

STATES OF JERSEY



Jersey

DRAFT COVID-19 (WORKPLACE RESTRICTIONS) (AMENDMENT) (JERSEY) REGULATIONS 202-

**Lodged au Greffe on 17th 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 8th 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 Enabling Law 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 (Workplace Restrictions) (Amendment) (Jersey) Regulations 202-** (*These Regulations*)
 - 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 (Gatherings) (Jersey) Regulations 202-**
 - Allow Orders that will limit the number of people who can gather together, in Order to restrict the spread of Covid-19.
- **Draft Covid-19 (Safer Travel – Information and Isolation) (Jersey) Regulations 202-**
 - Allow Rules (similar to Orders) that will bring the current safer travel guidance into law.

Background

The initial response in terms of managing sales and services to the public during the coronavirus pandemic was to introduce the Covid-19 (Restricted Trading) (Jersey) Regulations 2020¹ (the Restricted Trading Regulations), which divided public-facing businesses into essential and non-essential categories, and closed many of those deemed non-essential.

The original Covid-19 (Workplace Restrictions) (Jersey) Regulations 2020² (the Workplace Restrictions Regulations) replaced the Restricted Trading Regulations and

¹ [Link to P.48/2020](#)

² [Link to P.59/2020](#)

provided legislative measures to support a managed relaxation of the public health controls and support a safe transition ‘back to business’.

Orders could be made under the Workplace Restrictions Regulations to set out that workplaces could only open subject to specified conditions or if they comply with relevant guidance.

The Workplace Restrictions Regulations were suitable for the time at which they were introduced, with a focus on re-opening businesses and removing the essential/non-essential distinction that had been applied to support the ‘lockdown’ situation. However, since their introduction, concerns have arisen around enforcement, and the extent to which they properly address the collection of personal data to facilitate contact tracing.

In addition, the need has arisen to impose a requirement that people wear masks as an intermediate step between the current limited restrictions and the imposition of a lockdown. The terms of this restriction would be limited to workplaces, so this set of amending Regulation will be utilised to create the framework to impose those requirements. This avoids the need to bring overlapping legislation affecting behaviour in workplaces.

These two elements of the Regulations are structurally similar but different in their scope of application so the effects on business and the public are addressed below separately.

The effect on the public

Masks

The Regulations also allow the Minister to impose a ‘*mask requirement*’ by Order, which would require people aged 12 over (or some older age, if the Order specified, but no younger) to wear a mask in specified workplaces when they are present as a customer, if they are not exempted from doing so due to their health or disability.

This Order could include a specification as to what form of masks are acceptable, and how they must be worn. This is intended to avoid the ‘creative non-compliance’ that has been seen in some other jurisdictions, including the use of deliberately unsuitable materials (such as lace doilies) as masks.

If and when an Order comes into force, if a person enters a workplace as a customer, and is not wearing a mask as required by the Order and has no valid exemption or excuse, then they will be committing an offence, and if the Order specified, the staff of the workplace would not be permitted to offer them service, and must ask them to leave.

The rationale for mask-wearing has been debated at considerable length in most jurisdictions, and internationally there is broad-base support for doing. The requirement for a person to cover part of their face in some circumstances is clearly an imposition on their freedom and the decision to allow such a requirement to be introduced is not taken lightly. Medical guidance that people in Jersey should wear masks when shopping and conducting similar activities has been in place since shortly after the pandemic began, and this has not changed and remains in place today.

The rationale for wearing masks is that –

- Masks effectively prevent the projection of respiratory droplets, reducing the risk of people unknowingly passing on the virus to others (source control).
- Masks are increasingly thought to be useful in reducing the risk of community spread if introduced early and alongside other key measures. Mask use within areas where physical distancing cannot be guaranteed (such as shops) has been widely recommended.

- Masks are now linked to increasing protection to the wearer, as they reduce the amount of the virus that the user might be exposed to, and therefore increase the chance that they will have an effective immune response and thus reduce the likelihood of symptoms and severe disease.

The latest (at time of publication) evidence for mask use is attached as an **Annex** to this report.

Contact details

Customers in licensed premises and some other food and drink businesses will be required to provide contact details before receiving service. This requirement will be applied in line with the existing arrangements for pubs etc to collect contact details and should not make any noticeable change to the arrangements that customers encounter when they enter such a business. The intention is simply to provide a better legal framework for the data collection requirements. The primary effect will be on businesses, so it is addressed below.

