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

Consultation Report

Introduction

Background and context

Providers of health and social care services, care receivers, patients, their representatives and all other interested parties were asked for their views on proposals to amend the Regulation of Care (Jersey) Law 2014 (the "2014 Law") to regulate hospital, ambulance and Government provided mental health services.

Summary of the proposals

1. It was proposed to continue the process of extending the existing framework Law so that hospital, ambulance, and most Government provided mental health services would be required to meet legally enforceable standards of high-quality care. The Jersey Care Commission (the "Commission") would be responsible for enforcing these standards by inspecting services to verify and to publicly report on the quality of care provided. Providers of services which fail to meet those standards would be committing an offence.

2. Feedback was sought on a single amendment Law, the draft Regulation of Care (Amendments) (Jersey) Law 202- (the "draft Law"). The draft Law would amend the 2014 Law and the Regulation of Care (Standards and Requirements) (Jersey) Regulations 2018 (the "2018 Regulations"). Parts 2, 3, 4 and 5 of the draft Law would make key changes to this legislation in the following ways:

    - Part 2 of the draft Law makes amendments designed to strengthen the governance and independence of the Commission;
    - Part 3 describes the characteristics of the new services that will be regulated, including hospital (and the majority of Government-provided health services, including mental health services) and ambulance services, those laser clinic services that are currently regulated under the Nursing Homes (Jersey) Law 1994 and hyperbaric oxygen therapy services;
    - Part 4 amends the eligibility criteria for members of the Board of the Commission; and
    - Part 5 makes changes to the 2018 Regulations which sets out requirements and regulatory tools to ensure services provide care that is appropriate, safe and of a high quality.

3. The amendments would affect those providing regulated care services, including those that are currently regulated by the Commission and those that it is proposed will become regulated by the Commission, as well as patients and care receivers, their families, friends and carers.

Why are these changes being proposed?

4. On 15 February 2022, in response to public concerns, including a public petition and questions in the States Assembly, the Council of Ministers (CoM) committed to bringing forward legislation so that HCS services will be independently inspected and regulated by the Commission from 2024 onwards as a matter of law.

5. Aside from indications of public support for the inspection of hospital services evidenced by a public petition to this effect, there are widely accepted benefits attached to regulating health and social care services. Independent, high-quality regulation is needed for 3 key reasons:

    a) Protecting adults and children: health and care services need to be regulated to help keep adults and children safe and to ensure they receive good quality care that meets their needs. Unregulated services place people at risk of harm or abuse (whether that be physical, emotional or financial abuse or at risk of neglect).

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

    c) Measuring and enhancing service quality: At present, there is no legislation which sets out general standards that health and social care providers are expected to meet to ensure that health care provided in Jersey is effective. In fully regulated health care systems, all providers must produce data to demonstrate to regulators that they meet legally enforceable standards. This data provides both service users and service providers with clear information about the quality of all services. Service providers in Jersey would be able to benchmark their services against those provided by others and in other jurisdictions, and to identify those services which require improvements more efficiently and effectively.

6. Effective regulation not only assures the quality of health and social care but also improves the quality and safety of care. This would impact positively on the overall health and wellbeing of Islanders.

7. When services are regulated, Islanders will be able to access objective information on the quality of care provided in Jersey. It is important that, in an open, democratic society, citizens have access to transparent information, particularly in relation to publicly funded services, so that the public can have trust and confidence in the quality of the services they receive.

8. Regulating health services will bring Jersey into line with the majority of jurisdictions in the British Isles and all OECD countries, where mechanisms for external evaluation of health care facilities are accepted practice. Regulating health services would, for the first time,

provide robust, effective information to measure whether Islanders can access high quality, effective health services. Full details of the proposals can be found here.

