

Part 4:

Stakeholder consultation feedback report

Purpose of report:

To summarise stakeholders' responses and comments to a stakeholder consultation, undertaken in February to April 2017, on draft regulations under the Regulation of Care (Jersey) Law 2014

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SECTION 1: Introduction

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

Draft Regulations were developed taking into account the views of Stakeholders following an earlier consultation¹. These apply to Care Homes, Care at Home services and Day Care services for adults and will form the first phase of the new regulatory regime.

Two sets of draft Regulations were sent out for consultation, one describing the characteristics of services to be regulated, the second setting out requirements and regulatory tools to ensure services provide care that is safe and of a high quality.

In line with the policy of ongoing engagement with stakeholders underpinning the Regulation of Care legislation views were sought from a range of key agencies, carer representatives and service users about the proposed draft Regulations. The Consultation was also open to the public via www.gov.je.

It is essential to the success of the new regulatory framework that those providing and using services support the legislation objectives of ensuring high quality, person-centred care whilst avoiding unnecessary bureaucracy and cost.

Note: Why regulation of care is needed

Protecting people: Care services need to be regulated in order to help keep people safe and to ensure they receive good quality care that meets their needs. Unregulated services place vulnerable people at risk of harm or abuse (whether that be physical, emotional or financial abuse or at risk of neglect). In an aging society in which increasingly more people will need care, in a wider variety of care settings, it is essential that the right mechanisms are in place to set and enforce standards.

Ongoing provision of services: Locally registered healthcare professionals including doctors, nurses and midwives, social workers and other allied health professional cannot work in Jersey unless they are registered with a statutory regulator in the UK (for example, the General Medical Council, Nursing and Midwifery Council, Health and Care Professions Council) and many of those registration bodies are increasingly expecting their members to be working within regulated services. Without an appropriate regulatory framework for health and social care services in Jersey, there is a very real risk that those professional regulators will refuse to allow the validation, supervision or registration of healthcare professionals in Jersey. In other words, some key groups of essential professionals may not be able to work in Jersey.

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

SECTION 2: Consultation Process

The consultation was held over an eight week period from 27 February to 24 April 2017.

A copy of the draft Regulations and a report explaining the details of their content and how to respond to the consultation was sent by email to over 130 key stakeholders representing a variety of interested parties. These included:

- Carer and service users representatives
- Voluntary and Community Sector organisations
- Advocacy services
- Care home providers and managers
- Care agency providers
- Health Department
- Community and Social Services Department
- Family Nursing and Home Care
- The Safeguarding Partnership Board
- States of Jersey Police
- Environmental Health
- States of Jersey Fire and Rescue Service
- Social Security Department
- Primary Care Body
- Primary Care Governance Team

The consultation documents were also made available to the public, with information about how to respond on the gov.je website.

Details of a briefing session for those interested in further discussion about the proposals were included in the consultation documents. This briefing took place on 16 March 2017.

At the conclusion of the consultation period, 8 completed consultation documents were received, and three emailed comments received. There were face to face meetings with the States of Jersey Fire and Rescue Service and the Social Security Department and 27 representatives of various organisations attended the briefing session.

The response rate was relatively low but those who did respond were positive and generally in agreement with what is proposed. This may reflect the comprehensive engagement with stakeholders that was previously undertaken to determine what should be included in the Regulations.

SECTION 3: Overview and summary of consultation responses

This report, which broadly follows the structure of the consultation document, sets out the responses, comments and issues arising from the consultation process. It provides a response to those comments which will be used to amend the draft the draft Regulations prior to lodging for debate by the States

REGULATION OF CARE (REGULATED ACTIVITIES) REGULATIONS – DRAFT

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

Regulation 1 describes the characteristics of a care home; the essential features being that it offers both care and residential accommodation. Care homes can provide both long and short term care for adults and children with a variety of health and social care needs. The regulation also specifies exemptions that will not fall within the definition, in particular

- Hospitals
- Schools
- Young offender’s institutions and
- Private accommodation

Regulation 2 refers to care when it’s provided to people in their own residential accommodation by a private or voluntary agency, States Department or an individual who is paid either in money or in kind to provide the care. The definition also includes professional care provided for free, except in circumstances where such care is part of a service that is provided exclusively by the H&SSD, for example community staff who work as part of the H&SSD mental health multidisciplinary team.