Offences

There will be a new offence of failing to wear a mask in certain circumstances. It will apply in the cases where a person –

1. Fails to wear a mask, and
2. Is in a place where they are required to do so (e.g. a shop), and
3. Does not have an exemption (e.g. a medical exemption), and
4. Does not have a reasonable excuse (which remains unspecified, to allow for unusual circumstances such as entering a shop to avoid danger, etc).

In this case a person would technically be committing an offence, and, if the Order imposed reciprocal requirements on the business, they could not receive service and would be asked to leave. If they refused to do so, then the business could contact the police.

The offence carries 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.

Age restriction and effect on children

The Regulations provide that the restrictions cannot apply to 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, wearing masks in shops), 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. England and Wales apply the restrictions to a minimum age of 11, Scotland appears to allow requirements to be made on the over 5s, but this may not be in force at any given time, Australia and New Zealand limit restrictions on those under 12 years old. There is considerable variation in the USA, but some states including Oregon allow restrictions to apply down to the age of 5⁴.

Jersey's legislation appears to be within the normal range internationally, and with a higher minimum age than many other jurisdictions.

The effect on workplaces

The Regulations redevelop the system of applying conditions on workplaces, to address requirements that have been identified since May and to allow a more flexible regime to be applied.

More flexible conditions

The Amendment broadens the terms in which conditions may be applied to workplaces, by allowing Orders to include requirements to do or not do anything necessary to suppress the spread of Covid-19 in the workplace, and to require that people present in the workplace take action if necessary.

Contact Tracing

The amendments will clarify the position about the collection of personal data by businesses and its use by Government, to better support the collection of data from the public for contact tracing purposes.

The Regulations specify that this data can consist of a person's name and contact details and the time and location of their visits to the workplace. This list of requirements could be extended by Order, which is a safeguard against some new development that requires some specific additional data to be collected, but it is not anticipated that this will be the case.

Currently certain premises including pubs etc. are required by guidance to take contact details from members of the public, and the Licensing Assembly has taken a view that the guidance issued by Government in respect of their operation during the pandemic should be followed. However, there is no explicit provision in law that requires that

³ [Link](#) to the survey.

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

details be collected or that the public should provide those details. The expansion of the Order-making power in this amendment would allow such a condition to be applied to businesses in a clear and limited way.

For example, an Order might require that on-licensed premises collect the names and addresses of customers to facilitate contact tracing as a condition of their operation (by means of a QR code system, or whatever method the business preferred). Compliance with this condition could be established by enforcement officers checking that the data was being recorded in the required way, either in response to concerns about individual premises or as part of a compliance campaign.

The Regulations, and any Order, will not specify the manner in which the contact tracing details must be collected in excessive detail, as the intention is to allow both the manual and electronic collection of data to continue in whatever way best suits the business.

Enforcement Regime

Enforcement officers will be provided with the necessary powers to issue improvement notices and prohibition notices to businesses that do not comply with the conditions of a Workplace Restrictions Order. The scheme for enforcement has been taken from the existing Health and Safety regime, and does not grant any novel powers that are not already in the hands of Inspectors under the Health and Safety at Work (Jersey) Law 1989⁵, although under these Regulations the powers would be specifically directed at compliance with conditions set by Order, rather than with the general maintenance of a safe workplace.

Enforcement officers will have the ability to impose two types of ‘notice’ on a business that is not following the necessary conditions –

- An Improvement Notice

An improvement notice may be served where the enforcement officer considers that there is a breach of a condition of an Order. The business will be required to take the necessary action to meet the conditions of the Order within a specified time, which is usually 14 days. The reasons for serving the notice must be clearly detailed.

- A Prohibition Notice

Where the issue is not merely a breach of conditions but an active risk of spreading Covid-19, an enforcement officer may serve a prohibition notice. This requires that the business must not continue with an activity unless the risks specified in the notice are resolved. This does not mean that the business must close, but simply that it must not do whatever activity was creating the risk. Prohibition notices can take effect either after a stated period or immediately.

On request of the recipient, these notices can be reviewed by the Minister for Health and Social Services within 14 days of being issued.

Enforcement officers may enter businesses at a reasonable time to assess whether conditions are being met, and may take measurements, photographs and examine or copy documents. Employees of the business are required to assist the enforcement officers as necessary.

