

STATES OF JERSEY



Jersey

DRAFT COVID-19 (GATHERINGS) (JERSEY) REGULATIONS 202-

**Lodged au Greffe on 16th November 2020
by the Minister for Health and Social Services**

STATES GREFFE

REPORT

Covid-19 legislative programme Phase Two

These Regulations are part of Phase Two of the wider Covid-19 legislative programme, which follows the decision of the Assembly in the debate on Phase One on 8 September 2020 to extend, suspend and repeal elements of the original suite of emergency legislation as necessary.

Phase Two consists of various sets of Regulations under the [Covid-19 \(Enabling Provisions\) \(Jersey\) Law 2020](#) which are intended to develop a toolkit of powers that can be used by government to limit the spread of Covid generally, and to manage any potential deterioration of the situation.

Currently, the Government has a limited number of tools available, primarily centred on closing businesses and limiting people's movement. With more selective legislation available, government would be in a better position to introduce less restrictive measures early, rather than blunter and wider restrictions when things have deteriorated.

These Regulations will all consist of enabling provisions only and will have no effect in themselves. They will provide for Orders (or equivalent tertiary legislation) to be made which will have direct effects.

The full suite of Phase Two legislation that will be brought to the Assembly will be –

- **Draft Covid-19 (Gatherings) (Jersey) Regulations 202-** (*These Regulations*)
 - Allow Orders that will limit the number of people who can gather together, to restrict the spread of Covid-19.
- **Draft Covid-19 (Workplace Restrictions) (Amendment) (Jersey) Regulations 202-**
 - Allow Orders that will require businesses to do certain things to restrict the spread of Covid-19, such as to collect contact details from customers or to not serve people who do not wear masks.
 - Provide for an enhanced enforcement regime for business that do not follow the conditions of Workplace Restrictions Orders
 - Allow Orders that will require people to wear masks in some workplaces.
- **Draft Covid-19 (Safer Travel - Information and Isolation) (Jersey) Regulations 202-**
 - Embed the current safer travel rules, which currently operate by way of exemption to a requirement to isolate, into legislation.

Gatherings

The legislation will also offer a way to manage gatherings of people to limit the spread of Covid-19. Gatherings have been the subject of guidance since the lockdown and safe distancing arrangements were lifted, but this has not been enforceable in law.

The Regulations will allow Orders (called gathering control Orders) to be made to place a limit on the size and characteristics of gatherings that are allowed. This restriction is given effect by granting powers to enforcement officers to disperse gatherings over the permitted size or outside of the permitted characteristics, and to direct that people cannot return to the location for a specified time (no longer than three hours).

Regulation 2(4) describes how gatherings can be managed.

Some gatherings will be unaffected by the rules, based on their size. This reflects both the difficulty of managing controls on small gatherings (addressed below) and the desire not to impinge on freedoms to any greater degree than necessary to control the spread of Covid-19.

An Order may specify any minimum size of gathering above 10, which offers an assurance that the right of people to gather together will not be restricted below that number.

Some gatherings will be prohibited solely based on their size as, past a certain concentration of people, preventative measures and careful behaviour cannot be relied upon to manage viral transmission.

Gatherings of an intermediate size, between the minimum and maximum, will be restricted if they have characteristics that are known to create a greater risk of transmission of Covid-19.

The Regulations specify that the major risk factors are-

- If the gathering is inside a building, as there may be issues of ventilation or crowding that would be less of a factor outside
- If singing or shouting is taking place, as the risk of viral transmission through droplet spread is increased by that activity
- If the participants are engaging in physical exertion to the extent that they are breathing heavily, as again this exacerbates droplet transmission
- If alcohol is being consumed, as this factor affects decision making, encourages more risk-tolerant behaviour, and reduces observance of preventative measures.

If one of these risk factors is present, then an enforcement officer may (not must) take action to disperse the gathering, if it is of an intermediate size. Whether or not a gathering is dispersed will depend on whether the enforcement officer considers that it is breaching a requirement of a gathering control Order taking into consideration guidance from the Medical Officer of Health (MOH) in deciding whether or not to interfere with the activity.