Regulation 3 describes adult day care services. Falling within this definition are facilities that provide care for a limited period of time in premises that do not offer overnight accommodation. The key feature determining regulated day care, is that personal care or support or nursing care are provided as part of the service. Day care services do not include self-help groups or social/friendship clubs.

Question 1 asked consultees if they agreed with the definition of a care home, a home care service and an adult day care service. Consultees agreed with the proposed definitions, but sought clarity around how these may be interpreted.

Question 1 Response

	YES	NO	DON'T KNOW
(a) Do you agree with the definition of a care home?	8	0	0
(b) Do you agree with the definition of a home care service?	8	0	0
(c) Do you agree with the definition of adult day care services?	8	0	0

Three respondents made comments about the definitions of the proposed regulated activities:

- *We provide a day activity programme where residents and staff can come together to learn new skills, would this be classed as a self-help group?*
- **Care Home:** *Care can be personal care, nursing care or personal support should this read a combination of all three...anything not covered by nursing definition*
- **Home Care:** *this refers to nursing or personal care or personal support again should this read or a combination of all three*

- **Regulation 1:** *The department would like clarity on the definition of “private accommodation” i.e. is it dependent on who is paying the rent? Our issue is care in the community and not having care packages being required to be delivered in specific accommodation. We’ve had issues before where people don’t have capacity to manage their finances (pay the rent) and this responsibility has been taken on by a third party who may or may not be the same as the provider of care. We appreciate that this is a complex area but are aware of individual care packages that could be classified (and therefore regulated) inappropriately unless there is very good guidance and clear understanding of the specific definitions to be used. Also how do the Regulations deal with a live in carer? In some cases the accommodation (which is owned by care receiver) is occupied by the care receiver and carer. What is the definition of ‘occupy’? Does a 24/7 carer occupy the accommodation. This is not a care home.*
- **Regulation 2:** *the department would like the Regulations to consider adding an exemption for benefits being considered “in’kind” remuneration. Three main areas of concern are:*
 - *LTC – Respite (included in the care package as a monetary amount for the informal carer to use to have breaks from caring – arrangements do not need to include paid care)*
 - *IS – Carer’s component (this is provided in Income Support to someone who is taking care of another person)*
 - *SSF – HCA (this is provided through the Social Security scheme to someone who has given up work to care for someone with significant care needs for at least 35 hours a week – it is an ‘income replacement’ benefit)*

Services only provided by HSS: Given the diversification of home care services and commissioning of services by HSS to 3rd parties, is this clear as to what is included and excluded. I’m not sure why there is an exclusion and assume this will fall away over time. Does it mean anyone who is directly employed by HSS? Would it be easier to say that directly?

In addition to the written responses, a question was asked at the briefing evening regarding the definition of a hospital and whether long term or respite care provided by H&SSD would be included in the definition of a hospital and therefore excluded from this Regulation.

Response

- A service that employs staff to support service users as part of a programme of care would fall within the definition of an adult day care service and would not be classed as a ‘self-help’ group
- The definition of care in the Regulations covers all combinations of nursing and social care. Social Care is defined in the Law as including “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”.
- The definition of private accommodation does not rely solely on who is paying the rent. Some people will be owner occupiers, others may be leaseholders or have some other tenancy agreement. Neither does the definition rely on how a care package is determined. If a care provider is providing accommodation (be that by owning or leasing a premises) and is also providing the care to an individual this will be defined as a care home.
- The home of a care receiver who has a live in carer will not be deemed a care home

as it is in the care receiver's home where the care takes place. The fact that a live-in carer also occupies the care receiver's home does not affect the analysis as to whether care is "home care", the issue is whether the care receiver is in his or her own home. If however an individual carer provides accommodation and care in his or her home to a care receiver or a number of care receivers, he or she would be operating a care home.