Summary of the consultation

9. The consultation, which lasted for 8 weeks from 8 April 2024 to 3 June 2024, sought feedback on the principles of the proposed amendments to the 2014 Law, including:

    - all hospital and ambulance services being regulated by the Jersey Care Commission;
    - regulating those laser clinic services that are currently required to register under the Nursing Homes (Jersey) Law 1994 under the Regulation of Care (Jersey) Law 2014;
    - regulating hyperbaric oxygen therapy services;
    - amending the funding provisions for the Jersey Care Commission in relation to Government of Jersey provided services, its annual reporting and audit requirements;
    - amending the eligibility criteria for those who may be appointed as Care Commissioners, including the introduction of a maximum 9-year term limit; and
    - updating aspects of the 2018 Regulations that affect all regulated care services.

10. The consultation was aimed at providers of services that it is proposed to regulate as well as providers of services that are currently regulated. Key stakeholders are the Jersey Care Commission, the Department for Health and Community Services (HCS) and the Department for Justice and Home Affairs (JHA) which provides ambulance services. The consultation also sought the views of patients and care receivers.

Summary of the results

11. In total, 7 responses were received via the consultation Smartsurvey, and 4 email responses were received. Feedback was also gathered in meetings with stakeholders.

12. Respondents were asked to provide feedback on any aspects of the proposed amendments to the 2014 Law which they considered could be improved. Feedback was broadly supportive of the proposals. All comments provided to consultation have been considered in detail and, where appropriate, amendments will be made to the draft Law on the basis of the feedback received. These changes are summarised below.

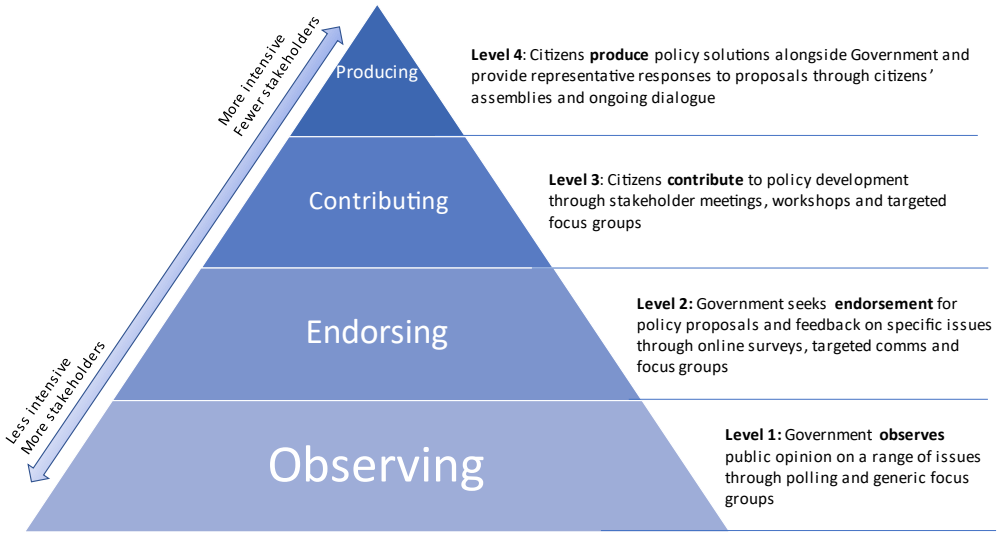
Delivery of the consultation

Methodology

13. This consultation followed the principles of the Government Engagement Framework, which sets out best practice for undertaking consultations on policy development.

14. The consultation focussed on Level 2 of the Engagement Pyramid Model ('endorsing') by seeking feedback on proposals which had already been developed by the Governance Policy Team in the Cabinet Office. This is because ministers support the principle that hospital and ambulance services should be regulated by the independent Jersey Care

Commission. This consultation, therefore, sought qualitative feedback on the detailed proposals for delivering this objective.



15. During the consultation period, the Governance Policy Team carried out engagement in the following ways:

- a public survey (Smartsurvey);
- direct emails to all those currently regulated and those services that may be impacted by the proposals;
- meetings with the Commission, the senior leadership of HCS and JHA, as well as relevant service managers;
- email submissions to careregulation@gov.je.