This means that gatherings that have any of the characteristics above, and are over the minimum size, will not automatically be interfered with but the MOH guidance will help the enforcement officer decide if they should intervene based on the risk.

For example, an Order might provide that-

- Groups of fewer than 'x' number of people may gather together without any interference from government, whatever they choose to do (even if this appears to create a risk of spreading Covid-19).
- Groups of 'x' to 'y' number of people may gather together if they do so in a safe way that limits the possibility of the spread of Covid-19, taking into account the number of people involved, the location, the behaviour of the group, and the activities being carried out. Advice from the MOH will inform the enforcement officer in question in more detail about what risks apply and how they should be weighted.
- Groups of more than 'y' number of people may not gather together, even with mitigation measures in place, unless for a funeral (or other specified event), where the limit is may be different.

The 'x' and 'y' numbers would be variable by Order based on health advice, and could be 10 and 20, 20 and 40 etc. The 'x' number, below which government would not interfere with a gathering, can never be lower than 10.

The Order will be able to determine the scope of the controls, and it would be possible to provide that only gatherings in public areas were affected, alternatively private spaces could be included as well, including dwellings. The Regulations stipulate, for certainty, that it is not possible to make any Order that affects a family in their own home without other people being present.

As noted above, a ‘hard minimum’ is included in the Regulations that precludes any limitations on gatherings of fewer than 10 people. This has been included after a review of the effectiveness and enforceability of similar legislation in other jurisdictions. It is particularly notable that the English legislation intended to control gatherings (the Health Protection (Coronavirus, Restrictions) (No. 2) (England) Regulations 2020)¹ is enormously complicated in comparison to this legislation.

To a large degree that complexity emerges from the attempt to control groups down to the size of six people, which is smaller than many families. This in turn leads to the need to exempt family groups, and onwards to the need to address whether otherwise exempted groups are ‘mingling’ or not, or if a member of one group becomes a member of another group, etc.

Jersey, along with other jurisdictions, has encountered some of that complexity in previous attempts to enforce distancing. The [Covid-19 \(Safe Distancing\) \(Jersey\) Regulations 2020](#) (the Safe Distancing Regulations) were an enforcement challenge as it was difficult to determine whether or not a group of people were exempted because they constituted a ‘household’.

By maintaining a hard minimum of ten people as the groups size of concern it is hoped that such complexity can be avoided. If special arrangements for households etc. are required above that limit, then they could be provided for in the relevant Order.

Controls on gathering will also allow enforcement officers to require groups to disperse from an area. If an instruction to disperse is given, then the officer will be able to specify a time period during which the individuals who have been dispersed will not be permitted to re-enter the area (which may be a building, a public area, a street, etc). This can never be longer than three hours and can only be as long as is reasonable to achieve the objective (e.g. it may be until an event has finished, or as long as the officer thinks will be necessary for the group to lose interest).

This continuation of the dispersal power is again based on the experience of the Safe Distancing Regulations, which met another enforcement challenge where people would comply with an officer’s instruction to stop breaching safe distancing, and the officer would encounter them soon afterwards in exactly the same circumstances. This would lead to another instruction, another compliance, and the cycle would continue. By placing a continuing requirement on a group to disperse, there is an effective deterrent to avoid the group re-gathering immediately afterwards.

The Regulations provide that a direction to disperse and not return will have no effect where it would stop a person getting to their home, their workplace, or to access medical treatment or education. In addition, the scope of the direction must be as limited as feasible in terms of area and time.

Currently, the only legislative response to unsafe gatherings is the [Statutory Nuisances \(Jersey\) Law 1999](#) (the Statutory Nuisances Law), which are engaged by an amendment to the [Statutory Nuisances \(Jersey\) Regulations 2017](#) made at an early stage of the pandemic to address those events which were “*of such size or duration, and is held in*

¹ [Link](#) to the English legislation.

such circumstances in relation to potential contamination or infection with Covid-19, as to be prejudicial to health or a nuisance.”²

The Statutory Nuisances Law is not the best tool with which to address this problem, as it is better suited to repeated incidences of nuisance and requires an abatement notice to be served ‘on the person responsible for the nuisance’ in the name of the Minister for the Environment. This emergency expansion of the function of the Law was sorely needed at the time but the procedure has proven cumbersome.