- It is not the intention of the Regulation of Care Law, to treat informal carers in receipt of benefit as care providers. The regulations will therefore be amended to exempt such benefits from being considered 'in-kind' remuneration.
- Services exclusively provided by a Minister, will ensure that in this first phase of implementation, like for like services within the public and third sector will be regulated in the same way, but services only provided by HSS that are part of a wider multidisciplinary service, such as community mental health, drug and alcohol services etc will not be included at this stage. Some HSS community services will be captured in these Regulations, for example home care support provided to people with special needs and home care support for children as these services are provided by both HSS and independent providers. In due course Regulations for all HSS services will be phased in.
- Long term residential, nursing and respite care provided by the Health and Social Services Department will be a regulated activity and to ensure there is no ambiguity, the Regulations will include a definition of 'a hospital'

REGULATION OF CARE (STANDARDS AND REQUIREMENTS) (JERSEY) REGULATIONS 201- DRAFT

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

PART 2 – Registration

Criteria for Registration

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

This section also sets out what would disqualify a person from being registered including being convicted of an offence resulting in a custodial sentence, appearing on a 'barred' list held under safeguarding vulnerable adults' legislation, bankruptcy, not being physically or mentally fit to carry out the regulated activity.

Question 2 asked consultees if they agreed with the proposed criteria to judge the fitness of care providers and managers of care services. All respondents agreed with the proposed criteria but some sought additional information and clarification or offered suggestions around suitability for registration.

Question 2 responses

	YES	NO	DON'T KNOW
Do you agree with the proposed criteria for assessing the fitness of providers and managers of care services?	8	0	0

Three respondents made the following comments about the proposed criteria for assessing fitness for registration:

- *Will there be an open and transparent appeals process if the commissioners in their reasonable opinion feels a person is unsuitable to be registered?*
- *First point: 'he or she has been sentenced to imprisonment (whether immediate or suspended) without the option of a fine....suggestion should read **and/or** is in the reasonable opinion of the Commission' etc. This would give more power to the Commission*
- *1. We would like to request that we are involved around the discussion around setting 'fees' for registration. The LTC Fund will bear much of these costs through increased care rates.*
- *2. It's not clear why the manager needs to be physically fit to carry out the activity. As long as they are physically and mentally fit to manage the activity, why should someone with a physical disability be constrained as working as a manager?*

Response

- There is an open and transparent appeals process should the Commission consider refusing an application for registration. Article 6 of the Regulation of Care (Jersey) Law 2014 sets out the process the Commission must follow if it proposes to refuse registration. This requires the Commission to notify the applicant in writing of the proposal and the reason for it. The applicant may make representations in writing to the Commission about the proposal and the Commission before making a decision must have regard to such representation. If the Commission decides to proceed and refuse a registration, under Article 44 of the Law, the applicant has a right of appeal to the Royal Court against this decision.
- The Commission may refuse a registration on a number of grounds, Regulation 2 (a) specifically refers to situations where an applicant has a criminal conviction of such seriousness it results in a prison sentence and the Commission considers that the person is unsuitable. If this were to be changed to and/or, it would undermine the meaning of this Regulation by providing an option to remove the reference to the criminal conviction.
- Registration fees will be prescribed by Order of the Chief Minister and stakeholders will be informed and have an opportunity to comment on the proposed fee structure before the Order is made.
- The point about the physical and mental fitness of the manager to carry out the activity is accepted and the Regulations will be amended to reflect the person must be mentally and physically fit to manage the service

Conditions of Registration

The process for applying conditions to a provider's registration is set out in the 2014 Law. This includes a right of appeal against any condition the Commission wishes to apply that is not already agreed with the provider as part of their registration.

The proposed Regulations oblige the Commission to apply specific registration conditions for the purpose of ensuring that once registered a service remains appropriate for the needs of the people receiving care. The 2014 Law however is sufficiently flexible to enable a registered provider or manager to apply for a change or variation in the registration conditions should the circumstances or needs of a service change.

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

The conditions applied to a provider's registration will include administrative details such as an obligation to have a local address from which the service operates. The Regulations also specify that a registered manager will be required for each location from which a service is provided, however in certain circumstances the Commission has discretion to permit a manager to be registered for more than one location if it is safe and appropriate to do so.

Question 3 asked consultees if they agreed with the proposed registration conditions. All those who responded agreed with the proposals about registration conditions. There were comments about how these might be applied, what arrangements would be in place to enable the transition from the existing regulatory regime to the new requirements and whether conditions should be extended to include setting out staffing ratios.

