

# STATES OF JERSEY



## **DRAFT COVID-19 (WORKPLACE RESTRICTIONS) (AMENDMENT) (JERSEY) REGULATIONS 202- (P.158/2020): COMMENTS (2)**

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**Presented to the States on 23rd November 2020  
by the Economic and International Affairs Scrutiny Panel**

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**STATES GREFFE**

## COMMENTS

### **Introduction**

The draft amending Regulations “Covid-19 (Workplace Restrictions) (Amendment) (Jersey) Regulations 202-” ([P.158/2020](#)) were lodged by the Minister for Health and Social Services on 17th November 2020 in response to the rising number of Covid-19 cases. The draft Regulations would amend the Covid-19 (Workplace Restrictions) (Jersey) Regulations 2020, which provided legislative measures to support a managed relaxation of the public health controls implemented earlier in the year.

Although the draft amending Regulations are a public health control measure, lodged by the Minister for Health and Social Services, the topic also covers the remit of the Minister for Economic Development, Tourism, Sport and Culture in relation to workplaces. Given the crossover of ministerial remits, and to offer a degree of continuity of previous scrutiny of the existing Regulations, the Economic and International Affairs Scrutiny Panel has taken responsibility for scrutinising the legislation, in agreement with the Health and Social Security Scrutiny Panel.

The Economic and International Affairs Panel, along with Members of the Health and Social Security Panel, received a briefing on the draft amending Regulations on 16th November 2020.

### **Purpose of the Amending Regulations**

The purpose of the amendment is twofold; if approved, it would introduce an enforcement regime for collecting personal data in order to facilitate contact tracing and it would also enable a legal requirement for people to wear masks.

#### Mask requirement

The mask requirement would be made by a Workplace Restrictions Order, which would require people aged 12 and over to wear a mask in specified workplaces when they are present as a customer. The legislation would also require staff in customer-facing roles to wear either masks, face shields or other suitable face coverings when dealing with the public.

When an Order comes into force, if a person enters a workplace as a customer and is not wearing a mask, with no valid exemption or excuse, then they will be committing an offence. The Panel was advised that the Order would specify that staff would not be permitted to serve customers who were not wearing a mask and must ask them to leave. The offence for not wearing a mask (with no valid exemption or excuse) carries a fine of up to a maximum of £1,000. This would only be applied in exceptional circumstances, and Courts would be required to judge the appropriate level of penalty.

#### Collecting data

Customers in licensed premises and in some other food and drink businesses will be required to provide contact details before receiving a service. This requirement would also be made by a Workplace Restrictions Order. The main intention around this element of the amendment is to provide a better legal framework for the data collection requirements. Compliance would be established by enforcement officers in checking that the data was being recorded in the required way.

Enforcement officers will be provided with the necessary powers to issue improvement notices and prohibition notices to businesses that do not comply with the condition of a

Workplace Restrictions Order. The Panel was advised that, if businesses did not comply with the improvement and prohibition notices, they could be liable to an unlimited fine.

#### Enforcement Regime

The enforcement regime (and appeals arrangement) has been based on the system introduced under the Health and Safety Law 1989. Under the draft amending Regulations, the existing offences under the Health and Safety Law are widened so that an offence can be committed by any person and not just occupiers or operators of workplaces. An additional offence has also been created in relation to masks (maximum £1,000 fine).

There is also an additional provision for Police Officers to assist, if asked, in the removal of persons from premises if they are not complying with the requirements. During the briefing, the Panel was advised that this element had been proposed to provide businesses with extra assurances, particularly if there were cases of deliberate non-compliance with mask wearing.

The Panel asked whether any penalties would be introduced for people who deliberately provided false information in relation to the data collection requirement. The Panel was advised that this had initially been considered when the legislation was being developed, but it was decided that it would be disproportionate to criminalise people in this area.

As the amending Regulations do nothing other than amend the Covid-19 (Workplace Restrictions) (Jersey) Regulations 2020, the expiry date of 30th April 2021 still applies.

#### **Panel concerns**

##### Time afforded to scrutiny and stakeholder engagement

The Panel acknowledges the urgent nature of the current Covid-19 pandemic and the requirement for emergency legislation as the situation evolves. However, the Panel is concerned about the length of time afforded to Scrutiny to review such pieces of legislation and the limited nature in which it is able to consult and engage with stakeholders.