Age restriction and effect on children

The Regulations provide that no restriction can be placed on children who are younger than 12 years old (i.e. before their twelfth birthday). This does not preclude an Order making provision for a different age of effect (e.g. 16), but it can never be lower than 12.

This limitation recognises that the measures taken so far to limit the spread of Covid-19 have had a significant effect on children, both in terms of causing disruption to their normal lives and in imposing burdens of behaviour that are more challenging for them to bear than for adults.

The recently conducted ‘*Jersey Children and Young People’s Survey – Covid 19*’³, gives some insight into the concerns of children during the pandemic, and this makes it clear that the disruption of normal activity during the period has had a detrimental effect on the lives of children. Conversely, many children express concerns about their life not returning to normal, and in particular that there may be another lockdown.

Despite the surface effects of Orders under this legislation (for example not gathering in large numbers), the objective is to introduce less oppressive restrictions early, to ensure that Covid-19 is sufficiently well controlled so that there is no need to take more disruptive action later on. Without the capacity to apply nuanced restrictions, that disruptive action could look very much like a full or partial lockdown. This would have a much greater effect on the lives of children (and all Islanders, of course) than the more limited restrictions in behaviour possible under this legislation.

Some consideration has been given to the position in other jurisdictions. This is slightly complicated by the fact that jurisdictions define ‘gathering’ differently. For instance, in New Zealand, a gathering consists of persons who are ‘intermingling’ but does not include activities where people remain at least two metres apart from each other. Scotland and Northern Ireland do not apply their gathering rules to under 12s, while England does.

Jersey’s legislation appears to be within the normal range internationally, and where other jurisdictions draw a minimum age, 12 is normal.⁴

Offences

To commit an offence under the Regulations, a person must do two things-

- Firstly, they must be part of a gathering that an enforcement officer believes is contravening a gathering control Order (by virtue of its size or characteristics).
- Secondly, they must ‘wilfully refuse’ (which means to refuse deliberately, not be unable to comply) to either

² [Link to P.25/2020](#)

³ [Link to the survey.](#)

⁴ ⁴ All information is correct at time of writing, but Covid controls are prone to rapid change.

- stop the contravention (e.g. stop drinking alcohol or shouting) or
- to disperse when they are instructed to so do.

In addition, if a group is dispersed then the members of the group will be required to stay away from the area for a time that the officer considers necessary to stop the group reforming to continue the activity.

The requirement for a direction means that a warning to stop any given activity is 'locked in' to the commission of the offence (although the warning would be given without this provision as it is a standard component of normal policing activity).

It should be noted that the Police have demonstrated during the pandemic that arresting people for the various 'Covid offences' is a last resort.

The offences carry the same penalty of a 'level 2' fine of up to £1,000. Level 2 has been chosen as the alternative of a level 1 fine would only be £100, which would not be sufficient to deal with some deliberate and/or malicious breaches of the requirements.

The £1,000 level is a maximum, and will in practice be applied only in exceptional circumstances. Courts are required to sensibly apply fines to offences that carry a broad range of risk and harm and seek to judge the appropriate penalty as fairly as possible, with the result that the actual fine is often far below the maximum.

In deciding as to whether there has been a breach of an infection control requirement, enforcement officers will be supported by guidance from the Medical Officer of Health or the Minister for Health and Social Services.

Financial and manpower implications

These Regulations will require enforcement, and this will inevitably have resource implications for the States of Jersey Police and other enforcement agencies. However, given the ongoing pandemic situation and the potentially significant effects of losing control of the spread of Covid-19, enforcement activity in this area is considered to be a positive investment.

