

**REGULATION OF CARE (JERSEY) LAW 201-
CONSULTATION ON DRAFT LAW**

REPORT

Executive Summary

This consultation seeks the views of stakeholders on the draft Regulation of Care (Jersey) Law 201- (“the draft Law”). The draft Law and subsequent Regulations will provide a new framework for the regulation of health and social care in Jersey.

New legislation is essential as the existing Laws are inadequate, fragmented and out of date. There are currently significant gaps in regulation that allows high risk services to operate without any monitoring of the safety, standards and quality of care provided to vulnerable people.

The passage of the draft Law would be just the first step in the development of a new regulatory framework for health and social care. The draft Law contains powers for the States to enact Regulations which will be required to be in force before any new regulation of services takes effect. The purpose of consulting at this stage is to identify any particular concerns with the powers that will be used to put in place and enforce the new framework and any other technical matters that may arise from the draft Law. While Stakeholders are welcome to make comments on any part of the draft Law, it is important to recognise that the draft Law is only the first stage in the creation of a comprehensive regulatory regime for health and social care. It is anticipated that further consultation will be appropriate before Regulations are lodged to set out further details of the activities to be regulated and the specific obligations that will be placed on the providers and managers of health and social care services.

STATES OF JERSEY HEALTH AND SOCIAL SERVICES DEPARTMENT
Public Health Directorate

The policy underpinning the Law is based on the response to a Green Paper Consultation published in 2010¹ and is described in a States Report published in May 2013².

The draft Law:

- Transfers responsibility for regulating health and social care from the Minister for Health and Social Services to an independent Commission
- Sets out how the Commission will be appointed
- Requires providers of care services to be registered by the Commission, describes the registration process and enables the Commission to apply appropriate conditions to registration to maintain standards
- Enables Regulations and standards to be written about the quality of care services
- Describes the Commissions powers to inspect services
- Explains the enforcement procedures and appeals process

Introduction

The draft Regulation of Care (Jersey) Law 201- is primary legislation that enables a new framework for the regulation of health and social care to be put in place in Jersey.

The existing Laws date from 1978 and 1995; since then the structure of health and social care has changed significantly and the expectations of those using services have increased. There is now much greater emphasis on the use of domiciliary care, the safety and quality of provision of care and a requirement for good governance and transparency. The inspection and regulatory regime in the UK is also focused more proactively on encouraging the incremental improvement of services rather than solely on regulatory enforcement. As a result there are a large number of deficiencies with the provisions contained in and made under these

¹ States of Jersey Department for Health and Social Services, Regulation of Care (Jersey) Law 200-, Report of Stakeholder Consultation, January 2010

² States of Jersey, Regulation of Care Proposals, R42/2013

STATES OF JERSEY HEALTH AND SOCIAL SERVICES DEPARTMENT
Public Health Directorate

existing Laws. Of the utmost importance, these Laws leave domiciliary care (i.e. care provided to support people in their own homes) and care provided by the States of Jersey unregulated. A further consideration is a lack of regulatory independence.

Under the existing framework the Minister for Health and Social Services is responsible for providing and contracting or commissioning health and social care as well as regulating. There is an inherent conflict of interest in this arrangement with departmental pressures to provide and fund care at the lowest possible cost in services that it also regulates to improve and maintain standards. This dual function would become untenable in the event of H&SSD services being regulated as the Minister would effectively be regulating services that s/he was also responsible for delivering. The Green Paper Consultation confirmed this view with only 6% of respondents indicating that regulation should continue to be the function of Health and Social Services.

In view of the above change is required to maintain public confidence in the regulation of health and social care.

The new Law will enable the inclusion of currently unregulated activity such as personal and nursing care provided to people in their own homes and services provided by H&SSD and others that are currently exempt from existing legislation.

The department's policy underpinning the proposed Law has relied on the contribution of stakeholders who were given an opportunity in 2008, to provide their views and help shape the new legislation. Consultation responses to the Green Paper were generally supportive of the department's policy direction and also suggested some additional areas to be considered.

The outcome of the consultation informed the key policy objectives for the proposed Law; now incorporated into the draft Law which:

- provides a single consistent legislative framework for the regulation of health and social care in Jersey

STATES OF JERSEY HEALTH AND SOCIAL SERVICES DEPARTMENT
Public Health Directorate

- creates a regulatory body in the form of a Commission that will be independent of strategic policy makers, providers and commissioners of health and social care.

and provides for:

- Regulations to include health and social care provided by the Health and Social Services Department, other States of Jersey departments, district nursing services and premises operated by medical and dental practitioners, which are currently unregulated
- Regulations to include nursing agencies, domiciliary and primary care within the same regulatory framework as other health and social care provision.
- Regulations to ensure that the health, safety and welfare of individuals is protected and that there is a focus on outcomes for the individual.
- Regulations to ensure that those managing services and working with people in need of health and social care have appropriate qualities, skills and expertise to be safe and competent practitioners.
- Regulations to enable the States to enact enforceable requirements concerning the provision of care and enable the Commission to set care standards, in the form of approved codes of practice, so that the requirements and the needs of individuals are met
- Regulations to ensure premises offering health and social care are fit for purpose and conform to best practice standards and guidance
- Regulations to require health and social care services to develop robust quality assurance and governance arrangements