Question 3 responses

	YES	NO	DON'T KNOW
Do you agree with the proposed conditions to be applied to a registration?	8	0	0

Comments were received from three respondents about the proposed registration conditions

- *It would be helpful for the 'certain circumstances' whereby the Commission has discretion to permit a manager to be registered for more than one location to be made more explicit*
- *Conditions of registration – should there be a ratio for staff to care receivers? This is quite complex and depends on needs but can be a huge problem*
- *Annual Fee: will the provider have to reapply and will this be based on inspection reports?*
- *In our meeting you provided clarity on the reasons for a provider having a 'local address'. We would like to raise the issue of transition for those in care should existing providers opt not to be registered on Island and their carers also not become registered persons. You said a year of transition, it would be good to have a transitional article in the regulations to this effect.*

Response

- As the discretion lies with the Commission, it will be for the Commission to determine the circumstances whereby a manager can be registered in respect of a service provided in more than one location. The Commission will be expected to develop policy on this. Any decision to refuse a registration in respect of more than one location would need to have reasonable grounds for refusal as an applicant will have a right of appeal against such a decision.
- The registration conditions set out in the Regulations are mandatory and will be applicable to the particular type of service provided, however the Law also enables the Commission to apply any other condition to a registration that it thinks necessary. This could include specific staffing ratios for a particular registered service, however as staffing levels can vary depending on the needs of those receiving care it is more likely that the Commission will set staffing standards, or issue guidance about staffing levels
- The annual fee will apply automatically once a service provider is registered. Registrations are not renewed annually but are continuous until cancelled, either by the person registered or by the Commission. The Commission can only cancel a registration if the registered person has failed to comply with any registration conditions, failed to comply with any Regulations relating to the requirements under Article 14 of the Law, failure to pay the annual fee, if the person is not fit to be registered or if the person has been convicted of an offence under Article 14 of the Law.

- The Regulations will include provisions for transitional arrangements to enable sufficient time for providers to become registered.

PART 3 – Service Requirements

Part 3 of the draft Regulations set out requirements associated with the quality and standard of care services. These focus on ensuring that care is appropriate, safe, personalised and respectful. Other requirements relate to specific elements of care, some to the environment in which care is delivered and several refer to staffing and other administrative functions

Regulations 5 – 12

This section includes an obligation that registered persons ensure that the quality of the service they provide meets Standards published by the Commission, conduct the service in such manner that the health, safety, welfare and particular needs of people receiving care are properly met and to do so in an open and transparent way. This includes making proper provision for assessing and planning the care people receive, safeguarding those receiving care from abuse and ensuring that they are treated with dignity and respect.

Question 4 asked consultees if they agreed with the proposed requirements relating to the conduct of the service and care and welfare of those using care services. All of those who responded agreed with the proposed requirements with some comments about recruitment of staff, access to personal/care plans and technical points of Law.

Question 4 responses

	YES	NO	DON'T KNOW
Do you agree with the proposed requirements to ensure that care is appropriate, safe, personalised and respectful?	8	0	0

Three consultees made the following comments about the Regulations for the character and ethos of care

- *Although it is implicit in having in place an appropriate safeguarding policy, I think it may be worthwhile being explicit about the need to carry out all appropriate checks when appointing people to work with vulnerable people as well as avoiding employing someone who is on the barred list*
- *Changes of staff, a registered person should keep the receiver of care up to date on changes in staff that provide their care. The care receiver if they so wish should be supported and actively involved in the recruitment and decision making process of who is delivering their care*
- *Personal plans and personal care records: the person being cared for or representative can see their personal plans, what about their care records...should they not be able to see these too?*
- *Personal plan and care record: 10(2)(a) are there ever circumstances when it is dangerous to give the care plan to the patient? 10(2)(b) is an absolute requirement*

that the plan must be revised at the request of the care receiver. This will not always be appropriate. It's ok to say 'must be reviewed' but the revision should only be if necessary.

- *Care and welfare: I note that regs 9(1)(iii) refers to unlawful discrimination. Is it appropriate to refer to unlawful acts in a different law? By definition the act is unlawful and therefore covered by the other Law. It might be more positive anyway just to use the second half of this clause. "make reasonable adjustments in the provision of care to meet the care receiver's needs"*

