

STATES OF JERSEY



DRAFT COVID-19 (GATHERINGS) (JERSEY) REGULATIONS 202- (P.157/2020): COMMENTS

**Presented to the States on 20th November 2020
by the Health and Social Security Scrutiny Panel**

STATES GREFFE

COMMENTS

Introduction

[\(P.157/2020\) Draft COVID-19 \(Gatherings\) \(Jersey\) Regulations 202-](#) was lodged by the Minister for Health and Social Services on 16th November 2020 in light of the ongoing Covid-19 pandemic.

The Draft Regulations, if adopted, will allow Orders (called gathering control Orders) to be made to place a limit on the size and characteristics of gatherings that are permitted. The restriction on the size and characteristics of gatherings would be given effect by granting powers to enforcement officers to disperse such gatherings, and to direct that people cannot return to the location for a specified time, which must be no longer than three hours.

The Health and Social Security Scrutiny Panel, along with Members of the Economic and International Affairs Scrutiny Panel, received a briefing on the Draft Regulations on 16th November 2020 from the Minister for Health and Social Services and Head of Policy (Criminal Justice) from Strategic Policy, Planning and Performance (SPPP). The Minister emphasised the urgent need to limit the spread of COVID-19 and sought the Panels' agreement to bring forward the Draft Regulations for debate at a requisition meeting of the States Assembly on 24th November. The Panels accepted the urgent requirement to bring forward the Draft Regulations in advance of the standard six-week lodging period assigned to Propositions brought before the States Assembly.

Background

On 9th September 2020, the States Assembly voted to approve [\(P.103/2020\) Draft COVID-19 \(Amendments – Extension, Suspension and Repeal\) \(Jersey\) Regulations 202-](#), as part of Phase One of a broader legislative programme to amend or repeal 24 pieces of domestic legislation, that were introduced in response to the outbreak of COVID-19 in Jersey.

These Draft Regulations will form part of Phase Two of the legislative programme, consisting of a 'toolkit' of Regulations that can be activated by way of Ministerial Order under [P.29/2020 Draft COVID-19 \(Enabling Provisions\) \(Jersey\) Law 202-](#). This 'toolkit' of Regulations is designed to equip the Government of Jersey with various powers to mitigate the deterioration of the COVID-19 outbreak and limit more generally the transmission of COVID-19 in Jersey.

The Draft Regulations will enable the Government of Jersey to activate more selective legislation that imposes less restrictive measures at an earlier stage, rather than blunt and wide-reaching measures at a later stage, when the outbreak of COVID-19 has deteriorated.

The Phase Two legislation to be brought forward to the States Assembly for debate will be:

- **Draft Covid-19 (Gatherings) (Jersey) Regulations 202-**
- **Draft Covid-19 (Workplace Restrictions) (Amendment) (Jersey) Regulations 202-**

- **Draft Covid-19 (Safer Travel - Information and Isolation) (Jersey) Regulations 202-**

Purpose of the Draft Regulations

The Draft Regulations create a mechanism, enforceable in law, to manage gatherings of people and limit the spread of COVID-19 in Jersey. The Draft Regulations closely follow the original guidance on gatherings and social distancing issued by the Government of Jersey following the outbreak of COVID-19 in March 2020.

During the briefing, the Panel was provided with an overview of the purpose of the Draft Regulations. It was noted that Draft Regulation 2(4), which sets out a ‘gathering control requirement’, seeks to:

- Avoid the difficulties of managing controls on small gatherings and impinging on freedoms to any greater degree of control than necessary, to minimise the spread of COVID-19;
- Provide assurances to Jersey residents that the right of people to gather will not be restricted below 10 persons;
- Prohibit certain gatherings solely based on size, where preventative measures and careful behaviour cannot be relied upon to manage viral transmission;
- Give powers of enforcement to restrict ‘intermediate size’ gatherings, those between the maximum size of 10 persons for informal gatherings and maximum size of 20 persons for formal gatherings;
- Mitigate the major COVID-19 infection risk factors associated with indoor gatherings, singing and shouting, physical exertion and the consumption of alcohol.