EXPLANATORY NOTE

These Regulations, if passed, will enable the Minister for Health and Social Services to make Orders imposing prohibitions on people, other than children aged under 12, in relation to gatherings of over 10 people. The Regulations do not make it an offence to take part in a gathering in itself, but create an offence of wilfully failing to comply with a direction given by a police officer (or other enforcement officer designated by the Minister) in relation to a gathering control requirement that the person has contravened.

Regulation 1 defines terms used in the Regulations, including “gathering control Order” and “gathering control requirement”.

Regulation 2 empowers the Minister to make gathering control Orders imposing gathering control requirements. The requirements cannot be imposed on children under the age of 12, but those children do count towards numbers of people gathering (so the requirement will be imposed on others, aged 12 or over, who take part in the same gathering). The Minister must consult the Medical Officer of Health and the Council of Ministers, and must be satisfied that it is necessary and proportionate to make the Order, having regard to the foreseeable risk of the spread of Covid-19 in Jersey. Each gathering control requirement applies only during a period specified in the Order, which cannot be longer than 31 days, but can be extended for up to 31 days at a time.

There are 3 types of requirement that can be imposed.

- (a) One type is a full prohibition, which sets a number of people (no fewer than 10) above which any gathering is prohibited (subject to any exceptions).
- (b) Another type is a conditional prohibition, which sets a number of people (again no fewer than 10) above which a gathering is prohibited (again subject to any exceptions) only if the gathering also involves being inside a building, consuming alcohol, singing or shouting, or engaging in physical exertion that requires heavy breathing (any one of those factors is enough). The Minister can, in the Order, add other activities or circumstances as factors, but only if the Medical Officer of Health agrees that they raise the risk of spread of Covid-19 to a dangerous degree.
- (c) The third type is a combined prohibition, which has features of both the other types. It sets both a lower and a higher number of people (again no fewer than 10, for the lower number). Above the higher number, all gatherings are prohibited (again subject to any exceptions). But between the lower and higher number there is a conditional prohibition, so gatherings are prohibited (again subject to any exceptions) only if one of the factors is present that are listed for conditional prohibitions.

Under Article 11(4) of the Interpretation (Jersey) Law 1954, the Minister can make the Order in relation to all cases, or with exceptions or in relation to specified cases (or classes of case), and can make the full provision or any lesser provision (by using exceptions or otherwise), or make different provision for different cases (or classes of case, or for different purposes), or apply conditions. In addition to that, Regulation 2 provides that the gathering control requirement can be imposed in general or in particular circumstances, including by type of gathering, and on people generally or on a particular description of people, and in relation to particular locations or descriptions of locations or without reference to any location. Those locations can include homes, but not so as to prohibit people who share a home from gathering there without others,

even if there are more than 10 of them (or any higher specified number). The Order can apply different prohibitions to different types of gathering, such as a full prohibition for more than 20 people for one type of gathering and a combined prohibition for between 15 and 25 people for another type of gathering. If the Order does so, it can provide that one or more of the factors relating to buildings, alcohol, singing, shouting and exertion (see note above) do not apply to a conditional or combined prohibition for any of the particular types of gathering that it covers, and it can also add different factors for conditional or combined prohibitions for the different types of gathering that it covers.

Regulation 3 creates a power for a police officer to give a direction to a person reasonably suspected of breaching a gathering control requirement (if that requirement is contained in an Order and applies to the person at the time). The direction can require the person to take reasonable steps (specified by the officer) to stop the contravention (in a time specified by the officer), or to leave an area (specified by the officer) and not return to that area (in a time specified by the officer, as to both leaving and returning), or both.

If a police officer reasonably suspects that the grounds for giving a direction are met (which, for a conditional prohibition, include that one of the specified factors is present), the police officer must decide whether to give a direction and, if so, what direction to give. In considering that, the police officer must have regard to any guidance published for that purpose by the Medical Officer of Health on factors that increase the risk of spread of Covid-19 in gatherings.

