARE (JERSEY) LAW 201-

Arrangement

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Jersey

REGULATION OF CARE (JERSEY) LAW 201-

A LAW to establish a Health and Social Care Commission; to provide for the regulation of activities involving or connected with the provision of health or social care; and for connected purposes

Adopted by the States [date to be inserted]

Sanctioned by Order of Her Majesty in Council [date to be inserted]

Registered by the Royal Court [date to be inserted]

THE STATES, subject to the sanction of Her Most Excellent Majesty in Council, have adopted the following Law –

PART 1

PRELIMINARY

1 Interpretation

(1) In this Law, unless the context otherwise requires –

“certificate” shall be construed in accordance with Article 8;

“Chairman” means the Chairman of the Commission;

“Commission” means the Health and Social Care Commission established by Article 35;

“discretionary condition” means a condition imposed under Article 12;

“fit person”, in relation to a provider or manager, shall be construed in accordance with Article 10;

“health care” includes all forms of health care provided for 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;

“health or social care” means health care or social care;

“health care associated infection” means any infection to which an individual may be exposed or made susceptible (or more susceptible) in circumstances where –

- (a) health or social care is being, or has been, provided to that or any other individual, and
- (b) the risk of exposure to the infection, or of susceptibility (or increased susceptibility) to it, is directly or in-directly attributable to the provision of that care,

but does not include an infection to which the individual is deliberately exposed as part of any health care;

“inspection” means an inspection under Part 5;

“inspector” means a person appointed as such under Article 24;

“mandatory condition” means a condition imposed under Article 11;

“medical practitioner” means a person registered as a medical practitioner under the Medical Practitioners (Registration) (Jersey) Law 1960;

“nurse” means a person registered as a nurse under the Health Care (Registration) (Jersey) Law 1995;

“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;

“premises” includes any vehicle or vessel;

“registered” means registered under this Law in relation to a regulated activity;

“registered person” means a registered provider or registered manager;

“regulated activity” has the meaning given in Article 2;

“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;

“States’ employee” has the same meaning as in the Employment of States of Jersey Employees (Jersey) Law 2005;

“worker” means –

- (a) an employee;
 - (b) a person working under a contract for services (whether entered into with that person or another person);
 - (c) a person working on a work experience placement; or
 - (d) a volunteer.
- (2) The States may, by Regulations, amend, in paragraph (1), the definitions “health care” and “social care”.

2 Regulated activities

- (1) Schedule 1 has effect to describe activities that are regulated activities and circumstances in which any activity is excepted from being a regulated activity.
- (2) The States may by Regulations amend Schedule 1.
- (3) Regulations under paragraph (2) may add or amend activities only if the activity involves or is connected with the provision of health or social care.
- (4) For the purposes of paragraph (3), activities connected with the provision of health or social care include, in particular –
 - (a) the supply of staff who are to provide such care;
 - (b) the provision of transport or accommodation for those who require such care;
 - (c) the provision of advice in respect of such care.
- (5) Regulations under paragraph (2) may repeal or amend any other enactment consequentially upon the addition of an activity to, or variation of an activity in, Schedule 1.

PART 2**REQUIREMENT AND PROCEDURE FOR REGISTRATION****3 Requirement to be registered to carry on, or act as manager in relation to, regulated activity**

- (1) A person must not carry on a regulated activity unless he or she is registered as the provider of the activity.
- (2) An individual must not act as the manager in relation to a regulated activity unless he or she is registered as the manager in relation to that activity.
- (3) A person must not –
 - (a) hold himself or herself out as being registered as a provider of a regulated activity, when he or she is not so registered;
 - (b) by his or her omission, allow another person to believe that he or she is registered as the provider of a regulated activity, when he or she is not so registered;
 - (c) hold himself or herself out as being registered as the manager in relation to a regulated activity, when he or she is not so registered;
 - (d) by his or her omission, allow another person to believe that he or she is registered, when he or she is not;
 - (e) hold out premises as being premises on which a person is permitted, by virtue of the conditions of his or her registration in relation to a regulated activity, to carry on the regulated activity, when the use of the premises is not so permitted;

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- (f) by his or her omission, allow another person to believe that premises are premises on which a person is permitted, by virtue of the conditions of his or her registration in relation to a regulated activity, to carry on the regulated activity, when the use of the premises is not so permitted.
 - (4) A person who contravenes paragraph (1) or (2) is guilty of an offence and liable to imprisonment for a term of 12 months and a to fine.
 - (5) A person who contravenes paragraph (3) is guilty of an offence and liable to a fine of level 4 on the standard scale.
 - (6) The States may by Regulations make provision for the purposes of this Law for determining, in relation to a regulated activity carried on by 2 or more persons acting in different capacities, which of them is to be regarded as the person who carries on the regulated activity.
 - (7) Where a regulated activity is carried on by a Minister, the following person, instead of the Minister, shall be treated, for the purposes of this Law, as the person carrying on the activity –
 - (a) such person as is specified, in relation to the activity, by Regulations made by the States; or
 - (b) if no-one is specified under sub-paragraph (a) in relation to the activity, the person who, in accordance with Article 37 of the Public Finances (Jersey) Law 2005, is the accounting officer for the Ministry.

4 Application for registration as provider or manager

- (1) A person who wishes to carry on a registered activity must apply to the Commission to be registered as a provider in respect of that activity.
- (2) An application for registration of an individual as the manager in relation to the carrying on of a regulated activity must be made by the person who is or wishes to be registered as the provider in respect of that activity.
- (3) An application under paragraph (1) or (2) must –
 - (a) be in the form required by the Commission;
 - (b) contain the information required by the Commission in order to determine the application;
 - (c) be accompanied by the documents required by the Commission in order to determine the application;
 - (d) be accompanied by the application fee;
 - (e) contain a declaration, signed by the person wishing to carry on the registered activity and, if the application is for registration of a manager, by that individual, that the information contained in the application and the documents accompanying the application is true and complete, to the best of the declarant's knowledge and belief.
- (4) An application may, with the permission of the Commission, be made for registration of a person as provider of, or the manager in relation to –
 - (a) 2 or more regulated activities;

- (b) a regulated activity carried on at 2 or more premises.
- (5) The Commission shall publish application forms for use under this Article, or otherwise make them available to prospective applicants.
- (6) The Commission may, for the purposes of deciding an application –
 - (a) request that an applicant provide further information and documents; and
 - (b) arrange an inspection.
- (7) The Commission is not required to make a decision in respect of an application until –
 - (a) all the information and documents required by the Commission have been provided;
 - (b) the application fee has been paid; and
 - (c) any inspection required by the Commission under paragraph (6) has been carried out.