In the limited time permitted, the Panel wrote to the following organisations in order to obtain their views on the proposals:

- Chamber of Commerce
- Primary Care Body
- Jersey Business
- Jersey Retailers Association
- Channel Island Co-operative Society
- Sandpiper Channel Islands
- Jersey Central and Beresford Market Traders
- Jersey Consumer Council
- Jersey Hospitality Association

Some of the organisations listed above simply did not have enough time to respond to the Panel's request for views. Of those that did respond, the following views were expressed:

**Jersey Hospitality Association:**

*With what's going on here and around the world, any sensible measures to try and contain the spread of Covid-19 are welcomed by the JHA and we would like it to be placed on the record that we support the work the government is doing to keep islanders and visitors safe. We have no issues with the latest measures on the wearing of face masks and shields and we will be continuing to encourage our members to abide by the recommendations and set the example for the rest of the island to do the same. We also have no problem with asking customers visiting premises to provide contact information before receiving service on licenced premises.*

**Consumer Council:**

- *The legislation is welcome and must be enforceable - not just guidance.*
- *The Council accepts that the balance of lives vs livelihood is a difficult one being faced worldwide. The whole Island community has a responsibility to support any measures intended to keep our society safe.*
- *Mask wearing should be mandatory for every person above 12 years unless they are exempt.*
- *Anyone with an exemption should be supplied with a lanyard, perhaps similar to the sunflower 'hidden disability' one. This would make it clear to all, that the person is exempt and avoid possible confrontations. It must not be the responsibility of shop assistants, waiters etc to ensure masks are worn. However, the management of businesses should be authorised to ask someone to leave if they cannot prove they are exempt.*

**SandpiperCI:**

*SandpiperCI's management and staff have been encouraging customers visiting our stores to wear face masks for some time. We welcome the Minister for Health and Social Services proposals to introduce regulations for people aged 12 or over to wear a mask in specified workplaces when they are present as a customer.*

*However, it is worth highlighting an issue that has caused conflict between some customers. We have noticed that a growing number of customers choose to wear masks which we welcome, but we do not welcome mask-wearing customers challenging customers not wearing masks. Also, we do not see it our job to police mask wearing, we see that as a matter for the authorities or police.*

*We have occasionally experienced customers pressurising staff members to either not serve mask-less customers or to ban them from entering our stores. In these incidences, we do not believe this should be the role of our in-store teams.*

*To assist both customers and staff we introduced the following notice to all our stores around the beginning of November.*

**Face Masks**

*The Government of Jersey has recommended that all islanders over the age of 11 should wear a Face Mask that covers the mouth and nose when inside shops and indoor public places.*

*Whilst we cannot demand our customers wear Face Masks, we strongly support the Government's view that wearing Face Masks reduces the risk of spreading COVID-19 to fellow customers and our frontline staff. We will do all we can to help you shop safely today. Please help us, please help fellow customers and please help yourself. Please wear a Face Mask today. Thank you*

*In conclusion, we welcome the introduction of formal regulations requiring customers to wear face masks in shops for the duration of the pandemic, we would not welcome any requirement for our frontline staff to police or challenge the regulations.*

#### Government Consultation and business responsibility

During the briefing, the Panel asked what consultation had been undertaken with businesses. The Panel was advised that Government Officials had met with the Chamber of Commerce and that the proposal for compulsory mask wearing was raised. The Panel understands that no other consultation has taken place about the proposals.

The Panel is concerned about the limited consultation undertaken on the proposals particularly as there will be a responsibility on business owners to police and implement these new rules. The Panel notes the concerns raised by SandpiperCI particularly about frontline staff having to deal with any conflicts arising over mask wearing.

The Head of Retail at Jersey Business also raised a number of [concerns](#) about businesses taking on an enforcement role:

#### **Head of Retail – Jersey Business:**

- *We have a particular concern with the section titled “requirement to support Covid controls”. The accompanying report states “The amendment will allow orders to be made that would require business to not serve anyone who is refusing to comply with the terms of an order and to make them leave the premises”*
- *This effectively orders businesses take on an enforcement role which, in every other area of law, is a task undertaken by either the police or by specific Government departments that have the capacity, skills and authority to enforce legislation and regulation.*
- *This goes further than laws in the UK on face coverings where businesses are required to “take reasonable steps to promote compliance with the law”. Those reasonable steps are outlined in UK guidance which includes displaying relevant government signage and asking customers to wear masks. Expecting businesses to take on an enforcement role may put staff into confrontational situations that they are neither experienced in nor trained to deal with. There has been an increase in aggression towards retail and hospitality employees during the pandemic and it would be unfortunate to create more situations that may cause this to rise.*

The Panel is aware that the mandatory wearing of masks could lead to increases in aggressive behaviour within the workplace. There may be instances where business customers do not feel it is appropriate to wear masks and there may be business

customers who wish masks to be enforced and so take a stand against people not wearing masks. The Government should ensure that all businesses are provided with support in terms of understanding how best to deal with such incidents.