It is an offence if a person has in fact contravened a gathering control requirement (imposed on that person by a gathering control Order), and is given a direction under this Regulation in relation to that contravention, but wilfully fails to comply with the direction. The offence carries a penalty of up to level 2 on the standard scale, which is currently £1,000. The offence is not committed to the extent that the person merely fails to comply with a part of the direction that goes beyond the following limits, or beyond a limit set in the gathering control Order. The time for ceasing a contravention or leaving an area must be reasonable, and the time in which the person cannot return to the area must be reasonable and no more than 3 hours. The area that the person has to leave must be no broader than reasonably appears to the officer to be necessary for the purpose of preventing a resumption of the contravention. A person also does not commit the offence by failing to leave their home, or by attending a place when they are required or expected to be there for work, under a court or tribunal order, or for education or medical treatment.

In the gathering control Order the Minister can add, as enforcement officers who can give directions, any of the types of enforcement officer or health officer set out in the Covid-19 (Screening, Assessment and Isolation) (Jersey) Regulations 2020.

Regulation 4 provides the short title of the Regulations. It also brings the Regulations into force on the day after they are made, and makes them expire at the end of April 2021 (if not repealed sooner).



Jersey

DRAFT COVID-19 (GATHERINGS) (JERSEY) REGULATIONS 202-

Contents

Regulation

1	Interpretation.....	13
2	Gathering control Orders.....	13
3	Power to direct person to take steps or to leave an area.....	15
4	Citation, commencement and expiry.....	16

ENDNOTES

Table of Endnote References.....	17
----------------------------------	----



Jersey

DRAFT COVID-19 (GATHERINGS) (JERSEY) REGULATIONS 202-

Made [date to be inserted]
Coming into force [date to be inserted]

THE STATES make these Regulations under Article 2 of the Covid-19 (Enabling Provisions) (Jersey) Law 2020¹ –

1 Interpretation

In these Regulations –

- “gathering control Order” means an Order under Regulation 2(1);
- “gathering control requirement” has the meaning given by Regulation 2(4);
- “Medical Officer of Health” means a person appointed as such under Article 10 of the Loi (1934) sur la Santé Publique²;
- “Minister” means the Minister for Health and Social Services.

2 Gathering control Orders

- (1) The Minister may by Order declare a period during which a gathering control requirement applies, by specifying the requirement and declaring that the period –
 - (a) starts on a specified date, being no sooner than the coming into force of the Order; and
 - (b) ends at the end of a specified day, being no later than 31 days after the start of the period.
- (2) Despite Article 11(3) of the Interpretation (Jersey) Law 1954³, a provision specifying the end of a period under paragraph (1)(b) may not be amended other than –
 - (a) to declare an earlier end; or
 - (b) to declare a later end, being no later than 31 days after the commencement of each Order making such an amendment.
- (3) Before making a gathering control Order the Minister must –
 - (a) consult the Medical Officer of Health and the Council of Ministers; and

- (b) be satisfied that it is necessary and proportionate, having regard to the foreseeable risk of the spread of Covid-19 in Jersey, to make the Order.
- (4) A gathering control requirement is one of the following –
 - (a) a full prohibition, being a provision that prohibits a person from taking part in a gathering of more than a specified number of people, no fewer than 10;
 - (b) a conditional prohibition, being a provision that prohibits a person from taking part in a gathering of more than a specified number of people, no fewer than 10, if the gathering involves any one or more of –
 - (i) being inside a building,
 - (ii) consuming alcohol,
 - (iii) singing or shouting,
 - (iv) engaging in physical exertion that requires heavy breathing,
 - (v) any other specified activity or circumstance, appearing to the Minister, and to the Medical Officer of Health, to raise the risk of spread of Covid-19 to a dangerous degree; or
 - (c) a combined prohibition, being a provision that applies a conditional prohibition, but also applies a full prohibition in relation to another specified number of people that is higher than the number specified for the conditional prohibition.
- (5) A child under the age of 12 –
 - (a) does not contravene a gathering control requirement by taking part in a gathering; but
 - (b) is to be counted towards the specified number of people when assessing whether another person, aged 12 or over, contravenes a gathering control requirement by taking part in that gathering.
- (6) A gathering control Order –
 - (a) may specify the locations, or descriptions of locations, to which a gathering control requirement applies, or apply that requirement without limitation as to location; and
 - (b) may do so in a manner that includes a person's home, but not so as to prohibit a group of people who have the same home from taking part in a gathering in that home without other people.
- (7) A gathering control Order may impose a requirement –
 - (a) in general or in particular circumstances (including by type of gathering), or as different requirements for different circumstances;
 - (b) on people generally or on a particular description of people, or as different requirements for different descriptions of people;
 - (c) subject to exceptions, whether in the form of exemptions or otherwise.
- (8) A gathering control Order that imposes a conditional or combined prohibition on a particular type of gathering –
 - (a) may disapply any one or more, but not all, of clauses (i) to (iv) of paragraph (4)(b) in relation to that type of gathering; and