5 Grant or refusal of application

- (1) The Commission must grant an application under Article 4 for the registration of a person as the provider in relation to a regulated activity if the Commission is satisfied –
 - (a) that the person is a fit person to carry on the regulated activity;
 - (b) that the condition in Article 11(1) is complied with; and
 - (c) as to the matter in paragraph (3).
- (2) The Commission must grant an application under Article 4 for the registration of an individual as the manager in relation to the carrying on of a registered activity by a registered provider if the Commission is satisfied –
 - (a) that the individual is a fit person to be a manager in relation to the carrying on of that activity; and
 - (b) as to the matter in paragraph (3).
- (3) The requirements specified in Regulations under Article 14 must be, and must continue to be, complied with, to the extent that they apply to the carrying on of the regulated activity.
- (4) In deciding whether paragraph (3) is satisfied, the Commission shall have regard to any standards for compliance issued under Article 15, to the extent that they apply to the carrying on of the regulated activity.
- (5) The Commission must refuse an application under Article 4 if it is not satisfied as to the matters described in this Article.

6 Notice of intention to refuse application or impose conditions

- (1) This Article applies where the Commission proposes to –
 - (a) refuse an application;

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- (b) impose mandatory conditions on registration on terms that differ from those (if any) proposed in the application; or
 - (c) impose discretionary conditions.
- (2) The Commission must notify the applicant, in writing, of its proposal and the reasons for it.
 - (3) Where the proposal relates to the registration of a manager, the Commission must also notify that individual, in writing, of its proposal and the reasons for it.
 - (4) A person notified under this Article may make representations, in writing, to the Commission in respect of the proposal.
 - (5) The representations must be made no later than 14 days after the notice is given.
 - (6) The Commission, in reaching its decision, must have regard to any representations made in accordance with paragraph (4) and (5).
 - (7) If a person notified under this Article informs the Commission that he or she does not intend to make any representations, or that he or she accepts the Commission's proposal, the Commission need not wait until the expiry of the period described in paragraph (5) before reaching its decision.

7 Notification of grant or refusal of application

- (1) The Commission must, upon granting an application, enter the particulars in the register in accordance with Article 8.
- (2) Where the application is for the registration of a provider, the Commission must also issue a certificate to the provider.
- (3) The Commission must, upon refusing an application, give written notice of the refusal, and the reasons for it, to the applicant.
- (4) The Commission must also, when issuing a certificate to an applicant or notifying an applicant of the refusal of his or her application, notify the applicant, in writing, of his or her rights of appeal under this Law against, as the case requires –
 - (a) the terms upon which any conditions are imposed upon the registration; or
 - (b) the refusal of registration.

8 Keeping of register and issue of certificates

- (1) The Commission shall keep a register of persons registered under this Law.
- (2) The following particulars shall be entered in the register in respect of a provider registered to carry on a regulated activity and the manager registered in relation to that activity –
 - (a) the name and business address of the registered provider and the date the provider was registered;

- (b) the names of –
 - (i) if the registered provider is a body corporate, its secretary, directors and any other officers,
 - (ii) if the registered provider is a partnership, the names of its partners,
 - (iii) if the registered provider is a trust, the names of the trustees,
 - (iv) if the registered provider is a foundation, the name of its guardian and council members;
 - (c) the name of the registered manager and the date he or she was registered;
 - (d) the regulated activity;
 - (e) the mandatory conditions and any discretionary conditions imposed upon the carrying on of the activity and the date the conditions were imposed.
- (3) The Commission shall –
- (a) make the register available for inspection, at reasonable hours, by members of the public;
 - (b) upon payment of the relevant fee, provide a person with a copy of an entry in the register.
- (4) A certificate issued to a registered provider must state –
- (a) the regulated activity or activities to which the registration relates;
 - (b) the name of the registered provider;
 - (c) the name of the registered manager;
 - (d) the mandatory conditions imposed upon the carrying on of a regulated activity; and
 - (e) the date the certificate takes effect.
- (5) A certificate issued to a registered provider may also state any discretionary condition imposed upon the carrying on of a regulated activity.
- (6) If, at any time, there is a change in the particulars described in paragraph (4) or stated in a certificate under paragraph (5), the Commission shall issue a fresh certificate to the registered provider.
- (7) The Commission shall, if satisfied that a certificate has been lost or destroyed, and upon payment of the relevant fee, issue a replacement certificate to the registered provider.

9 Annual fee

- (1) A registered person must, each year, by such date as is specified in Regulations, pay a fee to the Commission for his or her name to be kept on the register.
- (2) A registered person who does not pay the fee by the date specified must also pay a surcharge to the Commission.

- (3) A failure to pay the fee and any surcharge is a ground for cancellation of the person's registration.

PART 3

CONDITIONS AND REQUIREMENTS OF REGISTRATION

10 Provider and manager must be fit persons

The States may, by Regulations, specify criteria to be applied, and requirements to be complied with, by the Commission in determining, for the purposes of this Law –

- (a) whether a person is a fit person to be registered as the provider of a regulated activity;
- (b) whether a person is a fit person to be registered as a manager in relation to a regulated activity.

11 Mandatory conditions of registration

- (1) It shall be a condition of registration of a provider in relation to a regulated activity that there is –
- (a) an individual who is registered as the manager in relation to the carrying on of that activity by the provider; or
- (b) in a case where Regulations under paragraph (2)(b) require more than one manager to be registered, such numbers of individuals registered as managers in relation to the carrying on of that activity by the provider as the Regulations require.
- (2) The States may by Regulations specify, for the purposes of paragraph (1), circumstances –
- (a) in which an individual who is a registered provider in relation to a regulated activity may also be the registered manager in relation to the carrying on of that activity;
- (b) in which a registered provider must have more than one registered manager in relation to a regulated activity.
- (3) The States may by Regulations specify, in relation to any regulated activity, further conditions that the Commission must impose upon the registration of a provider or manager in relation to the activity.
- (4) The conditions that may be specified by Regulations made under paragraph (3) include but are not limited to –
- (a) a restriction on the numbers and descriptions of individuals for whom a regulated activity may be provided at any place or premises or otherwise, whether individuals are described by age, physical or mental health or otherwise; and
- (b) the premises at which any regulated activity may be provided.

12 Discretionary conditions of registration

- (1) The Commission may impose such conditions upon the registration of a provider or manager as it thinks appropriate to ensure that the needs of users of the regulated activity to which the registration relates are met.
- (2) The conditions that the Commission may impose under this Article include, but are not limited to –
 - (a) a requirement that a registered manager must complete specified training or obtain a specified qualification;
 - (b) a requirement that alterations are made to any premises on which the regulated activity is to be carried on;
 - (c) the imposition of minimum requirements as to the numbers, qualifications and training of the workers used to deliver the regulated activity.
- (3) A condition may be expressed –
 - (a) to apply indefinitely or until a specified date or occurrence;
 - (b) so as to require that any action required by the condition is completed by a specified date or occurrence.

13 Offence of failure to comply with conditions of registration

A person who is registered, in relation to a regulated activity, whether as provider or manager, who fails without reasonable excuse to comply with any discretionary condition or mandatory condition imposed on his or her registration is guilty of an offence and liable to a fine of level 4 on the standard scale.