The rationale for a ‘hard minimum’ in the Draft Regulations was explained, which precludes any limitations on gatherings of fewer than 10 people, citing the difficulties relating to the effectiveness and enforceability of similar legislation in other jurisdictions. The Panel notes that the hard minimum, seeks to avoid the complexity arising from attempts to control groups down to a maximum size of six people, which is often smaller than the size of many families, in turn creating the need for a large number of exemptions to the legislation.

The Panel was then briefed on the powers conferred on Enforcement Officers, by the Draft Regulations, to instruct groups of people exceeding the ‘hard minimum’ to disperse. It was explained that following an instruction to disperse, an Enforcement Officer would be permitted to specify a time period during which the dispersed individuals would not be permitted to re-enter the area, providing the time specified did not exceed three hours. The Panel noted that this power includes a ‘continuing dispersal requirement’, to deter groups from re-gathering immediately after a dispersal instruction is made. It was further noted, however, that the Draft Regulations would not prevent a person from accessing their home, workplace, medical treatment or education.

The Panel was informed that children under the age of 12 are strictly excluded from the rules applying to gatherings. The Panel noted the rationale for excluding children within this age range from the Draft Regulations, in recognising the significant impact on young children, both in disrupting their normal lives and the changes to behavioural requirements that pose greater challenges to children than adults. It was advised that the

Draft Regulations appeared to be within the normal age range set internationally and, where other jurisdictions draw a minimum age, that the age of 12 is normal.

The Panel was also informed of the offences which may be committed under the Draft Regulations. The Panel notes that in order to commit an offence under the Draft Regulations, a person must do two things:

- Be part of a gathering that an Enforcement Official believes is contravening a gathering control Order;
- Wilfully refuse to either stop the contravention or disperse when instructed to do so.

The Panel notes that such offences carry a maximum fine of £1,000 and was informed by the Officer that the Draft Regulations were due to expire on 30th April 2021.

The Panel was advised that the Draft Regulations only consist of enabling provisions and simply provide a framework by which gatherings can be restricted by specific numbers. The specific numbers will be stipulated by the Minister for Health and Social services in an Order and will be adapted according to the status of the pandemic. For example, it was further advised that an Order might provide that groups of fewer than 'x' number of people may gather without any interference from Government, groups of 'x' and 'y' number of people may gather together if they do so in a safe way and groups of more than 'y' number of people may not gather together unless for a specified event.

At the briefing the Panel queried whether the Draft Regulations would apply to gatherings within private dwellings, as well as public spaces. It was informed that the Order will determine the scope of the controls. The Order could, for instance, either provide that only gatherings in public areas are affected or, alternatively, that private spaces, including private dwelling are also included. However, it was noted that the Regulations stipulate that an Order cannot affect a family in their own home without other people being present.

In consideration of the above, the Panel asked whether the Order would be available for the Panel and States Members to review before the debate on the draft Regulations. It was advised that due to the proposal to hold a requisitioned meeting on 24th November 2020, there was a chance that the Order would not be finalised before the debate. However, the Minister assured the Panel that he would provide them to the Panel as soon as they were available. Despite a request following the briefing, the Panel has not received the law-drafting instructions for these Draft Regulations or any further details about the areas that may be addressed in the Orders.

Conclusion

The Panel would like to thank the Minister for Health and Social Services and Head of Policy (Criminal Justice) for the briefing held on 16th November 2020.

In consideration of the above, the Draft Regulations seek to ensure that limitations on gatherings in response to the outbreak of COVID-19 in Jersey, are both effective in limiting the spread of COVID-19 and enforceable by the relevant Enforcement Officers. The Panel notes the importance of delivering legislation whilst minimising complexities, to ensure members of the public and the business community have

confidence that legislation brought forward to respond to COVID-19 is proportionate and limited to the duration of the pandemic. The Panel believes that this is appropriate given the current and future uncertainty the Island faces.

Statement under Standing Order 37A [Presentation of comment relating to a proposition]

These comments were submitted to the States Greffe after the deadline set out in Standing Order 37A as the Panel was awaiting further information and checking of the factual accuracy of the comments needed to be undertaken