STATES OF JERSEY HEALTH AND SOCIAL SERVICES DEPARTMENT
Public Health Directorate

- Regulations to ensure the publication of reports on the outcome of inspections and investigations and that these are easily accessible to the public
- Regulations to establish a fee structure that is proportionate to the size and complexity of the service
- Regulations to enable a flexible risk based inspection regime that maintains public confidence

The policy is summarised in a States Report R42 lodged in May 2013 and can be accessed at www.statesassembly.gov.je/AssemblyReports/2013/R.042-2013.pdf

Proposed Regulated Activities

The draft Law is the first stage of introducing a new regulatory framework for health and social care and is essential to enable Regulations to follow. The Regulations will set out in detail the services and activities included within the regulatory regime and the requirements those running such services must meet.

Following approval of the draft Law, types of activities that over time are likely to be covered by the scheme of regulation include:

- short or long-term hospitals, general or specialist medical, surgical, psychiatric and substance abuse hospitals, mental hospitals, rehabilitation centres, and other institutions which have accommodation facilities which provide diagnostic and medical treatment to inpatients with any of a wide variety of medical conditions
- medical consultation and treatment in the field of general and specialised medicine by general practitioners and medical specialists and surgeons.

STATES OF JERSEY HEALTH AND SOCIAL SERVICES DEPARTMENT
Public Health Directorate

Dental practice activities of a general or specialised nature and orthodontic activities

- activities not performed by hospitals or by practicing medical doctors but by paramedical practitioners legally recognised to treat patients
- cosmetic procedures or techniques undertaken by medical or non medical staff that may create hazard to health
- social care primarily provided in the community by a variety of professionals and support workers
- provision of social work, personal and nursing care, protection or social support services to children or adults in need or at risk, or adults with needs arising from illness, disability, old age or poverty
- residential accommodation combined with either nursing, personal, supervisory or other types of care
- children's homes providing social assistance
- care services directly to clients in their own homes
- social work activities to children and adults

Order and Phasing of Regulating Specific Activities

To ensure that the implementation process is not overwhelmed by the size and complexity of the task, the regulations for various activities will be brought in over a realistic and manageable time frame.

STATES OF JERSEY HEALTH AND SOCIAL SERVICES DEPARTMENT
Public Health Directorate

The key drivers setting the implementation timetable include the high risk of unregulated domiciliary care at home and the introduction of long term care funding which relies on the regulation of particular health and social care activities.

Consequently it is proposed to bring in the appointment of the Commission and Regulations pertaining to long term care homes, group homes, and personal care workers, nursing and domiciliary care agencies, including those provided by HSSD and other States departments as the first phase of implementation during 2015 – 2016.

The provisional timeframe for phasing the regulation of other services, such as hospital, social services and primary care estimates implementation by 2020.

Funding the Regulatory Framework

The current Professional and Care Regulation function is funded through Health and Social Services with a small contribution (approx 2.5%) raised annually in registration fees. The fees charged at present are nominal and not related to the size and complexity of the service or the level of associated regulatory activity undertaken by officers.

It is intended to introduce a fee structure comparable to other jurisdictions. This will include increasing the initial registration fee to an appropriate level that reflects the responsibility and accountability of providing such a service. In addition there will be an annual fee based on the size of the service rather than the current approach which is a minimal flat fee applied to small group homes and large care homes alike.

Applying a more realistic fee structure to providers in Jersey, together with the existing States funding will fund the new regime.

STATES OF JERSEY HEALTH AND SOCIAL SERVICES DEPARTMENT
Public Health Directorate

Draft Law Provisions

The effect of each of the provisions of the draft Law is set out in detail in the Law Draftsman's explanatory note and is not repeated here.

Briefing Sessions

There will be two briefing sessions where stakeholders will have an opportunity to ask questions about and comment on the proposals. These will be held:

1. Wednesday 9 April 2014, 6.00pm – 8.00pm, Halliwell Lecture Theatre, Education Centre, Peter Crill House, JGH
2. Wednesday 23 April 2014, 6.00pm – 8.00pm, Halliwell Lecture Theatre, Education Centre, Peter Crill House, JGH

A briefing about the draft Law will also be arranged for States Members

Consultation and Responses

The Consultation begins on 25 March 2014 for six weeks ending on 30 April 2014

If you require any further information about this consultation, or wish to make a response to the proposals in the draft Law, please contact:

Christine Blackwood
Head of Professional and Care Regulation

Email: c.blackwood@health.gov.je

Tel: 01534 445798

Address: Maison Le Pape
The Parade
St Helier
JE3 3PU