Response

- The Regulations make provision under Article 18 requiring registered persons to recruit fit, appropriately qualified and competent people to work in any service that is regulated. This Regulation also requires the registered person to have in place and adhere to a recruitment policy.
- It is a requirement under Regulation 18 that the person registered must take into consideration the needs of care receivers, however it would not be feasible to put into Regulation a statutory requirement that care receivers should determine the individuals who provide their care. This would be logistically difficult for example in a care home for each resident to determine who would provide their care. It is appropriate for this to be addressed in the Standards which could include that where possible care receivers should be involved in the recruitment of staff.
- It is agreed that service users, and with permission their representatives, should be able to see their care records and the Regulations will be amended to reflect this. It would not be 'dangerous' for care receivers to see their own care plan; they should be an active contributor and agree with the plan.
- It is agreed that it should not be an absolute requirement that a care plan must be revised and the Regulations will be amended to reflect that revision will only occur if it is appropriate.
- It is important to include the reference of 'unlawful discrimination' to give the particular context to the second part of the clause in Regulation 9(1) (c) (iii) as the 'reasonable adjustments' are specifically in relation to avoiding unlawful discrimination

Regulations 13 – 17

This section includes provisions relating to specific aspects of care such as cleanliness and infection control, nutrition, medicine management and control and restraint. There are also obligations for the registered person to make appropriate arrangements to ensure that those receiving care have access to medical, dental and other personal services. Where care and treatment is shared with or transferred to another agency, the registered person must work collaboratively with the other party or parties to ensure the health, safety and welfare of the care receiver.

Question 5 asked consultees if they agreed with these requirements. All of the respondents agreed with the provisions about particular aspects of care with some respondents commenting on support from other agencies and others on specific details for particular requirements.

Question 5

	YES	NO	DON'T KNOW
Do you agree with the requirements relating to specific aspects of care and shared care with other agencies?	8	0	0

Three respondents commented on these requirements:

- *Agencies such as the States of Jersey Fire Department and Pharmaceutical body should be able to support providers*
- *Personally the Fire Service have been outstanding. I did not know about the Pharmaceutical body, but now on board they have been very helpful*
- *We could do with a list of ‘useful people to know’ to help us meet these regulations’*
- *My only comment here is that being ‘free from odour’ may need the additional description of being free from persistent or enduring odours as opposed to transient odours which are part of personal care*
- *16(1) a registered person must make arrangements where necessary for care receivers to receive medical, dental and other health, social or other personal services: This is an absolute requirement. In a home care situation are we saying that the carer has to make dentist’s appointments for the care receiver? How do we interpret ‘where necessary’? Should this be limited to other services that are linked to the effective provision of care?*
- *16(3) Does this need to refer to the new GDPR legislation?*

In addition to the returned consultation documents, the Royal Pharmaceutical Society Jersey made following comment via email:

- *Further to the publication of the draft Regulation Of Care (Standards and Requirements)(Jersey) Regulations, RPS Jersey would formally request that the wording of Regulation 15 (3) be revised, specifically to remove the reference to “dispensing” and replace with the more appropriate term, “administration”.*
- *Whilst the term “dispensing” in relation to handling medication is not legally protected, to be used in the context of Regulation 15 will cause confusion of the respective roles of professionals within health care.*

Response

- Premises registered as care homes will require a States of Jersey Fire Certificate and the Fire Service currently offer fire safety advice.
- The Regulations will not specify a list of useful people to know, but the Jersey Care Commission will provide guidance about compliance with the Regulations
- Enforcement action for transient odours that are part of personal care would be unlikely; one of the principles of good regulation is that it has to be proportionate². However to limit this Regulation to persistent or enduring odour would inevitably lead to differences in interpretation that may lead to delays in addressing the problem.

² Five Principles of Good Regulation – Better Regulation Task Force

- The arrangements for medical, dental and other services should be determined as part of an assessment of the care receiver's needs and recorded in their personal care plan. This will decide whether it is necessary for the care service to make such arrangements or whether the care receiver will make these arrangements independently.
- Registered care providers will be data handlers and as such will need to process personal data lawfully.
- The reference to terminology regarding the safe handling of medicines is accepted and the term 'dispensing' will be replaced with 'administration'

Regulation 18 – Workers

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

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

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

Question 6 asked consultees if they agreed with the requirements for staff recruitment and employment. All of the respondents agreed with the proposed requirements about the recruitments and employment of staff working in regulated services. Comments received mainly referred to the criminal records provisions, including whether Rehabilitation of Offenders legislation would apply.