16. The following stakeholders provided feedback via a written submission or meeting with the Governance Policy Team:

- Minister for Children and Families
- Office of the Children's Commissioner
- Jersey Care Commission
- Chief Officer for Health and Community Services
- Jersey Ambulance Service

Data collection

17. Most data was collected via the consultation platform Smartsurvey. Responses were collated securely on Smartsurvey and exported via Excel into the Cabinet Office's internal files. Qualitative data (i.e. comments) were manually themed and categorised by officials prior to the export.

18. Other qualitative data, such as feedback collected in meetings and email submissions, were also themed and collated into the data master spreadsheet. This data will be retained in line with Strategic Policy, Planning and Performance's retention schedule.

Consultation Response

19. The Minister for the Environment (the "Minister"), who holds responsibility for health and social care regulatory policy, appreciates the time taken to respond to the consultation. The following section aims to address feedback raised in the consultation as well as common queries regarding the proposals. Note that the draft legislation will be refined based on the feedback.

20. The consultation survey requested feedback in six specific areas with a further two questions that sought respondents' general feedback on the proposals. The Minister's response to feedback received in each of those areas is set out below.

Question 1

> Do you have any comments on any of the proposed amendments in Part 2 of the Regulation of Care (Amendments) (Jersey) Law 202- (the "draft Law"), including in relation to:
>
> a) Registered Providers for Government Care Services
> b) Registration of Large Services
> c) Restrictions on Health and Social Care Services
> d) Regulation Services in Other Jurisdictions
> e) Funding
> f) Accounts, Audit and Annual Reporting
> g) Transitional Arrangements?

21. In summary, the majority of respondent supported the proposed changes in this Part of the draft Law or provided no comments.

22. Two respondents made general comments that further care services should be regulated:

    "In time the law should regulate ALL healthcare providers: government, private, and charitable healthcare providers. Hospitals, hospices, medical practices and treatment centres, nursing, ambulances and paramedics, residential and day care, pharmacies etc. In line with JCC resources and skills ramping up." (Respondent 4)

    "I am of the strong opinion that any entity remotely related to 'care', especially of the vulnerable, should be registered and regulated, regardless of their affiliation. Especially government entities, given the findings of the Independent Jersey Care Inquiry." (Respondent 6)

23. The Minister for the Environment confirms that it remains his intention to continue the longstanding policy of the States Assembly to extend the 2014 Law to regulate all health and social care services in due course. This is a long-term project.

24. Two respondents raised concerns that hospice services should remain regulated as they currently are (registered separately as care home, home care, and adult day care services), and should not be included under the new proposed regulated activity for hospital services.

"The Commission supports the proposal to continue to regulate Hospice but does not believe that Jersey Hospice should be separated and regulated as a hospital service.

"Whilst arrangements could be put in place to regulate the Hospice by applying specific standards and requirements as part of the single assessment framework, the Commission believe that the Hospice provides a unique palliative and end-of-life service and that formal registration as a hospital could represent a fundamental shift from its services ethos." (Jersey Care Commission)

"Although the transitional arrangements proposed will make it easier for the JCC I do not agree with them, in the example Hospice would only be registered as a hospital and inspected as such how can we have assurance that the other services they are providing e.g. children's home care are ok if different criteria is being used for standalone providers. This should be about setting high standards for all services, provision of multiple services should not exempt a place from multiple inspections. (Respondent 1)

25. Based on this feedback, the draft Law will be amended so that hospice services continue to be regulated as they are currently. Hospice services will be exempted from registration as a hospital service and will continue to be regulated under the Law as care home, home care and adult day care services.