14 Requirements in respect of regulated activities

- (1) The States may by Regulations specify requirements that must be complied with by either or both of the registered provider and registered manager in relation to all regulated activities or specified regulated activities.
- (2) Regulations under this Article may in particular make provision with a view to –
 - (a) securing that any service provided in the carrying on of a regulated activity is of appropriate quality;
 - (b) securing the health, safety and welfare of persons for whom any such service is provided;
 - (c) securing –
 - (i) that the particular needs (whether educational, treatment, supervisory or otherwise) of each person for whom any such service is provided are identified, and
 - (ii) that the service provided meets each person's particular needs;

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- (d) securing that workers and premises used to provide such service and that any care and treatment (including assessment of a person's care and treatment needs) administered as part of such services are of an appropriate quality, fit for purpose and safe.
- (3) Regulations under this Article may in particular –
- (a) make provision as to the manner in which a regulated activity is carried on;
 - (b) make provision as to who is a fit person to work in any service provided in the carrying on of a regulated activity;
 - (c) make provision as to the recruitment, management and training of persons who work in any service provided in the carrying on of a regulated activity;
 - (d) make provision as to the fitness of premises;
 - (e) impose requirements as to the financial position of a registered provider;
 - (f) impose requirements as to the keeping of records and accounts;
 - (g) impose requirements for the display or making available of a certificate issued to a registered provider;
 - (h) impose requirements as to the provision of information –
 - (i) whether periodically or upon the occurrence of any specified event, and
 - (ii) whether to the Commission, to persons to whom any service is provided or to any other persons;
 - (i) impose requirements as to the making available to the public of information as to any charges made for the provision of any services provided in the carrying on of a regulated activity;
 - (j) impose requirements as to the review of the quality of any services provided in the carrying on of a regulated activity, as to the preparation of reports of such reviews, and as to the making available to the public of such reports;
 - (k) make provision as to the handling of complaints and disputes and the application of lessons learnt from them.
- (4) Regulations made under this Article by virtue of paragraph (3)(a) may in particular include provision as to the control and restraint, in appropriate cases, of persons receiving health or social care or other services in connection with the carrying on of a regulated activity.
- (5) Regulations made under this Article may make provision for the prevention and control of health care associated infections and may include such provision as the States consider appropriate for the purpose of safeguarding individuals (whether receiving health or social care or otherwise) from the risk, or any increased risk, of being exposed to health care associated infections or of being made susceptible, or more susceptible, to them.
- (6) Regulations under this Article may provide for a failure to comply with any requirement in the Regulations to be an offence liable to a fine up to £50,000.

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- (7) Regulations under this Article may –
- (a) empower the Commission to serve a notice (an “improvement notice”) on either or both of a registered provider and registered manager in relation to a regulated activity;
 - (b) specify the circumstances in which an improvement notice may be served;
 - (c) specify the requirements that may be imposed on either or both of a registered provider and registered manager by an improvement notice;
 - (d) specify a procedure for the preparation, completion and service of an improvement notice;
 - (e) confer a right of appeal against an improvement notice on a person on whom a notice is served;
 - (f) specify the consequences of a failure to comply with an improvement notice.
- (8) Regulations under this Article may provide that a person cannot be prosecuted for a failure to comply with any requirement in the Regulations unless –
- (a) an improvement notice has been served in respect of the failure;
 - (b) the time by which that notice must be complied with has passed; and
 - (c) the improvements required by that notice have not been effected.
- (9) Before lodging Regulations under this Article, a Minister must consult the Commission and such persons as he or she considers appropriate.

15 Standards for compliance with requirements

- (1) The Commission may –
- (a) prepare and publish standards for compliance with requirements imposed by Regulations made under Article 14;
 - (b) keep standards for such compliance under review and, as necessary, replace, revoke or amend them.
- (2) The Commission must, before publishing a standard for compliance or any amendment of a standard for compliance, or before revoking a standard for compliance, consult with such persons or bodies as appear to the Commission to be representative of persons affected by the proposal.
- (3) Standards for compliance published under paragraph (1) shall be taken into account –
- (a) by the Commission, when making any decision under this Law;
 - (b) by the Bailiff and the Royal Court, when making a decision under Article 21;
 - (c) by a court, when hearing any appeal against such a decision;
 - (d) in any proceedings for an offence under this Law.

- (4) A standard for compliance is admissible in evidence in any criminal or civil proceedings that do not arise under this Law.
- (5) A failure to observe a standard for compliance does not, of itself, make a person liable to any criminal or civil proceedings.

16 Arrangements during absence of manager

- (1) The States may by Regulations make provision as to the carrying on of a regulated activity by a registered provider –
 - (a) when the registered manager is absent or incapacitated or has died;
 - (b) when the registration of the manager in relation to the activity is suspended or has been cancelled;
 - (c) when the registered manager has been dismissed by the registered provider; or
 - (d) in any other circumstance when the individual who is or was the registered manager is no longer discharging the duties of that role.
- (2) The Regulations may further make provision as to circumstances in which another person may discharge the duties of the registered manager –
 - (a) without that person committing an offence under Article 3(2);
 - (b) without the registered provider being in breach of Article 11(1).
- (3) The Regulations may further provide that this Law and Regulations made under it shall apply to a person discharging the duties of a registered manager in accordance with provision made under paragraph (2) as if the person was registered.

PART 4

VARIATION OF CONDITIONS, SUSPENSION AND CANCELLATION

17 Variation of conditions

- (1) The Commission may, of its own volition or upon the written application of a registered person under paragraph (2), decide to –
 - (a) vary the terms of a mandatory condition; or
 - (b) vary, add to or remove discretionary conditions,applicable to that person's registration in relation to a regulated activity.
- (2) A registered person may apply to Commission for –
 - (a) the terms of a mandatory condition to be varied; or
 - (b) any discretionary condition to be varied or removed,in relation to his or her registration in relation to a regulated activity.
- (3) A variation of the terms of a mandatory condition or the variation, addition or removal of a discretionary condition may be expressed –
 - (a) to apply indefinitely or until a specified date or occurrence;

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- (b) so as to require that any action required by the terms of the mandatory condition or by the discretionary condition is completed by a specified date or occurrence.
 - (4) An application under paragraph (2) must be –
 - (a) in such form and provide or be accompanied by such information and documents as the Commission may require; and
 - (b) accompanied by the application fee.
 - (5) Paragraph (4)(a) does not prevent the Commission requesting that the registered person provide further information or documents in support of the application.
 - (6) The Commission is not required to consider an application under paragraph (2) until –
 - (a) all the information and the documents required or requested have been provided;
 - (b) any inspection required by the Commission has been completed; and
 - (c) the application fee has been paid.
 - (7) Before making a decision under paragraph (1) Commission must notify the registered person, in writing, of its proposal and the reasons for it.
 - (8) A person notified under paragraph (7) may make representations, in writing, to the Commission in respect of the proposal.
 - (9) The representations must be made no later than 14 days after the notice is given under paragraph (7).
 - (10) The Commission, in reaching its decision, must have regard to any representations made in accordance with paragraphs (8) and (9).
 - (11) Paragraphs (7) to (10) do not apply where the alteration, variation or removal is made upon the application of the registered person and as requested in the application.
 - (12) If a registered person notified under paragraph (7) informs the Commission that he or she does not intend to make any representations, or that he or she accepts the Commission's proposal, the Commission need not wait until the expiry of the period described in paragraph (9) before reaching its decision.
 - (13) The Commission must –
 - (a) notify the registered person of a decision under this Article and the date it takes effect; and
 - (b) if the decision is made otherwise than upon the application of the registered person and as requested in the decision, notify the registered person of his or her rights of appeal against the decision.
 - (14) A decision under this Article cannot, without the agreement of the registered person, take effect earlier than the day on which the right to appeal against the decision is exhausted.