Question 6

	YES	NO	DON'T KNOW
Do you agree with the requirements applying to the recruitment and employment of staff working in a Regulated Activity?	8	0	0

Three consultees provided the following comments about Regulation 18

- 18) P.12 **Workers** 2(a) should this read **and/or** is in the reasonable opinion of This would give more control to the registered person if they felt an employee was not suitable for the position

- Will the rehabilitation of offenders legislation be considered or be used to determine a person is not suitable to be employed if they have been imprisoned? Mindful of equality legislation and test cases for discrimination of individuals due to their past.
- This may answer my previous comment about vetting and barring.

In addition to the written responses a comment was made at the consultation briefing suggesting that a requirement to undertake DBS checks for all staff prior to employment should be made explicit in the Regulations

Following the consultation the States of Jersey Assembly agreed in principle that there should be consultation on an Ethical Care Charter, one of the elements of the charter related to providers having in place a whistle blowing policy

Response

- Regulation 18(2) (a) specifically refers to situations where an individual applying to work in a regulated services has a criminal conviction of such seriousness it results in a prison sentence and the registered person considers that the person is unsuitable. If this were to be changed to and/or, it would undermine the meaning of this Regulation by providing an option to remove the reference to the criminal conviction. As the default in this provision is that someone with a criminal conviction resulting in a custodial sentence would not be suitable this places a significant obligation on the registered person to demonstrate otherwise.
- The Rehabilitation of Offender Exemption Regulations will be included in the consequential changes associated with the implementation of this legislation. This will exempt those working with vulnerable people from the limitations of the Rehabilitation of Offenders Law and enable a registered person to take into consideration any spent convictions when making a determination as to whether someone is fit and suitable to work in a regulated activity. This is to ensure that the safety and welfare of care receivers should always take priority in any appointment decisions.
- The suggestion that a requirement for registered persons to undertake criminal records checks for all staff prior to employment is accepted and the Regulations will be amended accordingly.
- The Regulations will be amended to include a requirement that providers of regulated activities must have in place and adhere to a whistle blowing policy.

Regulation 19 – premises and equipment

This Regulation requires providers to ensure that any premises provided as part of a regulated care service are fit for purpose and able to meet the aims and objectives of the service as set out in the Statement of Purpose. Premises must be located and designed so as to meet the number and needs of those using the service and designed to facilitate their privacy, dignity and independence. The must of sound construction, adequately heated, lit and ventilated and maintained in a good stated of repair and decoration. There are also obligations to ensure that premises are suitably equipped and have adequate fire safety measures in place.

Question 7 asked consultees if they agreed with the proposed requirements in Regulation 19, most consultees agreed with the requirements about premises and equipment. The

respondent who didn't agree did not provide a reason for their view. Comments included supportive statements about the proposals, clarification about implications for other legislation and specific descriptive terminology.

Question 7

	YES	NO	DON'T KNOW
Do you agree with the requirements relating to premises and equipment?	7	1	0

Three respondents commented on the proposed requirements in Regulation 19:

- *Fire safety is paramount*
- *Location of the premises is important for both safety of the person being cared for but also to promote independence*
- *Need to be clear how this will dovetail with Public Health and Safety (Rented Dwellings) (Jersey) Law 201-*
- *19(3)(g) ensure that care receivers have access to a telephone on which to make and receive calls in private; suggest you use a technology neutral phrase – mobile phones, skype etc*
- *19(3)(c) is it appropriate to refer to medical equipment? The care provider does not attend to the medical needs of the care receiver*

Response

- All care homes will require a fire certificate and will be subject to the requirements set out by the States of Jersey Fire Service. Registered persons operating any premises from which a care service is delivered will be required to provide suitable fire safety equipment, an adequate and safe means of escape and fire safety training.
- The Public Health and Safety (Rented Dwellings) (Jersey) Law 201- applies to rented housing including staff accommodation, but will not apply to registered care homes or adult day care facilities
- The comment about access to a telephone is accepted and the Regulation will be amended to include other means of communication
- The comment referring to 'medical equipment' is noted and the Regulation will be amended with the alternative term 'clinical equipment'.

Regulations 20 – 28 Operational requirements

The Regulations have provisions that require those operating a registered care service to have in place a quality assurance system which must include seeking the views of those using the service and their representatives. Where the service is provided by a company, trust, a voluntary management board or other such body corporate, the provider will be required to appoint a representative to review and report on the quality of the service.