26. The Jersey Care Commission supported the changes to the legal provisions governing its funding. However, it advocated amendments to "*clearly reflect that funding should be reviewed on a 3–4-year cycle to align with Government Planning cycles*." It is not intended to make provision for this in Law – the effect of the new funding provision will be to ensure that the funding requirements for the Commission are kept under review in line with the processes for reviewing funding for the rest of the public sector. This is and will continue to be provided for under the Public Finances (Jersey) Law 2019 and in practice. To provide separate requirements under the 2014 Law would not be practical.

27. One individual respondent was concerned about the proposals for the Commission to be allowed to provide services outside Jersey, stating that this *"section should be left until a later date, Jersey has enough problems without offering assistance to others, local matters should be resolved first."* It is, however, considered important for the Commission to be able to provide services in other jurisdictions as this provides an opportunity for cost savings, where appropriate.

28. The Department for Health and Community Services raised concerns about the proposals to enable large hospital services to register multiple managers for the service. HCS submits that this could "*unwittingly create a system which encourages separate arrangements by clinical teams and approach to the Single Assessment Framework requirements that may not be in the service users' interests."*

29. The Minister accepts that an amendment is required to Article 5 of the draft Law to ensure that, while the Law will enable the registration of multiple managers, it will be a decision for the Commission, in consultation with service providers, as to whether it is appropriate to register multiple managers in each specific case. This amendment will provide the Commission with the ability to register more than one manager for hospital services but will not necessarily require a separate manager for each regulated activity. While the Law cannot be prescriptive on this point to cater for individual circumstances, the Minister is clear that, as a matter of policy, the Commission should work with HCS prior to registering its

services to ensure that managers of services are of sufficient seniority to hold effective accountability for the services they manage. It is not intended for the Commission to implement this rigidly and to require, for example, the registration of each ward manager – if this were the case then the Minister considers that this could indeed encourage a lack of consistency in patient care which must be avoided. It may be appropriate for registered managers of hospital services to be at director level.

Question 2

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

30. The Commission made several observations on the scope of the hospital services definition. The Minister welcomes the Commission's technical comments on provisions that could be improved to address the Government's policy intent, and these will be addressed in an updated draft of the Amendment Law.

31. The Commission made comments on how they would inspect services that the Government proposes should be in scope. The Minister has no comments on the following observations, as he agrees with the Commission's approach to regulation:

    "In line with practices in England, hospital pharmacy services should demonstrate accreditation from the General Pharmaceutical Council (GPhC) or a similar relevant body.

    "Pathology, blood services, and radiology departments should secure accreditation from the United Kingdom Accreditation Service (UKAS). This mirrors the standards and practices established by England's Care Quality Commission (CQC). While the Commission opposes direct inspection of the services themselves, the Commission supports inspecting and regulating the interfaces and direct contact points with patients, families, carers, and representatives with these services. This focus will help ensure that the quality of patient interaction and care delivery is maintained to high standards without overburdening the technical and operational aspects of the services." (Jersey Care Commission)

32. The Commission also commented on the proposal to include diagnostic and screening procedures carried out by a hospital service as a regulated activity:

    "The Commission does not agree with direct inspection and regulation of Diagnostic and Screening Procedures, Management of Blood, Tissue, and Organs, and Pharmacy Services. For these services, inspections should focus on verifying the existence and validity of external accreditations. The Commission recommends that our action only seek proof of relevant external accreditation provided by national regulatory bodies. This method will uphold the integrity and quality of these critical services while avoiding unnecessary overlap." (Jersey Care Commission)

33. Hospitals are required to carry out diagnostic and screening procedures, to manage blood tissue and organs and to provide pharmacy services as a matter of course. They are regulated in other jurisdictions, including in England. It is important that they fall under the Law's scope and that the Commission has the powers to inspect them to ensure that these parts of the hospital service are safe and effective. Operational decisions on how these services will be inspected are a matter for the Commission, but the Minister is clear that

these services should be regulated as part of the overall hospital service and the Commission must take steps to ensure that these services meet all relevant statutory requirements.