18 Expedited procedure for variation of conditions

- (1) Where the Commission is of the opinion that to delay the imposition or variation of a condition under Article 17 would be a serious risk to the life, health or well-being of an individual, the Commission may impose or vary the condition –
 - (a) without following the procedure in paragraphs (6) to (9) of that Article; and
 - (b) notwithstanding Article 17(14), with immediate effect.
- (2) A notice of decision under Article 17 that is made in accordance with paragraph (1) of this Article must, in addition to stating the reasons for the decision, state the Commission's reasons for making the decision in accordance with this Article.

19 Suspension of registration of manager

- (1) The Commission may suspend the registration of a manager in relation to a regulated activity, for a period of up to 3 months, if Commission has reason to suspect that –
 - (a) he or she is not a fit person;
 - (b) any condition imposed upon the registration of the manager or the provider in relation to a regulated activity has not been complied with; or
 - (c) the manager has not complied with any requirement relating to the regulated activity that he or she is required by Regulations under Article 14 to comply with.
- (2) The Commission may further decide, on more than one occasion, to extend the period of a person's suspension by up to 3 months.
- (3) The Commission shall give a manager notice of a decision under paragraph (1) or (2) and the reasons for it.
- (4) During the period for which an individual's registration as a manager is suspended, this Law shall apply as if the individual were not so registered, even though his or her name remains on the register.

20 Cancellation of registration

- (1) The Commission may cancel the registration of a registered person in relation to a regulated activity if –
 - (a) the person has failed to comply with any mandatory condition imposed upon his or her registration in relation to the activity;
 - (b) the person has failed to comply with any discretionary condition imposed upon his or her registration in relation to the activity;
 - (c) the person is not a fit person;
 - (d) the person has failed to comply with any requirement in Regulations made under Article 14, whether in relation to the regulated activity in question or in relation to another regulated

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- activity, and whether or not the person has been convicted of an offence for such failure;
- (e) the person has been convicted of an offence under this Law or Regulations made under Article 14, whether or not in relation to the regulated activity;
 - (f) the person has failed to pay an annual fee and any surcharge due in respect of his or her registration under Article 9.
- (2) The Commission may cancel the registration of a manager in relation to a regulated activity if there ceases to be a provider registered to carry on that activity.
 - (3) Before making a decision to cancel the registration of registered person in relation to a regulated activity, Commission must notify, in writing, both the provider and the manager in relation to that activity of its proposal and the reasons for it.
 - (4) A person notified under paragraph (3) may make representations, in writing, to the Commission in respect of the proposal.
 - (5) The representations must be made no later than 14 days after the notice is given.
 - (6) The Commission, in reaching its decision, must have regard to any representations made in accordance with paragraph (4) and (5).
 - (7) If a registered person notified under paragraph (3) informs the Commission that he or she does not intend to make any representations, or that he or she accepts the Commission's proposal, the Commission need not wait until the expiry of the period described in paragraph (5) before reaching its decision.
 - (8) The Commission must give the registered person written notice of the cancellation of his or her registration in relation to a regulated activity.
 - (9) A notice under paragraph (8) must –
 - (a) give the reasons for the decision;
 - (b) state when the decision takes effect; and
 - (c) explain the provider or manager's rights of appeal.
 - (10) The cancellation of a person's registration cannot, without his or her agreement, take effect before his or her rights of appeal are exhausted.
 - (11) If the Commission gives notice of cancellation to a provider in respect of the carrying on of a regulated activity, the Commission must, at the same time, give a copy of the notice to the manager registered in relation to that activity.
 - (12) If the Commission gives notice of cancellation to a manager in relation to a regulated activity, the Commission must, at the same time, give a copy of the notice to the provider registered to carry on that activity.
 - (13) Paragraphs (11) and (12) do not apply if the same individual is both the provider and the manager.

21 Immediate cancellation of registration

- (1) The Commission may apply to the Bailiff for a provisional order for the immediate cancellation of the registration of a registered person in relation to a regulated activity.
- (2) An application under paragraph (1) shall be made *ex parte* and shall be supported by an affidavit made on behalf of the Commission, stating the reasons for the application.
- (3) The Bailiff may grant an application under paragraph (1) if –
 - (a) he or she is satisfied that there are grounds for such cancellation under Article 20; and
 - (b) it appears to him or her that there is prima facie evidence that there will be serious risk to the life, health or well-being an individual if such cancellation does not have immediate effect.
- (4) A provisional order made by the Bailiff under this Article shall be of immediate effect.
- (5) If the Bailiff makes a provisional order under this Article –
 - (a) the Bailiff must refer the provisional order to the Royal Court for consideration; and
 - (b) both the registered provider of, and the registered manager in relation to, the regulated activity must be served with –
 - (i) notice of the making of the order and of its terms,
 - (ii) a copy of the affidavit referred to in paragraph (2), and
 - (iii) notice of the date on which the provisional order shall be considered by the Royal Court.
- (6) On considering the provisional order for cancellation of registration, the Royal Court may –
 - (a) confirm, vary or cancel the order; and
 - (b) make such other order as it think in the interests of any user of the regulated activity to which the cancellation of registration relates.

22 Report on essential services

- (1) In this Article “essential service” means a regulated activity –
 - (a) which is carried on by a Minister; and
 - (b) which is not carried on by any other person.
- (2) Where the Commission considers that there are grounds for cancellation of registration of the provider or manager in relation to an essential service the Commission may prepare a report under this Article.
- (3) Before making a report under paragraph (8), the Commission must send a draft of the report to the Minister, the registered provider and the registered manager.
- (4) A person notified under paragraph (3) may make representations, in writing, to the Commissioner, in respect of the draft report.

- (5) The representations must be made no later than 28 days after the draft report is sent under paragraph (3).
- (6) The Commission, in completing the report, must have regard to any representations made in accordance with paragraphs (4) and (5).
- (7) If each of the persons notified under paragraph (3) informs the Commission that he or she does not intend to make any representations, the Commission need not wait until the expiry of the period described in paragraph (5) before completing the report.
- (8) A report under this Article in relation to an essential service –
 - (a) shall be made to the Council of Ministers;
 - (b) shall specify the grounds on which the report is made;
 - (c) shall recommend actions that should be taken in relation to the essential service.
- (9) The Commission shall publish the report, subject to the restrictions in Part 6.

23 Cancellation of registration upon request

- (1) A registered person may apply, in writing, to the Commission for his or her registration in relation to a regulated activity to be cancelled.
- (2) A registered provider who makes an application under paragraph (1) must give a copy of the application to the manager registered in relation to the activity
- (3) A registered manager who makes an application under paragraph (1) must give a copy of the application to the registered provider who carries on the activity.
- (4) Paragraphs (2) and (3) do not apply if the same individual is both the provider and the manager in relation to the activity.
- (5) The Commission may decide to refuse an application under paragraph (1) or defer granting such an application if, at the time it is made, the Commission suspects that the person making the application may have failed to comply with any mandatory or discretionary condition imposed on his or her registration or any requirement imposed by Regulations under Article 14.