There are requirements to notify the Commission of accidents, incidents and other events that have cause harm or pose a risk of harm to those using the service. Providers are

required to have in place a complaints procedure that includes adequate records and advising the complainant and the Commission of the outcome of the investigation.

There is an obligation to keep records relating to the service, the details of which will be specified by the Commission.

The Regulations require providers of care services to operate their business in such a way as to ensure that it is financially viable and able to meet its aims and objectives. Where there is a substantial or imminent risk to the viability of the business, the provider is obliged to inform the Commission. Providers, other than individuals directly employed to provide care must publish the fees charged to those using the service.

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

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

Question 8 asked consultees if they agreed with the proposed operational requirements. All those who responded to the consultation agreed with the proposed Regulations. Comments received related to the publication of charges and clarification about commissioned services and regulation and inspection process for domiciliary services.

Question 8

	YES	NO	DON'T KNOW
Do you agree with the requirements about the operational aspects of the regulated services?	8	0	0

Two respondents commented on these proposed Regulations:

- *The department would like fees to be published publically (www.jod.ie) and available at a more detailed level to States Departments*
- *Commissioned services: does this apply when anybody except for the care receiver themselves organises a care package? Do we need to explain what an 'agency' is? What if it is a friend helping out the care receiver?*
- *How will inspections be undertaken in the domiciliary setting...will only the provider's office and documentation be checked or will the inspection include visiting care receivers in their homes?*
- *How will paid individuals be regulated i.e. if I was paid weekly /monthly to look after an ageing great aunt...would I be regulated? Preferred Providers Framework?? As opposed to if she paid me via Xmas or Birthday present, petrol or meals, where I wouldn't be regulated.*

Response

- The Regulations will not require registered providers to publish their charges on any specific website, however they will be obliged to make information about their charges available. The Regulations will also not differentiate between information to be provided to States departments and that provided to anyone else. The Regulation states that **“a registered person must publish the scale of charges for the regulated activity including any additional charges not covered by its standard charge.”** States Departments, like anyone else, will be able to request the scale of charges from any care service that is registered.
- It is not the intention for the assistance of friends or families to be included with reference to the commissioning of care in Regulation 27.
- The policy for how inspections will be carried out will be determined by the Care Commission. Good inspection practice would include seeking the views of those using the service and the 2014 Law makes provision for inspectors to visit individuals in their own homes.
- The Preferred Provider Framework will no longer apply once the Regulations are in force as this was set up as an interim quality assurance measure until the 2014 was implemented.
- The draft Regulation of Care (Regulated Activities) Regulations, specifically exempts birthday, Christmas and similar gifts (of small value) or the reimbursement of expenses from being regulated, however if someone was ‘employed’ and receiving payment which would also need to be declared for taxation and social security purposes, this person would fall within the regulatory framework.

PART 5 – Children’s Homes and support services

Regulations 29 – 32

These Regulations make additional requirements for care services provided for children. There are obligations to ensure that arrangements are made to ensure children have access to appropriate educational facilities, have opportunities and support for private study and leisure activities and where a child is over the age of 16 assistance and support with further education, training or employment.

The registered person has a responsibility to ensure that children are protected from inappropriate disciplinary measures and restraint practices, or other behavioural management practices that include the use of any form of corporal punishment, depriving a child of food or drink or restricting their contact with friends, family and any other authorised person.

There is also an obligation to have in place a policy for managing unexplained absence or absconding.

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

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

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

Question 9 asked consultees if they agreed with the Regulations for children’s homes and support services. Six respondents agreed with the proposed requirements and two recorded ‘don’t know’. No reasons were given as to why the respondents recorded ‘don’t know’. Comments received included clarification about funding for the requirement to appoint an independent person as part of the quality assurance and safeguarding arrangements in children’s homes. Other comments were related to general requirements for the premises and fire safety.

Question 9

	YES	NO	DON'T KNOW
Do you agree with the requirements that apply to children’s homes	6	0	2

Comments were received from two respondents about the Regulations relating to children:

- *Re the highlighted area (reference to independent persons) is there an island body that supplies this service now and if not would there be a cost to regulated organisations to set such a scheme up?*
- *Is there any mention of suitability of home to meet child’s needs.... Such as safety issues i.e. fire safety or arising from behavioural or health needs? Staff safety arising from above.*

Response

- Regulation 31(1) places the obligation on the provider to appoint an independent person at the registered person’s expense.
- The provisions related to children’s homes are in addition to the provisions applicable to all regulated activities. Therefore any premises provided for the purpose of caring for children will need to meet the requirements of Regulation 19. This requires any premises to be fit for purpose, safe and suitable and able to achieve the aims and objectives of the service. This also applies to fire safety arrangements.

