

PROJET DE LOI

ENTITLED

The Regulation of Care (Enabling Provisions) (Bailiwick of Guernsey) Law, 2024

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THE STATES, in pursuance of their Resolution of the 28th February, 2019^a, have approved the following provisions which, subject to the Sanction of His Most Excellent Majesty in Council, shall have force of law in the Bailiwick of Guernsey.

Object of this Law.

1. The object of this Law is to -
 - (a) protect public safety and the safety of individuals who receive care,
 - (b) promote, and where practicable ensure, safety and quality in relation to care, and
 - (c) ensure the appropriate regulation of care.

General power to make Ordinances relating to care.

2. (1) The States may by Ordinance make any provision they think fit relating to the following -

^a Article V of Billet d'État No. III of 2019.

(a) health care,

(b) social care.

(2) Schedule 1 has effect.

(3) In this Law, "**health care**" and "**social care**" have the respective meanings given by Schedule 1.

Specific matters and purposes for which Ordinances may make provision.

3. (1) Without limiting the generality of section 2, an Ordinance may make provision in relation to the following -

(a) the provision of care,

(b) the practice of a care profession,

(c) any matter set out in Schedule 2,

(d) any purpose set out in Schedule 3.

(2) In this Law, "**care profession**", "**practise**" and "**provision of care**" have the respective meanings given by Schedule 1.

Ordinances may amend or repeal section 7 and Schedules 1, 2, 3 and 4.

4. (1) The States of Deliberation may at any time by Ordinance amend or repeal all or any part of the following where it appears necessary or expedient to do so for a purpose specified in subsection (2) -

- (a) section 7,
 - (b) Schedule 1,
 - (c) Schedule 2,
 - (d) Schedule 3,
 - (e) Schedule 4.
- (2) Subsection (1) refers to the following purposes –
- (a) ensuring the effective enforcement of this Law,
 - (b) enabling any person or body within the Bailiwick with functions under this Law to effectively carry out those functions,
 - (c) protecting public safety or the safety of individuals,
 - (d) discharging any international obligation to which the Bailiwick is subject.

Ordinances having effect in Alderney or Sark.

5. (1) Before recommending that the States of Deliberation enact an Ordinance under this Law having effect in Alderney or Sark, the Committee must consult on the terms of the proposed Ordinance with -

(a) in the case of an Ordinance having effect in Alderney, the Policy & Finance Committee of the States of Alderney, and

(b) in the case of an Ordinance having effect in Sark, the Policy and Finance Committee of the Chief Pleas of Sark.

(2) However, failure to comply with subsection (1) does not invalidate an Ordinance.

(3) An Ordinance ceases to have effect -

(a) in Alderney if, within the period of four months immediately following the approval date, the States of Alderney resolve to disapprove its application to Alderney, and

(b) in Sark if, at the first or second meeting of the Chief Pleas of Sark following the approval date, the Chief Pleas resolve to disapprove its application to Sark.

(4) If the States of Alderney or the Chief Pleas of Sark resolve to disapprove the application of an Ordinance in accordance with subsection (3), the Ordinance ceases to have effect in Alderney or (as the case may be) Sark, but without prejudice to -

(a) anything done under the Ordinance in Alderney or (as the case may be) Sark, or

- (b) the making of a new Ordinance having effect in Alderney or (as the case may be) Sark.

(5) In this section, "**approval date**", in relation to an Ordinance, means the date of its approval by the States of Deliberation.

General provisions as to Ordinances.

6. (1) Subject to subsection (2), an Ordinance under this Law may do any or all of the following -

- (a) repeal, replace, amend, extend, adapt, modify or disapply any rule of custom or law,
- (b) make provision under the powers conferred by this Law despite the provisions of any enactment for the time being in force,
- (c) without limiting the generality of paragraph (a) or (b), make any such provision to such extent as might be made by Projet de Loi.

(2) An Ordinance under this Law must not -

- (a) provide for an offence to be triable only on indictment,
- (b) provide that a person is to be guilty of an offence as a result of any retrospective effect of the Ordinance, or

(c) authorise the imposition, on conviction of an offence, of imprisonment for a term exceeding two years.

(3) An Ordinance under this Law may amend or repeal a Law specified in Schedule 5.

(4) Nothing in this section limits the effect of section 20 of the Interpretation and Standard Provisions (Bailiwick of Guernsey) Law, 2016^b.

Interpretation.

7. (1) In this Law, unless the context requires otherwise -

"**approval date**": see section 5(5),

"**care**" means health care or social care,

"**care profession**": see Schedule 1,

"**the Commission**" means a Commission established and constituted under this Law,

"**the Committee**" means the States of Guernsey Committee for Health and Social Care,

"**cosmetic intervention**": see Schedule 1,

^b Order in Council No. V of 2018; this enactment has been amended.