PART 5

INSPECTIONS, INVESTIGATIONS AND COMPLAINTS

24 Inspectors

The Commission may appoint any person as an inspector for the purposes of this Law.

25 Requirements for inspection of premises

- (1) The Commission may, for the purposes of the discharge of its functions under this Law or Regulations made under Article 30(c), direct an inspector to conduct an inspection of premises on which a regulated activity is, or is believed to be, carried on.
- (2) An inspector shall, as directed by the Commission under paragraph (1) –
 - (a) conduct inspections of premises on which a regulated activity is carried on; and
 - (b) submit his or her findings upon any inspection to the Commission together with an inventory of any documents, records or other items seized by him or her in exercise of the powers conferred by Article 26.

26 Powers of inspection

- (1) An inspector directed under Article 25 to conduct an inspection of premises may enter and inspect those premises, in accordance with this Article for the purpose of checking –
 - (a) compliance with the requirements imposed by or under this Law in relation to any regulated activity carried on on premises; and
 - (b) the meeting of standards set under Article 15 in relation to such requirements.
- (2) An inspector shall not enter a private dwelling without the prior consent of the occupier.
- (3) Notwithstanding paragraph (2), if the occupier of a private dwelling is unable to give his or her consent, by reason of mental or physical incapacity, an inspector may enter the dwelling if he or she is of the opinion that it is in the best interests of the occupier that the inspection is conducted.
- (4) An inspector shall, if requested by the owner or occupier of premises, produce proof of his or her authority to conduct an inspection of those premises.
- (5) An inspector conducting an inspection of premises –
 - (a) may be accompanied by a police officer and such other persons as he or she considers necessary for the purposes of the inspection;
 - (b) may have with him or her such equipment as he or she considers necessary for the conduct of the inspection.
- (6) An inspector conducting an inspection of premises may –
 - (a) make any examination into –
 - (i) the state of the premises,
 - (ii) the management of the premises,
 - (iii) the treatment of persons receiving care, or accommodated on, the premises;
 - (b) inspect and take copies of any documents or other records;

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- (c) have access to, and check the operation of, any computer, and any associated apparatus or material which is or has been in use in connection with any documents or records;
 - (d) inspect any other item; and
 - (e) seize and remove from the premises any documents, records other items.
- (7) The power of inspection in paragraph (6)(b) includes the power –
- (a) to require any person holding or accountable for documents or records (whether or not kept at the premises) to produce them for inspection at the premises; and
 - (b) to require any records which are kept by means of a computer to be produced in a form in which they are legible and can be taken away.
- (8) An inspector conducting an inspection of premises may interview, in private –
- (a) the registered provider of any regulated activity carried on, or believed to be carried on, on the premises;
 - (b) the registered manager in relation to any regulated activity carried on, or believed to be carried on, on the premises;
 - (c) any person working on the premises;
 - (d) any person receiving care at, or accommodated on, the premises, if he or she consents to the interview.
- (9) The power under paragraph (8)(a) to interview a registered provider includes, in the case of a body corporate, limited liability partnership or separate limited partnership, the power to interview, in private, any director, manager, secretary, partner or other similar officer of the body corporate or partnership.
- (10) An inspector conducting an inspection of premises may examine in private any person receiving care at, or accommodated on, the premises if –
- (a) the inspector is a medical practitioner or nurse;
 - (b) the inspector has reason to believe that the person to be examined is not receiving proper care or, as the case requires, is not properly accommodated, at the premises; and
 - (c) the person to be examined –
 - (i) is capable of giving consent to the examination, and does so, or
 - (ii) is incapable of giving consent to the examination.
- (11) An inspector may –
- (a) require any person to afford the inspector such facilities and assistance with respect to matters within the person's control as are necessary to enable the inspector to conduct the inspection;

- (b) take such measurements and photographs, and make such recordings, as the inspector considers necessary for the purposes of the inspection.
- (12) In this Article, “documents or records” includes a reference to personal and medical records.

27 Report following inspection

- (1) The Commission shall prepare a report following an inspection that is carried out pursuant to a requirement imposed by Regulations under Article 30(c).
- (2) The report shall include the Commission’s conclusions as to whether there has been any failure to comply with requirements imposed by or under this Law and as to whether standards set under Article 15 have been met.
- (3) The Commission shall, before finalizing a report, send a copy of the draft report to the registered provider carrying on the regulated activity under inspection and the registered manager in relation to that activity.
- (4) The registered provider and the registered manager may each, within the period of 28 days, submit a response to the draft.
- (5) If a response submitted under paragraph (4) identifies an error of fact in the draft report, and the inspector accepts the error, the inspector must correct the error before finalizing the report.
- (6) Once the report is finalized, the Commission shall –
 - (a) send a copy of the report and the inventory to the registered provider and registered manager; and
 - (b) make arrangements for the publication of the report in such manner as the Commission thinks fit.
- (8) The Commission may, before complying with paragraph (6)(b), omit from the report any confidential information.

28 Power to require documents and information

- (1) The Commission may require a registered provider or registered manager to provide the Commission with such documents, information and records as the Commission considers it necessary or expedient to have for the purposes of any of its regulatory functions.
- (2) The power in paragraph (1) to require the provision of information, documents or records includes, in relation to information, documents or records kept by means of a computer or other electronic device for the storage of information, power to require the provision of the information, documents or records in legible form.
- (3) In this Article, “documents or records” includes a reference to personal and medical records.

29 Offence of obstruction or non-compliance

A person who, without reasonable excuse –

- (a) obstructs the conduct of an inspection under this Part; or
- (b) fails, without reasonable excuse, to comply with a requirement imposed under Article 26 or Article 28,

is guilty of an offence and liable to a fine of level 4 on the standard scale.

30 Complaints and further requirements as to inspections

The States may by Regulations –

- (a) require the Commission to ensure that complaints concerning the carrying on of a regulated activity are dealt with and, if appropriate, investigated, whether the Commission deals with the complaint itself or ensures that it is dealt with by another person;
- (b) empower the Commission to conduct investigations of complaints –
 - (a) in accordance with procedures specified in the Regulations; or
 - (b) in accordance with procedures determined and published by the Commission;
- (c) require that the Commission carries out inspections of any regulated activity at such intervals, for such purposes or upon the occurrence of such events as are specified in the Regulations.

PART 6**USE OF INFORMATION****31 Offence of disclosing confidential personal information**

- (1) This Article applies to personal confidential information, being information which –
 - (a) has been obtained by the Commission on terms, or in circumstances, requiring it to be held in confidence; and
 - (b) relates to and identifies an individual.
- (2) A person is guilty of an offence under this Article if, during the lifetime of an individual, the person knowingly or recklessly discloses personal confidential information that relates to that individual.
- (3) A person guilty of an offence under this Article is liable to a fine of level 4 on the standard scale.
- (4) For the purposes of paragraph (1)(b), information obtained by the Commission is to be treated as identifying an individual if the individual can be identified from a combination of –
 - (a) that information; and
 - (b) other information obtained by the Commission.