- (b) may include, in relation to that type of gathering, provision made under paragraph (4)(b)(v) that is different from provision so made in relation to any other type of gathering.
- (9) Paragraphs (6)(a), (7) and (8)(b) do not limit Article 11(4) of the Interpretation (Jersey) Law 1954⁴ in its application to the power to make a gathering control Order.

3 Power to direct person to take steps or to leave an area

- (1) Paragraph (2) applies if a police officer, or an enforcement officer of a description specified by Order under paragraph (6), has reasonable grounds to suspect that a person is contravening a gathering control requirement imposed on that person by a gathering control Order.
- (2) The officer may direct the person to do either or both of the following –
 - (a) to take reasonable steps specified by that officer to cease, within a time specified by that officer, to contravene that requirement;
 - (b) to leave an area, specified by that officer, within a time specified by that officer, and not to return to that area within a further time specified by that officer.
- (3) A person commits an offence, and is liable to a fine of level 2 on the standard scale, if the person –
 - (a) has contravened a gathering control requirement imposed on that person by a gathering control Order; and
 - (b) wilfully fails to comply with a direction given to the person under this Regulation in relation to that contravention.
- (4) The whole or part of a direction is to be disregarded for the purpose of paragraph (3)(b) to the extent that –
 - (a) the time specified in it, to cease contravention of a gathering control requirement or to leave an area, is shorter than is reasonable in the circumstances;
 - (b) the further time specified in it, in relation to return to the area, is longer than whichever is the shorter of –
 - (i) 3 hours, or
 - (ii) a shorter period that is reasonable with a view to preventing a resumption of the contravention;
 - (c) it specifies an area that is broader than reasonably appears to the officer to be necessary for the purpose of preventing a resumption of the contravention;
 - (d) it includes the person's home in the specified area, or includes leaving the person's home in the specified steps;
 - (e) it prevents the person attending, at a time when the person is required or expected to attend there, at a place that the person is –
 - (i) required to attend for the purpose of the person's employment or work,
 - (ii) required to attend by an obligation imposed by or under an enactment or by an order of a court or tribunal, or

- (iii) expected to attend for the purpose of education or training or receiving medical treatment;
 - (f) it does not comply with any other restriction on directions that is specified by the Minister in the gathering control Order.
- (5) If paragraph (2) applies the officer must have regard, when considering whether to give a direction or what direction to give, to any guidance published for that purpose by the Medical Officer of Health as to factors that increase the risk of spread of Covid-19 in gatherings.
- (6) A gathering control Order may specify any of the following descriptions of person as enforcement officers –
 - (a) an enforcement officer within the meaning of the Covid-19 (Screening, Assessment and Isolation) (Jersey) Regulations 2020⁵, other than a police officer;
 - (b) a health officer within the meaning of those Regulations.

4 Citation, commencement and expiry

- (1) These Regulations may be cited as the Covid-19 (Gatherings) (Jersey) Regulations 202-.
- (2) These Regulations come into force on the day after they are made.
- (3) These Regulations expire at the end of 30th April 2021.

ENDNOTES

Table of Endnote References

1	<i>L.2/2020</i>
2	<i>chapter 20.875</i>
3	<i>chapter 15.360</i>
4	<i>chapter 15.360</i>
5	<i>R&O.33/2020</i>