34. The Jersey Care Commission submitted that dental clinics and services provided by a hospital service should not be regulated until dental services provided in the community are regulated. The Minister has considered this in further detail but considers that dental services should remain in scope. This is because the intention is to capture in regulation all health services provided by HCS, and this was set out from the commencement of this project in 2022. HCS provides dental services and so these should be regulated concurrently with other services. It would present practical and legal challenges if dental services were to be taken out of scope at this stage.

35. Other respondents either provided no comments or provided comments in support of the proposed definition of hospital services. One response from a private individual questioned why prison health services and cannabis services have not been included. Proposals to regulate cannabis clinics will be brought forward separately. Equally, it would be appropriate for the Care Commission to regulate prison health services, but this will be reserved for a future phase of the project to regulate all health and social care services in Jersey.

Question 3

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

36. Respondents supported the proposed definition of ambulance services under the Law. The States of Jersey Ambulance Service sought clarification on whether the Emergency Services Control Centre (ESCC) – which will be regulated as part of the ambulance service – would be required to register as a separate ambulance service. The Law does not require this. However, whether it would be most effective for the ESCC to be registered separately or not will be a decision for the Jersey Care Commission to make at an operational level, in consultation with the States of Jersey Ambulance Service.

Question 4

Do you have any comments on the proposals to include provisions to regulate: a) Laser Clinic Services b) Hyperbaric Oxygen Therapy?

37. Respondents were supportive of including laser clinics and hyperbaric oxygen therapy under the 2014 Law. The Commission made a technical comment that the definition of laser clinics does not match the policy intent of regulating services which are currently required to register under the Nursing Homes (Jersey) Law 1994, as it includes intense pulse light procedures. This will be addressed.

Question 5

Do you have any comments on any of the proposed amendments in Part 4 of the draft Law, including in relation to: a) Term Limits for Care Commissioners b) Disqualifications from Office for Commissioners c) Status of Commission Employees?

38. There were no comments from respondents that questioned the proposals in this area. Respondents supported the principle of introducing term limits for commissioners and for disqualifying commissioners from being appointed where there is a conflict of interest.

Question 6

Do you have any comments on the proposed amendments to the requirements for regulated care services under the Regulation of Care (Standards and Requirements) (Jersey) Regulations 2018 under Part 5 of the draft Law, including in relation to: a) Registration of Providers b) Duty of Candour c) Access to Visitors d) Effective Communication Requirements e) Access to Care and Health Records f) Mandatory Inspection Periods g) Offences

39. No comments were made on amendments proposed to Regulations 3 and 5 of the 2018 Regulations.

Duty of Candour

40. Those respondents who commented on proposals to implement a duty of candour under Regulation 6 of the 2018 Regulations supported the principle of these amendments:

"HCS welcomes Article 31 of the draft Law and its statutory Duty of Candour and will work towards HCS being more open and transparent and notifying the relevant person as soon as reasonably practicable once a notifiable safety incident has occurred under the process. HCS understands the requirement in training staff and embedding this across the organisation requiring further investment." (Department for Health and Community Services)

"The Commission supports this critical change, which is reflected within the Commission's draft standards." (Jersey Care Commission)

41. The Commission queried the rationale for implementing a different definition for a "notifiable safety incident" for hospital and ambulance services from other services. This distinction exists under similar provisions in English Law and reflects that hospital and ambulance services are distinctly health care services – the definition has, therefore, been designed to accommodate the provision of treatment to patients. In contrast, other services provide

health and/or social care services and so the definition under paragraph (8) of Regulation 6 is designed to take account of these broader circumstances.

42. HCS raised *"a significant concern about the overlap between the duty of candour requirement and potential prosecution of the Registered Person/Manager for an offence where serious harm or neglect has occurred…"*

43. The Minister does not consider that amendments are required to address HCS' concerns. This is because there should not be a conflict between a registered provider or a registered manager's duty to apologise for unexpected notifiable safety incidents (which is required under the duty of candour) and their duties to conform with other requirements under the 2018 Regulations. The definition of an "apology" under amended Regulation 6(9) does not require the registered provider and manager to admit liability or fault for a notifiable safety incident – it is important that they express regret only.