- (5) References in this Article to information obtained by the Commission include references to information obtained by an inspector.

32 Defence to Article 31

- (1) It shall be a defence for a person charged with an offence under Article 31 to prove that, at the time of the alleged offence –
- (a) any of the circumstances in paragraph (2) applied in relation to the disclosure; or
 - (b) the person reasonably believed that any of them so applied.
- (2) The circumstances are –
- (a) that the disclosure was made in a form in which the individual to whom the information relates is not identified;
 - (b) that the disclosure was made with the consent of that individual;
 - (c) that the information disclosed had previously been lawfully disclosed to the public;
 - (d) that the disclosure was made in accordance with any enactment or order of a court;
 - (e) that the disclosure was necessary or expedient for the purposes of protecting the welfare of any individual;
 - (f) that the disclosure was made to any person or body in circumstances where it was necessary or expedient for the person or body to have the information for the purpose of exercising functions of that person or body under any enactment.
- (3) It shall also be a defence for a person charged with an offence under Article 31 to prove that the disclosure was made –
- (a) for the purpose of facilitating the exercise of any of the Commission's functions;
 - (b) in connection with the investigation of a criminal offence (whether in Jersey or elsewhere); or
 - (c) for the purpose of criminal proceedings (whether in Jersey or elsewhere).
- (4) If a person charged with an offence under Article 31 relies on a defence in paragraph (1) or (3), and evidence is adduced which is sufficient to raise an issue with respect to that defence, the court must assume that the defence is satisfied unless the prosecution proves beyond reasonable doubt that it is not.
- (5) For the purposes of paragraph (2)(a), information disclosed by a person is to be treated as being in a form in which an individual is identified if the individual can be identified from a combination of –
- (a) the information; and
 - (b) other information disclosed by the person or by the Commission.

33 Use of information by Commission

- (1) Information obtained by, or documents or records produced to, the Commission in connection with any of its functions under this Law may be used by the Commission in connection with any of its other functions.
- (2) The reference in paragraph (1) to information obtained by, or documents or records produced to, the Commission includes a reference to information obtained by, or documents or records produced to, an inspector.

34 Permitted disclosure of information by Commission

- (1) Paragraphs (2) and (3) apply to information obtained by the Commission in the course of discharging any of its functions.
- (2) The Commission may disclose information that relates to an individual if –
 - (a) the disclosure is made in a form in which the individual is not identified; or
 - (b) the disclosure is made with the consent of the individual.
- (3) The Commission may disclose information (whether or not related to an individual) if –
 - (a) the information has previously been lawfully disclosed to the public;
 - (b) the disclosure is made in accordance with any enactment or order of a court;
 - (c) the disclosure is necessary or expedient for the purpose of protecting the welfare of any individual;
 - (d) the disclosure is made to any person or body in circumstances where it is necessary or expedient for the person or body to have the information for the purpose of exercising functions of that person or body under any enactment;
 - (e) the disclosure is made for the purpose of facilitating the exercise of any of the Commission's functions;
 - (f) the disclosure is made in connection with the investigation of a criminal offence (whether in Jersey or elsewhere); or
 - (g) the disclosure is made for the purposes of criminal proceedings (whether in Jersey or elsewhere).
- (4) Paragraphs (2) and (3) have effect notwithstanding any rule of customary law which would otherwise prohibit or restrict the disclosure.
- (5) For the purposes of paragraph (2)(a), information disclosed by the Commission shall be treated as being in a form in which an individual is identified if the individual can be identified from a combination of –
 - (a) the information; and
 - (b) other information disclosed by the Commission

- (6) The reference in paragraph (1) to information obtained by the Commission includes a reference to information obtained by an inspector.

PART 7

ESTABLISHMENT AND GENERAL FUNCTIONS OF COMMISSION

35 Establishment of Health and Social Care Commission

- (1) There shall be a Health and Social Care Commission.
- (2) The Commission shall be a body corporate with perpetual succession.
- (3) The Commission shall consist of not less than 4 and not more than 8 Commissioners.
- (4) The States may by Regulations amend, in paragraph (3) the minimum and maximum number of Commissioners.
- (5) Schedule 2 has effect regarding the appointment of the Commissioners, the discharge of the functions of the Commission, and the resources and funding of the Commission

36 Independence of Commission

The Commission is independent of the Minister for Health and Social Services, the Chief Minister and of the States.

37 Functions of Commission

- (1) The Commission shall discharge the functions conferred on it by or under this Law and any other enactment.
- (2) The States may by Regulations transfer, from a Minister to the Commission, any function of regulating the provision of any description of health or social care.
- (3) Regulations under paragraph (2) may contain such incidental, consequential, supplemental and transitional provisions as may be necessary or expedient for the purpose of giving full effect to the Regulations, including provisions –
 - (a) for the transfer of any movable property held, any rights enjoyed and any liabilities (whether civil or criminal) incurred by the Minister in connection with any function transferred, including any such rights and liabilities in respect of which, at the time of transfer, no claim has been made or no proceedings have been commenced;
 - (b) for the carrying on and completion by or under the authority of the Commission of anything commenced, before the Regulations have effect, by or under authority of the Minister;
 - (c) for the amendment of enactments relating to any functions transferred;

- (d) for the construction of enactments of the United Kingdom having effect in Jersey relating to any functions transferred;
 - (e) for the construction and adaptation of any instrument, contract or legal proceedings made or commenced before the Regulations have effect.
- (4) Only the Chief Minister may lodge Regulations under this Article.

38 Reports, information and advice

- (1) The Commission shall, when requested by the Minister for Health and Social Services –
- (a) prepare a report upon an aspect of health and social care, as requested by the Minister; and
 - (b) submit the report to the Minister.
- (2) The Commission may prepare and publish report on aspects of health and social care, as it thinks fit.
- (3) The Commission shall publish information and give such advice to the public as the Commission considers appropriate regarding –
- (a) the operation of this Law;
 - (b) any matters relating to the functions of the Commission under this Law or any other enactment.
- (4) The Commission may offer for sale copies of reports published under paragraph (2) and information published under paragraph (3).
- (5) The Commission may, if it thinks fit, make a reasonable charge for advice given under this paragraph (3) at the request of any person other than the Minister.

39 Minister's duty to consult Commission

- (1) A Minister –
- (a) shall consult the Commission upon any proposals for the preparation of an enactment concerning health or social care;
 - (b) may consult the Commission upon any other matter relating to the provision of health or social care.
- (2) The Commission shall advise a Minister when so consulted.

40 Limitations of liability

- (1) The Commission, the Commissioners, its employees and other appointees are not liable in damages for any act done in the discharge, or purported discharge, of any function of the Commission.
- (2) Paragraph (1) does not apply –
- (a) if it was shown that the act was done in bad faith; or

- (b) so as to prevent an award of damages made in respect of an act on the ground that the act was unlawful as a result of Article 7(1) of the Human Rights (Jersey) Law 2000.
- (3) Except as any enactment or contract provides to the contrary, the Chief Minister, the Minister for Health and Social Services and the States are not liable for any act or omission, or debt or other obligation, of the Commission.