"health" means physical or mental health,

"health care": see Schedule 1,

"this Law" includes –

- (a) an Ordinance made under this Law, and
- (b) any subordinate legislation made under any such Ordinance,

"medical", for the avoidance of doubt, includes dental,

"the Medical Device Regulation" means Regulation (EU) 2017/745 of the European Parliament and of the Council of 5 April 2017 on medical devices, amending Directive 2001/83/EC, Regulation (EC) No 178/2002 and Regulation (EC) No 1223/2009 and repealing Council Directives 90/385/EEC and 93/42/EEC,

"nurse" includes a person registered as a nurse or midwife in the register of health professionals maintained under section 3 of the Registered Health Professionals Ordinance, 2006^c or section 3 of the Regulation of Health Professions (Non-medical) (Sark) Ordinance, 2018^d,

^c Ordinance No. III of 2006; this enactment has been amended.

^d Sark Ordinance No. IV of 2018.

"nursing care" means a service that should be provided by a nurse because of its nature and circumstances, including the need for clinical judgment,

"personal care" -

- (a) means assistance in daily living, including -
 - (i) practical assistance with daily tasks, such as eating, washing and dressing, and
 - (ii) prompting a person to carry out daily tasks, but
- (b) excludes health care,

"personal data" has the meaning given by section 111(1) of the Data Protection (Bailiwick of Guernsey) Law, 2017^e,

"personal support" -

- (a) includes supervision, guidance, counselling or other support in daily living provided for an individual as part of a programme of such supervision, guidance, counselling or other support, but
- (b) excludes health care,

^e Order in Council No. VI of 2018; this enactment has been amended.

"**practise**": see Schedule 1,

"**prescribed**" means prescribed by or under an Ordinance,

"**provision of care**": see Schedule 1,

"**social care**": see Schedule 1,

"**specified matter or purpose**" means any matter or purpose mentioned
in -

(a) section 2(1), or

(b) section 3(1), and

"**specified thing**": see Schedule 1.

(2) In this Law, a reference to a Community directive or regulation, or any provision of a Community directive or regulation, is a reference to it as from time to time amended or re-issued (with or without modification).

(3) In subsection (2), "**Community directive or regulation**" means a directive or regulation, within the meaning of Article 249 of the Treaty establishing the European Community.

Repeals and revocation.

8. (1) The following enactments are repealed -

(a) the Regulation of Health Professions (Enabling Provisions) (Guernsey) Law, 2012^f, and

(b) the Regulation of Health Professions (Enabling Provisions) (Sark) Law, 2012^g.

(2) The Regulation of Health Professions (Medical Practitioners) (Guernsey and Alderney) Regulations, 2015^h are revoked.

Transitional and savings.

9. (1) Despite section 8(1), the enactments in subsection (2) of this section -

(a) continue to have effect as if they were duly made under this Law, and

(b) may be amended, repealed or, as the case may be, revoked, accordingly.

(2) Subsection (1) refers to the following -

^f Order in Council No. IX of 2013; this enactment has been amended.

^g Order in Council No. XIV of 2013; this enactment has been amended.

^h G.S.I. No. 105 of 2015.

- (a) the Regulation of Health Professions (Medical Practitioners) (Guernsey and Alderney) Ordinance, 2015ⁱ,
- (b) the Regulation of Health Professions (Medical Practitioners) (Guernsey and Alderney) (Amendment) Ordinance, 2015^j,
- (c) the Regulation of Health Professions (Medical Practitioners) (Sark) Ordinance, 2017^k,
- (d) the Regulation of Health Professions (Non-medical) (Sark) Ordinance, 2018^l,
- (e) the Regulation of Health Professions (Medical Practitioners) (Guernsey and Alderney) Regulations, 2016^m,
- (f) the Regulation of Health Professions (Medical Practitioners) (Sark) Regulations, 2017ⁿ.

i Ordinance No. XXII of 2015; this enactment has been amended.

j Ordinance No. L of 2015.

k Sark Ordinance No. VI of 2017.

l Sark Ordinance No. IV of 2018.

m G.S.I. No. 53 of 2016.

n G.S.I. No. 74 of 2017.

Extent.

10. This Ordinance has effect in the Bailiwick of Guernsey, including its territorial waters.

Citation.

11. This Law may be cited as the Regulation of Care (Enabling Provisions) (Bailiwick of Guernsey) Law, 2024.

Commencement.

12. This Law shall come into force on the day appointed by Ordinance of the States; and different dates may be appointed for different provisions and for different purposes.