Access to Visitors

44. The introduction of a new requirement for registered services that deliver accommodation to provide access to visitors was widely supported by all respondents.

45. However, while supporting the necessity of preventing individuals from being granted access to service users in the interests of their safety and wellbeing, the Care Commission and the Office of the Children's Commissioner Jersey (OCCJ) raised concerns that the proposals provide registered providers with too much discretion in this area as currently drafted:

"The Commission supports this critical change, which is reflected within the Commission's draft standards. The Commission can understand the restriction of visitors in response to a court order. In other situations, the way that this is drafted seems to place all the decision-making with the provider rather than the individual. The Commission would question the consultation paper as drafted, as it has taken away the right of individuals with the capacity to choose who may visit them." (Jersey Care Commission)

"The OCCJ also welcomes the proposed changes relating to access to visitors and access to care and health records by representatives of a service user under Part 5 of the draft Law. These are important measures which support the rights of those receiving care, support or treatment in these settings.

"The OCCJ understands the requirement for the law to provide for access (to records and/or visitors) to be restricted in order to safeguard service users or comply with other legal requirements. However, the OCCJ wishes to raise a concern that the current drafting of these restrictive provisions (Article 32 – Regulation 7A(3) and Article 34 – Regulation 9(8)) rely on the subjective view of the provider of a registered activity rather than a more objective test. As such, it is our view that these provisions should be amended to include some reasonableness parameters and provide for the grounds under which such restrictive decisions are permitted.

"Additionally, we believe that where a decision is made by a registered person to restrict access under these proposed regulations, the draft law should make provision to require a registered person to:

- *consult with the service user in determining their actions,*

- *inform the service user of their decision and their reason for it,*
- *and maintain accurate records of both of the above."* (Office of the Children's Commissioner)

46. The Minister agrees with the Office of the Children's Commissioner that new Regulation 7A(3) of the 2018 Regulations should be amended to ensure that registered persons may only restrict access to visitors if it is reasonable to do so in the circumstances. The Minister also accepts the OCCJ's further recommendations that registered persons must consult with and then inform service users if they intend to restrict access to a visitor, and that this must be recorded. The provision will be amended accordingly.

47. HCS queried whether it would be intended to amend these provisions by emergency legislation in the event of a future pandemic/public emergency. The 2018 Regulations were previously amended to account for emergency arrangements during the COVID-19 pandemic in 2020, and so it may be necessary to amend these provisions in similar circumstances in future. However, it may not be necessary to do so as, when it is reasonable to restrict visitors, registered persons will be able to do so, subject to taking the steps outlined above. Registered care providers are required to have in place systems to control the spread of infections, under Regulation 12(2) of the 2018 Regulations, and so it would be possible to put in place proportionate restrictions on visitors in pursuit of this requirement without the need for emergency amendments to the legislation.

Effective Communication Requirements

48. No respondents advocated changes to proposals to require regulated services to communicate effectively with service users. The Care Commission confirmed its support for these changes and that it would, in practice, apply the proposal with discretion, depending on the type of service being provided.

Access to Care and Health Records

49. Respondents agreed that, in general, if a service user provides their consent for somebody to review their health or care records, regulated care services must provide that individual with access. It was also accepted that there may exist certain narrow circumstances in which it would be appropriate for a regulated service to withhold access to a person's health or care records, despite consent being given.

50. The OCCJ raised concerns that the draft amendments to Regulation 9(8) of the 2018 Regulations are currently too broad. These are set out under paragraph 45, above. The Minister also accepts the OCCJ's observations and suggested amendments to this Regulation. This will be updated accordingly.