41 Fees and surcharge chargeable by Commission

- (1) Where a provision of this Law or any enactment made under it provides for the payment to the Commission of a fee, the fee that may be charged shall be the fee related to the provision that is for the time being –
 - (a) prescribed by Order made by the Minister for Treasury and Resources, or
 - (b) if a fee is not prescribed under sub-paragraph (a), published by the Commission and in effect in accordance with this Article.
- (2) The Minister for Treasury and Resources may prescribe fees, or the Commission may set fees, that are calculated by reference to any factor that is relevant to the carrying on of a regulated activity, including, but not limited to –
 - (a) the number and classes of persons for whom a service is provided;
 - (b) the number and size of premises on which a service is provided.
- (3) The Commission must, at least 28 days before publishing a fee under paragraph (1)(b), publish a report that must include –
 - (a) details of the duty or power for or in respect of which the fee is to be determined;
 - (b) details of the proposed fee.
- (4) The amount of the surcharge due under Article 9(2) shall be the amount for the time being –
 - (a) prescribed by Order made by the Minister for Treasury and Resources; or
 - (b) if the amount is not prescribed under sub-paragraph (a), published by the Commission
- (5) The Commission must, before publishing a fee under paragraph (1)(b), consult the Minister for Treasury and Resources on the proposed fee.
- (6) In this Article “publish” means publish in a manner that is likely to bring it to the attention of those affected;
- (7) Except as provided by this Article, nothing in this Article otherwise limits any right or power the Commission has to charge, recover and receive any fees, charges, costs, proceeds and other amounts.

42 Exemption from income tax

The income of the Commission is not liable to income tax under the Income Tax (Jersey) Law 1961.

43 Requirement to prepare annual accounts and reports

- (1) The Commission shall, as soon as possible after the end of a year, prepare a report –
 - (a) providing information regarding the discharge of the Commission's functions during the year; and
 - (b) containing a copy of the Commission's accounts for the year.
- (2) The Commission shall –
 - (a) publish the report; and
 - (b) submit a copy of the report to the Chief Minister.
- (3) The Chief Minister shall present to the States a report submitted under paragraph (2)(b).

PART 8**APPEALS, GENERAL OFFENCES AND CLOSING****44 Rights of appeal**

- (1) The following persons have a right of appeal to the Royal Court against a decision of the Commission under this Law –
 - (a) the provider and the manager, in relation to the refusal of any application made under Article 5;
 - (b) the registered provider and the registered manager, in relation to –
 - (i) the terms on which any mandatory conditions are imposed or varied under Article 11 or under Article 17 (whether or not in accordance with Article 18);
 - (ii) any discretionary conditions imposed or varied under Article 12 or under Article 17 (whether or not in accordance with Article 18),
 - (iii) a suspension under Article 19,
 - (iv) the cancellation of the provider or manager's registration in relation to a regulated activity under Article 20,
 - (v) a refusal to remove the provider or manager from the register under Article 23 in relation to a regulated activity, or a decision to defer such removal.
- (2) An appeal under paragraph (1) must be made within the period of 28 days following the day the person having the right of appeal receives notice of the decision of the Commission.
- (3) On hearing an appeal, the Royal Court may –
 - (a) confirm the decision of the Commission; or
 - (b) direct that the decision of the Commission shall not have effect.
- (4) For the purposes of this Law, a person's rights of appeal are exhausted upon whichever is the earlier of –

- (a) the expiry of the period within which an appeal must be made, without an appeal being made;
- (b) the withdrawal of an appeal;
- (c) the dismissal of the appeal without any further right of appeal.

45 Offence of providing false or misleading information, etc.

A person—

- (a) who, in connection with any application under this Law; or
- (b) who, when required by the Commission or an inspector under this Law to provide information, documents or records,

provides any information, document or record knowing or reckless as to whether it is false or misleading in a material particular is guilty of an offence and liable to a fine of level 4 on the standard scale.

46 General provisions as to offences

- (1) Where an offence under this Law or Regulations made under it, committed by a body corporate, limited liability partnership or separate limited partnership, is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of—
 - (a) a person who is a partner of the partnership, or director, manager, secretary or other similar officer of the company; or
 - (b) any person purporting to act in any such capacity,the person shall also be guilty of the offence and liable in the same manner as the partnership or body corporate to the penalty provided for that offence.
- (2) Where the affairs of a body corporate are managed by its members, paragraph (1) shall apply in relation to acts and defaults of a member in connection with his or her functions of management as if the member were a director of the body corporate.

47 Defence – due diligence

- (1) In any proceedings for an offence under this Law, subject to paragraph (2), it shall be a defence for the person charged to prove—
 - (a) that the commission of the offence was due to a mistake or to reliance on information supplied to him or her or to the act or default of another person, an accident or some other cause beyond his or her control; and
 - (b) that he or she took all reasonable precautions and exercised all due diligence to avoid the commission of such an offence by himself or herself or any person under his or her control.
- (2) If in any such case the defence provided by paragraph (1) involves the allegation that the commission of the offence was due to the act or default of another person or to reliance on information supplied by another

person, the person charged shall not, without leave of the court, be entitled to rely on that defence unless, within a period ending 7 clear days before the hearing, he or she has served on the prosecution a notice in writing giving such information identifying or assisting in the identification of that other person as was then in his or her possession.

48 Service of documents

- (1) Any decision, notice or other document to be given or sent to person may be given or sent to the person by delivering it personally to him or her or by posting it to his or her proper address.
- (2) The proper address of a person in respect of whom an application has been made is the address given for the person in the application.
- (3) The proper address of a registered provider or registered manager is the address recorded in the register for that person.

49 Transitional and transfer Regulations

- (1) The States may by Regulations make such transitional and supplementary provisions as may be expedient for the purposes of the commencement of any provision of this Law or of any amendment to this Law.
- (2) The States may by Regulations provide for the employment of specified States' employees to be transferred to the Commission, on such terms and subject to such conditions as are imposed (which may include conditions imposed on the Commission) as ensure continuity of the employees' conditions of employment and rights, including membership of any pension scheme.
- (3) The States may by Regulations provide for any specified description of information held by a Minister in connection with –
 - (a) any function discharged under an enactment repealed by this Law; or
 - (b) any activity added to Schedule 1,to be transferred to the Commission.

50 Citation and commencement

- (1) This Law may be cited as the Regulation of Care (Jersey) Law 201-.
- (2) The following provisions of this Law shall come into force on the day after this Law is registered –
 - (a) Article 1;
 - (b) Article 3(6);
 - (c) Article 11;
 - (d) Article 14;
 - (e) Article 15;

- (f) Part 7 and Schedule 2;
 - (g) Article 49; and
 - (h) this Article.
- (3) The remaining provisions of this Law shall come into force on such day or days as the States appoint by Act.