LAW NOT YET IN FORCE

SCHEDULE 1

Section 2(2) and (3); section 3(2)

MEANING OF KEY EXPRESSIONS

In this Law -

"care profession" -

- (a) means any kind or description of profession or occupation in, directly or indirectly connected with, or represented to be connected with, health care, social care or the provision of care, and
- (b) without limiting the generality of item (a), includes a profession or occupation specified in Schedule 4,

"cosmetic intervention" -

- (a) means any intervention, procedure or treatment carried out with the objective of changing an aspect of a person's physical appearance (whether or not it is also carried out for any other objective),
- (b) includes non-surgical procedures, and
- (c) for the avoidance of doubt, includes the use of a laser, or light source or device, to improve skin tone, texture or colour, or to remove tattoos or hair,

"health care" -

- (a) includes the following -
 - (i) any form of medical or surgical care,
 - (ii) any other form of care (including nursing care) provided for the health of an individual,
 - (iii) any procedure similar to a form of medical or surgical care even if the procedure is not provided in connection with a medical or health condition, and
- (b) is deemed to include the following (to the extent that these do not fall within item (a)) -
 - (i) any intervention, procedure or treatment involving, or carried out for the purpose of -
 - (A) the ingestion, inhalation, injection or implantation of any product or substance into any part of the human body, or
 - (B) the application of any product or substance in or onto any part of the human body,
 - (ii) any information, advice or service relating to any health or medical matter, including, for the avoidance of doubt,

human nutrition, mental health, or well-being,

(iii) any cosmetic intervention,

"**practise**", in relation to a care profession, includes -

- (a) undergoing practical training to practise a care profession,
- (b) using a name, title or description associated with, or purportedly associated with, a care profession,
- (c) using or providing any premises, facility or equipment in connection with, or purportedly in connection with, a care profession,
- (d) carrying out any activity or providing any service in connection with, or purportedly in connection with, the care profession,
- (e) purporting to do anything mentioned in item (c) or (d), and
- (f) purporting to be qualified to do anything mentioned in item (c) or (d),

"**provision of care**" -

- (a) means provision of health care or social care, and
- (b) includes the following -

- (i) using, or providing or permitting the use or provision of any premises, facility or equipment, for health care or social care,
- (ii) carrying out any activity in connection with the provision of health care or social care,
- (iii) giving or providing any information, advice or service to any member of the public (whether or not for payment or reward) relating to any specified thing,
- (iv) purporting to do any of the things specified in sub-item (i), (ii) or (iii),
- (v) any other prescribed activity or service,

"social care" -

- (a) includes any form of personal care, practical assistance or personal support provided for an individual in need of the care, assistance or support because of the individual's age, illness, disability, pregnancy, childbirth, dependence on alcohol or other substances or for any other reason, but
- (b) excludes health care, and

"specified thing" means the following -

- (a) any health or medical matter, including, for the avoidance of doubt, human nutrition, mental health, or well-being
- (b) any apparatus, instrument, appliance or combination of these -
 - (i) presented as having properties for treating or preventing disease in human beings, or
 - (ii) which may be used in or administered to human beings either with a view to restoring, correcting or modifying physiological functions by exerting a pharmacological, immunological or metabolic action, or to making a medical diagnosis,
- (c) any other medical device, or accessory for a medical device, within the meaning of the Medical Device Regulation,
- (d) any other prescribed matter.

SCHEDULE 2

Section 3(1)(c)

SPECIFIC MATTERS FOR WHICH AN ORDINANCE MAY BE MADE

1. Any form of regulation of, or restriction on, the provision of care or the practise of a care profession, including prohibiting it, unless the person providing the care or practising the profession satisfies prescribed requirements or conditions, for example -
 - (a) being employed by or having a prescribed connection with a prescribed person,
 - (b) being registered, licensed, certified or accredited in a prescribed manner,
 - (c) holding a prescribed qualification or being qualified in a prescribed manner,
 - (d) providing the care or practising the profession only in prescribed premises or premises that meet prescribed requirements or conditions,
or
 - (e) using or providing prescribed premises, prescribed facilities or prescribed equipment, or carrying out a prescribed activity, in connection with the provision of the care or the practise of the profession.

2. The grant to, or conferral on, any person of the exclusive right to provide

prescribed care or practise a prescribed care profession.

3. Standards or requirements relating to –
 - (a) the fitness to provide, or continued fitness to provide, care, or
 - (b) the fitness to practise, or continued fitness to practise, a care profession.
4. Standards or requirements relating to conduct (including codes of conduct), ethics or performance in relation to the provision of care or practise of a care profession.
5. Use of names, titles or descriptions in any way associated with the provision of care or practise of a care profession.