51. HCS noted that there should also be an absolute right for those appointed as a health and welfare delegate under Articles 24 and 27 of the Capacity and Self-Determination (Jersey) Law 2016 to access health and care records. This is accepted.

Mandatory Inspection Periods

52. A range of feedback was received on proposals to require the Care Commission to inspect all regulated services at least once every 12 months, and to inspect all hospital services

within a 3-year period. Stakeholders had differing views but there was consistency in agreeing that these mandatory inspection periods should be reassessed:

"Following the introduction of regulations and experience in the inspection of Children's Social Care services, the Commission is now of the opinion that Child and Adolescent Mental Health Services (CAMHS), Fostering and Adoption, Social Work, and Independent Reviewing Officers (IRO) services should be provided with a mandatory inspection every two years. To safeguard this extension, additional inspections could be conducted if there were concerns about an area of care or notifications which indicated an inspection was required prior to the mandated inspection period." (Jersey Care Commission)

"The proposal for a three-year frequency for hospital services provides an opportunity to consider whether it remains appropriate for an annual inspection for Children Social Care and CAMHS services. A move to a three-year cycle of inspection would align more closely with practice in other jurisdictions (local authority children's services in England are inspected every 3 years by Ofsted with annual conversations and Focused Visits during the intervening years). This change would have the benefit of enabling service leads to fully focus on implementing the Care Commission's recommendations rather than constantly preparing for the next inspection in the 12 month cycle (and several potential inspections of Children's Social Work Services in each 12 month period)." (Minister for Children and Families)

"We welcome regulation of the States of Jersey Ambulance Service by the Jersey Care Commission and wish to facilitate as much access as necessary and practicably possible for Regulation Officers to carry out thorough review and appraisal of our service. This is likely to impact our limited workforce during the inspection period. In addition, the States of Jersey Ambulance Service is unique in that it partners with a wide range of agencies including, but not limited to:

- *Justice and Home Affairs (Chief Officer, Head of Change and Projects, Business Support Unit)*
- *Health and Community Services (broad range of Services including the Hospital, Outpatients and Community based settings and teams)*
- *Emergency Services Control Centre (ESCC)*
- *States of Jersey Police*
- *States of Jersey Fire and Rescue Service*
- *Government of Jersey Business Partners (Finance, Human Resources, Communications Team)*
- *General Practitioners*
- *Voluntary Agencies*
- *UK Ambulance Trusts*
- *Guernsey Ambulance and rescue Service*
- *Non-government health care providers*
- *Public Event organisers*

"It is anticipated that this may add complexity to our ability to fully implement and embed actions to address any recommendations within the space of one year. Based on the two points above, an inspection period of "at least once every two years" may be more useful and practicable." (States of Jersey Ambulance Service)

53. Having considered this feedback and taken account of evidence from other jurisdictions, the Minister has decided that the Regulation of Care (Standards and Requirements) (Jersey) Regulations 2018 should be amended to require the Care Commission to inspect the following services at least once every 3 years:

- Adoption services
- Children's home services
- Fostering services
- Social work services for children and young people
- Independent monitoring and review services in respect of looked after children's cases
- Children and young people's mental health services
- Ambulance services
- Hospital services (including Government-provided mental health services)

54. This would not prevent the Commission from undertaking inspections at any time. The Commission's current powers under Article 26 of the 2014 Law will enable it to undertake announced and unannounced inspections of any regulated service when the Commission considers it is appropriate to do so.

55. This amendment would bring the Law into line with other jurisdictions in the British Isles. For example, in England Ofsted must inspect local authority children's services once every 3 years. However, the regulator may and often does decide to inspect certain local authority children services more frequently. In the same way, it should be and will be an operational decision for the Jersey regulator as to whether to inspect services more frequently than the statutory minimum.