SCHEDULE 1

(Article 2(1))

REGULATED ACTIVITIES

[deliberately left blank – to be populated by Regulations made under Article 2(2)]

SCHEDULE 2

(Article 35(5))

APPOINTMENT, RESOURCES AND FUNDING OF COMMISSION**1 Interpretation of Schedule 2**

In this Schedule, “JAC” means the Jersey Appointments Commission established by Article 17 of the Employment of States of Jersey Employees (Jersey) Law 2005.

2 Appointment of Chairman of Commission

- (1) One of the Commissioners shall be the Chairman of the Commission.
- (2) The Chief Minister shall –
 - (a) select a person to be a Commissioner and the Chairman of the Commission; and
 - (b) decide the duration of that person’s appointment as a Commissioner and Chairman.
- (3) The JAC shall oversee the selection.
- (4) The Chief Minister shall, by instrument in writing –
 - (a) appoint the person selected by the Council of Ministers as a Commissioner and as the Chairman;
 - (b) specify the duration of the person’s appointment, as decided by the Council of Ministers.
- (5) The Chief Minister shall, at least 2 weeks before making the appointment under sub-paragraph (4), present to the States a notice of the Council of Minister’s selection and the intention to make the appointment.
- (6) A person may be appointed under this paragraph more than once.

3 Appointment of other Commissioners

- (1) The Chairman shall –
 - (a) subject to Article 35(3), decide the number of other Commissioners; and
 - (b) select and nominate persons to be the other Commissioners.
- (2) The Chairman must select and nominate persons who have such skills, knowledge or experience as he or she considers to be relevant to the Commission’s functions and, in particular, must select and nominate –
 - (a) at least one person who has proven capability in the delivery of health services;
 - (b) at least one person who has proven capability in the delivery of social services; and



- (c) at least one person who has experience as a recipient of health services or social services, whether personally or as a person who cares, or is otherwise responsible, for another person who receives such services.
- (3) The JAC shall oversee the selections.
- (4) The Chief Minister shall, by instruments in writing –
 - (a) appoint the persons so nominated as Commissioners;
 - (b) specify the term of appointment of each Commissioner, which shall be not less than 3 and not more than 5 years.
- (5) A person may be appointed under this paragraph more than once.

4 Disqualification for appointment

- (1) A person cannot be a Commissioner if he or she is a member of the States of Jersey or of the States of Guernsey or Tynwald.
- (2) A person cannot be a Commissioner if the person –
 - (a) is working or has worked, whether as a States employee or pursuant to a contract for services, in any administration of the States for which the Minister for Health and Social Services is responsible;
 - (b) is working or has worked, whether as an employee or pursuant to a contract for services, for any public authority in Guernsey or the Isle of Man that provides substantially the same services as any administration described in clause (a);
 - (c) has, or has had, any other interest in the provision of health or social care in Jersey, Guernsey or the Isle of Man, whether that interest is or was financial, or as an officer, member, trustee, employee or associate or otherwise.
- (3) A person is not precluded from being a Commissioner by reason only that he or she is or has been a user of any service described in subparagraph (2)(a) or (b) or any regulated activity.

5 Term of office of Commissioner

A Commissioner's appointment shall end upon whichever is the earlier of –

- (a) the expiry of the period for which he or she was appointed (unless his or her appointment is renewed);
- (b) the expiry of the period of notice following his or her resignation, in accordance with paragraph 6;
- (c) the termination of his or her appointment under paragraph 7.

6 Resignation

- (1) A Commissioner may resign by giving between one and 3 months' notice in writing to the Chief Minister.
- (2) The Chief Minister, on receiving the Chairman's resignation, may, with that person's agreement reduce or waive the period of notice.
- (3) The Chief Minister, on receiving any other Commissioner's resignation, may, with the agreement of that Commissioner and the Chairman, reduce or waive the period of notice.

7 Termination of appointment

- (1) The Chief Minister may terminate the appointment of a Commissioner if the Commissioner –
 - (a) becomes, by virtue of paragraph 4, disqualified for appointment;
 - (b) has been absent from meetings of the Commission, without the permission of the Commission for a continuous period of –
 - (i) in the case of the Chairman, 6 months or more,
 - (ii) in the case of any other Commissioner, 2 months or more;
 - (c) becomes bankrupt;
 - (d) is incapacitated by physical or mental illness; or
 - (e) is otherwise unable or unfit to discharge his or her functions as the Chairman or other Commissioner.
- (2) The Chief Minister shall consult the Chairman before terminating the appointment of a Commissioner other than the Chairman,
- (3) The Chief Minister shall report to the States following the termination of a Commissioner's appointment.

8 Remuneration and expenses of Commissioners

- (1) The Commission shall pay to the Commissioners –
 - (a) such remuneration as the Commission may determine, subject to any maximum directed by the Chief Minister;
 - (b) reasonable out of pocket expenses incurred in the course of carrying out their duties.
- (2) Any maximum remuneration directed under sub-paragraph (1)(a) after the appointment of a Commissioner does not operate to reduce the remuneration determined by the Commission on the appointment of that Commissioner, but does limit any subsequent increase.

9 Employees and agents of Commission

- (1) Without prejudice to the generality of the Commission's powers as a corporation sole, the Commission may employ or appoint such officers servants and agents as it considers necessary for the discharge of its functions.

- (2) The Commission may not enter into, or offer to enter into, a contract of employment or for services with a person who was a Commissioner immediately before the contract is entered into or offered.
- (3) A person cannot be, at the same time, a Commissioner and an employee or other appointee of the Commission.

10 Financial resources of Commission

The financial resources of the Commission are –

- (a) the fees charged by and paid to the Commission under this Law and any other enactment;
- (b) any grant paid to the Commission by the States.

11 Accounts and audits

- (1) The Commission must –
 - (a) keep proper accounts and proper records in relation to the accounts; and
 - (b) prepare accounts in respect of each financial year and a report on its operations during the year.
- (2) The Commission must submit a copy of its accounts to Chief Minister no later than 6 months after the end of the financial year.
- (3) The Chief Minister must lay a copy of the accounts before the States.
- (4) The accounts of the Commission must –
 - (a) be audited by auditors appointed in respect of each financial year by the Minister for Treasury and Resources and qualified for appointment as auditors of a company by virtue of Article 113 of the Companies (Jersey) Law 1991; and
 - (b) be prepared in accordance with generally accepted accounting principles and show a true and fair view of the profit or loss of the Commission for the period and of the state of the Commission's affairs at the end of the period.
- (5) The Minister for Treasury and Resources may, by Order, make additional provision as to the Commission's accounts.
- (6) This Article is without prejudice to any additional accounting requirements –
 - (a) imposed by any enactment; or
 - (b) agreed as a condition lawfully attached to any funding accepted by the Commission from the States.

12 Conduct of business by committee or delegate

- (1) The Commission may delegate any of its functions under this Law or any other enactment to –

- (a) the Chairman;
 - (b) one or more Commissioners;
 - (c) a committee comprised of at least one Commissioner and one or more employees or other persons appointed by the Commission; or
 - (d) an employee or other person appointed by the Commission.
- (2) The Commission cannot delegate the power of delegation in paragraph (1).
- (3) The delegation of a function does not prevent the exercise of the function by the Commission itself.

13 Procedures

The Commission shall, subject to this Law and any other enactment, determine its own procedures.