LAW NOT YET IN FORCE

SCHEDULE 3

Section 3(1)(d)

SPECIFIC PURPOSES FOR WHICH AN ORDINANCE MAY BE MADE

1. Establishing and constituting a Commission for the purposes of this Law, including giving the Commission powers, duties and other functions.
2. Establishing, constituting, appointing or recognising any other body or authority or other person for the purposes of this Law, including giving the person powers, duties and other functions.
3. Providing for the Commission or any other body, authority or other person established, constituted, appointed or recognised under paragraph 1 or 2 to provide services or carry out activities outside Guernsey or the Bailiwick, which may include services or activities -
 - (a) relating to the regulation of care, and
 - (b) in return for payment.
4. Imposing duties and obligations, or conferring rights and privileges, on any person in relation to the provision of care or practise of a care profession.
5. Requiring or authorising any person to provide or verify any information, or make any information returns at prescribed intervals, which may include personal data.
6. Imposing a fee, charge or levy payable by any person in connection with any

specified matter or purpose.

7. The creation, trial (summarily or on indictment) and punishment of offences.
8. Excluding liability for any person in respect of anything done or omitted to be done in the discharge or purported discharge of any of the person's functions under this Law unless the thing is done or omitted to be done in bad faith.
9. Giving to any person any powers considered necessary or expedient for the enforcement or due administration of this Law, including (without limitation) powers of entry, inspection, questioning, search, seizure, forfeiture and disposal, or arrest and detention.
10. Providing for appeals in relation to any decision made under this Law.
11. Dealing with any matters necessary or expedient to be dealt with in making provision in relation to anything set out in section 3(1) of this Law.
12. Providing for any other matters necessary or expedient for giving full effect to this Law and for its due administration.

Note: In this Schedule, any reference to a person in paragraph 4, 5, 6, 8 or 9 includes a person that has a prescribed connection with any person providing care or practising a care profession.

SCHEDULE 4

Schedule 1

EXAMPLES OF CARE PROFESSIONS

1. Medical practitioner, dentist or pharmacist (including pharmaceutical chemist, chemist or druggist).
2. Nurse, midwife or health visitor.
3. Arts therapist.
4. Biomedical scientist.
5. Chiropodist or podiatrist.
6. Chiropractor.
7. Clinical dental technician.
8. Clinical scientist.
9. Dental nurse.
10. Dental technician.
11. Dental therapist.
12. Dietitian.

13. Occupational therapist.
14. Operating department practitioner.
15. Orthodontic therapist.
16. Orthoptist.
17. Osteopath.
18. Paramedic.
19. Physiotherapist.
20. Practitioner psychologist.
21. Prosthetist or orthotist.
22. Radiographer.
23. Social worker.
24. Speech and language therapist.
25. Any other profession or occupation registered, licensed or in any way regulated by any of the following bodies in any part of the United Kingdom -
 - (a) the General Medical Council,

- (b) the Nursing & Midwifery Council,
 - (c) the General Dental Council,
 - (d) the General Pharmaceutical Council,
 - (e) the Pharmaceutical Society of Northern Ireland,
 - (f) the General Optical Council,
 - (g) the General Osteopathic Council,
 - (h) the General Chiropractic Council,
 - (i) the Health & Care Professions Council,
 - (j) Social Work England,
 - (k) the British Association for Counselling and Psychotherapy.
26. Any other profession or occupation in any way connected with health care, social care or the provision of care, registered, licensed or in any way regulated by any body or person in the United Kingdom or any other country or territory.
27. Any kind of provider of cosmetic interventions.
28. Nutritionist.

29. Counsellor.

30. Any kind of therapist.

LAW NOT YET IN FORCE

SCHEDULE 5

Section 6(3)

SPECIFIC LAWS THAT MAY BE AMENDED OR REPEALED BY ORDINANCE

1. Loi relative à la Santé Publique, 1934^o.
2. Nursing Homes and Residential Homes (Guernsey) Law, 1976^p.
3. Nursing and Residential Homes (Registration and Occupation) (Alderney) Law, 1987^q.
4. The Tattooing, Piercing, Acupuncture and Electrolysis (Guernsey and Alderney) Law, 2000^r.
5. The Medicines (Human and Veterinary) (Bailiwick of Guernsey) Law, 2008^s.

^o Ordres en Conseil Vol. IX, p. 386; this enactment has been amended.

^p Ordres en Conseil Vol. XXVI, p. 71; this enactment has been amended.

^q Ordres en Conseil Vol. XXX, p. 371; this enactment has been amended.

^r Order in Council No. V of 2000; this enactment has been amended.

^s Order in Council No. V of 2009; this enactment has been amended.