Whilst the amending regulations make it clear that the ultimate line of enforcement is the police or other appointed agent, the reality is that business managers and staff will find themselves in the front line of enforcing these regulations and having to deal with any aggressive incidents.

#### Exemptions to the mask requirement

During the briefing, the Panel asked about what would constitute an exemption to wearing a mask. It was advised that the Ministerial Order would include provision for an exemption related to health (such as anxiety) or disability (such as the need for lip-reading), but no other details were provided. Therefore, it is unclear at this stage what constitutes appropriate grounds for being exempt from wearing a mask.

The Panel assumes that primary care providers, such as GPs, would be required to provide written evidence of medical exemptions. In that regard, the Panel asked the Minister whether GPs had been consulted and was advised that no formal consultation had taken place.

The Panel wrote to the Primary Care Body and they confirmed that, although no formal communication had been received about the legislation, they had already been providing written evidence of medical exemptions:

#### **Primary Care Body**

*Our understanding is that there has been no formal communication with GPs and our colleagues are already providing written evidence of medical exemption when required. No guidelines regarding what constitutes appropriate grounds have been circulated.*

The Panel believes that it will be important for guidance to be issued as to what constitutes appropriate grounds for being exempt from wearing a mask. If GPs are being relied upon to make their own judgements in this area, there may be cases of inconsistency for patients depending on which GP they see.

At the time of writing these Comments, the Panel had not received the Workplace Restrictions Order in relation to these proposals, or the law drafting instructions. The Panel hopes that the Order, and any supporting guidelines, will provide much needed clarity around this issue. The Panel looks forward to receiving the draft Workplace Restrictions Order before the Minister signs it and it comes into force.

#### What constitutes a suitable mask?

During the briefing, the Panel asked whether there would be clear guidance on what constituted a suitable mask. The Panel was advised that the Workplace Restrictions Order could include a specification as to what form of mask was acceptable and how it must be worn. The Panel believes that inserting this information into the Order and providing supplementary guidance will be important if mandatory mask wearing is introduced. It would not only provide much needed clarity for mask wearers but also for businesses who will be required to apply the new rules within their workplaces.

### Safe disposal of masks

If the amending Regulations are approved, the Panel would also encourage the Minister to provide clear guidance on the safe disposal of masks. Given that some masks are only supposed to be worn for no longer than one day, their disposal is likely to lead to an increased waste in the environment. If in line with medical guidance, the Minister should consider encouraging people to use more sustainable choices of masks such as cloth ones, which are washable and reusable. The Government should also issue communications highlighting the need to dispose of masks properly.

### Will people be less likely to follow other public health guidance when wearing a mask?

Although this matter was not raised during the briefing, the Panel notes that some studies have highlighted that people may be less likely to follow other public health measures when wearing a mask. A study by the Department of Political Science at Aarhus University<sup>1</sup> concludes:

*Importantly, these findings do not suggest that face masks are not an effective tool to hinder the spread of infections during the SARS-CoV-2 pandemic. However, they do suggest that the effectiveness of face masks can be increased if the onset of mandatory policies of face masks are combined with clear communications from health authorities that remind people about the importance of physical distancing and that face masks are not a substitute for such distancing.*

If the amending Regulations are approved, the Panel would encourage the Minister to facilitate an appropriate public health campaign which would provide a clear message that mask wearing is not a substitute for the other measures introduced to stop the spread of the virus.

### **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.

The Panel acknowledges the purpose of the draft amending Regulations and, aside from the issues raised, does not have any other major concerns about them.

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<sup>1</sup> [Study](#) - Does the introduction of a mandatory policy on face mask use elicit risk-compensation? Evidence from Denmark during the SARS-CoV-2 pandemic using an instrumental variable approach