Regulations 33 – 36

These Regulations are concerned with inspection, compliance and offences. The Care Commission are required to carry out an inspection of any regulated service at least once a year, however the inspection regime does not apply to an individual who is directly employed to provide care as this would be overly intrusive. The annual inspection may cover

monitoring compliance with the requirements, reviewing the effectiveness of the service and/or encouraging improvements.

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

Where non-compliance with the requirements is identified following an inspection or complaint investigation, and where there is no risk of serious harm or neglect, the Commission may serve an improvement notice to give providers opportunity to address any deficiencies. Where however, there is a risk of serious harm or neglect, or where serious harm or neglect has occurred, the registered person may be prosecuted without the need to serve an improvement notice. If convicted the penalty for non-compliance with registration requirements is a fine up to £50,000.

Question 10 asked consultees if they agreed with the Regulations for inspection and offences for non-compliance. Seven of the respondents agreed with the inspection arrangements and the Regulation related to offences, with one respondent recording 'don't know'. Only one comment was received asking whether inspection reports would be published.

Question 10

	YES	NO	DON'T KNOW
Do you agree with the Regulations for inspection and offences for non-compliance?	7	0	1

One respondent commented on the provisions for inspection:

- *Will report be published? And easily accessible to all?*

Response

- There is an obligation set out in the 2014 Law for the Care Commission to publish the report "in such a manner it thinks fit".

Additional Comments

Consultees were asked if they had any other comments they wished to make about the proposed Regulations.

Three respondents provided additional comments:

- *Can you provide an impact assessment on the legislation that will need to be amended as a result of these regulations?*
- *Can you confirm all providers will be GST exempt? In this case has a consequential amendment to GST Law been prepared to bring this into effect?*
- *My only comment is that I would like to a (sic) clearer definition round what comprises nursing care and what constitutes personal care, as this is blurred at the moment. The definitions given regarding this new regulation are still not very explicit and I feel this should be better defined.*

- *We don't find too much change from what we are already doing*

Response

- The impact on legislation that will need to be amended as a result of these Regulations will be set out in the consequential amendments to the Law. This will be limited to replacing references to the current Nursing and Residential Homes and Nursing Agency legislation with the Regulation of Care Law. The substitution should not make any material difference to how the Laws operate in practice.
- A review of all the consequential changes to existing legislation will be undertaken. The decision as to whether all providers will be GST exempt will rest with the Treasury Minister.
- The definitions of nursing care and personal care are already set out in the 2014 Law and are not under consideration in this consultation. It is likely however that additional guidance will be provided to assist interpretation of the definitions.

SECTION 4: NEXT STEPS

The feedback provided in this consultation will inform the final draft of the Regulations that will be lodged for debate by the States Assembly. Once the final draft is completed the implementation time frame is:

Phase 1 (Care Homes, Home Care and Adult Day Care Services)

	Regulation	Orders
June – August 2018		Consultation on proposed Fee structure
July – September 2018	3 rd Consultation on draft Regulations	
October 2018	Lodge Regulations and Appointed Day Act	
December 2018	States Debate	Sign Fee Order
January 2019	Law in force	

Phasing of Future Regulations

Regulations for other health and social care functions will not be developed until Phase 1 is completed, fully embedded and reviewed to ensure it is operating effectively.

It is envisaged that the next, Phase of implementation will be Regulations relating to cosmetic procedures carried out by non medical practitioners. These procedures are not currently subject to any Regulation and due to their nature present a potential public health risk.

The timeframe for implementing Regulations for acute, services, social services and Primary Care is yet to be determined.

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SECTION 5: CONCLUSION

We would like to take this opportunity to thank those who took the time to participate in this consultation.

We would also wish to express again our appreciation for the contribution from stakeholders in the development of the Regulations. The discussions, comments and information gathered during this process was invaluable in informing the final document that will be put before the States Assembly for approval. The positive engagement with those who use and provide health and social care services has ensured that the Regulations provide a sound but proportionate platform for safe and high quality care in the community.

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