56. The Care Commission raised a further concern that, in practice, it would be difficult for the Commission to monitor places where individuals may be detained in a hospital every year, as this would require it to visit most parts of the service annually. This would be resource intensive. The Minister accepts that it is not intended for the Commission to conduct full annual inspections of all places of accommodation in hospital services. Therefore, Regulation 80(1B) of the 2018 Regulations will be reconsidered to ensure that it only requires annual monitoring of places of detention in hospital and not all parts of the hospital where a person may be deprived of their liberty.

Offences

57. There was one comment on the proposal to provide a defence against prosecution for registered providers and managers that breach Regulation 18 of the 2018 Regulations on the basis that their premises were defective. The Care Commission stated that this defence should only apply to the current acute hospital. The Minister accepts that the defence should not be relied upon widely by services and has been included to address known deficiencies with the present acute hospital building. It will, therefore, be targeted more effectively so that only hospital service providers may rely upon it.

Question 7

Do you have any further comments on the draft Law?

58. HCS queried whether medical advice provided remotely by a UK hospital, particularly if clinical teams are considering transporting a service user off island would be required to register in Jersey. It is not intended for medical advice provided from the UK to be regulated by the Care Commission. It is anticipated that this service would already be regulated by the relevant UK regulator.

Question 8

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

59. The Care Commission requested reconsideration of Regulation 24 of the 2018 Regulations which requires regulated services to provide annual accounts and insurance details to the Commission. It stated the following:

"The Commission does not have the current requirement or expertise to review providers' financial accounts every year. The Commission, therefore, would like to make an additional amendment to the Law, which would be for registered providers to submit annual financial reports to the Commission only if requested." (Jersey Care Commission)

60. The Minister accepts that amendments could be made to Regulation 24. The rationale for this Regulation is to ensure that the Commission has early warning as to whether a care provider is in financial difficulty and is, therefore, likely to fail and leave care receivers without access to care or facing the prospect of finding alternative services. It must be possible for the Commission to require this information to enable it to monitor this financial information accordingly and with this purpose in mind, and the Commission is expected to make all reasonable enquiries when it has reason to believe that a care provider may be in financial difficulty. However, it is accepted that they do not require accounts to be provided by all providers as a matter of course. Instead, care providers will be required to provide this information when requested to do so by the Commission.

61. Concerns were raised by both HCS and the States of Jersey Ambulance Service about liability for complying with requirements under the 2018 Law being placed on both registered providers and registered managers. The 2018 Regulations consistently places requirements on both providers and managers except where it would be appropriate for providers only to hold responsibility. Usually, providers hold responsibility alone for fulfilling statutory requirements that require funding to meet them. For example, responsibility is placed purely on providers to ensure that premises are fit for purpose.

62. In general, it is important that both providers and managers of services hold joint responsibility for delivering high quality services under the Law so that there are no gaps in accountability. However, the facts of a particular case may show that a manager has discharged their responsibilities to the best of their ability, but a provider has failed to do so. In such a case, the provider would be potentially liable for the breach, but the manager would not because they are not at fault. Equally, it may be clear that, while a breach has occurred, it would be right to hold the provider and manager's employer accountable or vicariously liable. In this way, it is considered that the legal framework is robust and effective.

63. Further concerns were raised by both HCS and the States of Jersey Ambulance Service about the longstanding offences provisions under the 2014 Law. It should be noted that these offence provisions have been in force since 1 January 2019. No prosecutions have been brought under the 2014 Law and yet the standard of care across regulated services has, despite significant challenges, been consistently high throughout that period. The Minister considers it is necessary and proportionate to retain a possible sanction of £50,000 for breaches of the 2018 Regulations. If there is no sanction in place for breaches of the Law, then there is no effective deterrent against providing substandard care. It is only fair that this should apply to all regulated services, whether provided by public, private or charitable organisations.

Next steps

64. The Minister for the Environment has considered the feedback gathered in this consultation. This report has summarised the feedback received and sets out those aspects of the draft Law that the Minister intends to amend. Those amendments will now be drafted, and it is expected that the draft Law will be finalised and lodged in the States Assembly before the end of 2024.