All of these powers, and the appeal arrangements, are based on the system currently in force under the Health and Safety Law. That Law has been used on several occasions to address business activity that risks spreading Covid-19, so the principles are well understood. The key difference is that this enforcement regime is targeted directly at Covid-19, and that notices can be served to address those business which ignore

⁵ [Link to the Health and Safety at Work \(Jersey\) Law 1989](#)

conditions but have not yet reached the level of actively constituting a threat of spreading Covid-19. This is an issue for the Health and Safety regime as it is grounded in more immediate risks.

Requirements to support Covid controls

In order to support the introduction of requirements on individuals to help prevent the spread of Covid-19, the amendment will allow Orders to be made that would require businesses to not serve anyone who is refusing to comply with the terms of an Order, and to make them leave the premises. For example, if an Order was put in place requiring a pub to take contact details from customers, but a person refused to give them, the pub would be required not to serve them and to ask them to leave. Alternatively, if an Order was put in place requiring people to wear masks in shops, and a person refused to do so, the shop would be required not to serve them and to ask them to leave.

There is an additional provision that a police officer must, if asked to assist, remove the person from the premises. This resolves a potential difficulty with licenced premises, which can remove people from their business only on certain conditions, but it also ensures that if a business feels that it needs police assistance then it is absolutely clear that seeking such assistance meets the business's obligation to comply with the condition of the Order.

The intention is to avoid any employee of a business being worried that they might be causing trouble for the business by getting the police involved if someone refuses to follow the rules and refuses to leave.

Masks (or similar) requirements on employees

The legislation will allow for Orders to be made to require people to wear masks when they are customers in a workplace, and for staff in customer-facing roles to wear either masks, face shields or some other suitable face covering when dealing with the public. This is intended to give effect to the guidance currently in place.

Workplace offences

The offences are replaced with a slightly expanded set of offences that recognises the new enforcement powers, and provides for new offences concerned with ignoring notices and obstructing enforcement officers.

The penalties for those offences are an unlimited fine, in line with the existing ones.

Duration of Orders

The [Covid-19 \(Workplace Restrictions\) \(Jersey\) Order 2020](#) can currently only be made to last 14 days. At the time of publication, this Order had remained been renewed 'as-is' from July to November 2020, but there has been a requirement to consider the details of the restrictions, consult and draft legislation every fortnight. As the Orders are ultimately within the gift of the Minister for Health and Social Services, there is no detraction from democratic safeguards in allowing the Orders to run for longer, but this will avoid the fortnightly diversion of effort.

Financial and manpower implications

There are enforcement implications arising from this amendment, but in respect of the workplace requirements, as enforcement activity is already taking place across various

sectors of the economy, and as this legislation will offer a more effective and rapid resolution to those offences than prosecution, the net resource effects are expected to be neutral or positive.

In respect of the offence of not wearing a mask, it is anticipated this will have 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.

ANNEX

Review of evidence on mouth and nose coverings, as at 5th October 2020

This review collates much of the evidence base behind the use of mouth and nose coverings within community settings. This document begins with a summary of the evidence and is followed by links to key, secondary and primary evidence sources. The final section contains relevant tables from key evidence sources, some of which have been adapted to include local context or to combine different sources into one.

The evidence review is ongoing and is being used to underpin the development of updated guidelines on masks and other mouth and nose coverings in the community. Policy officers are working to achieve a consensus on the environments and settings where mask, mouth and nose coverings would be used as a priority.

Brief overview of evidence**Effectiveness**

The effectiveness of mouth and nose coverings falls into three main categories depending on intended purpose – source control, personal protective equipment (PPE), and in prevention of outbreaks or epidemics. Claims that masks are ineffective tend to stem from mismatched evidence and purpose. For example, there is a wide consensus that cloth masks are not deemed effective as PPE within clinical contexts and equally valved respirators for clinical PPE are not deemed effective for source control in community use contexts. These conclusions do not state masks are ineffective but rather that the type and design of masks needs to match their intended purpose and setting. Therefore, cloth masks are appropriate for use in the right circumstances.

As Source Control (to prevent infecting others)

Source control refers to the primary intention of protecting others from exhaled respiratory droplets that could contain the virus. The *source* is the person who is wearing the mask and the mask itself is a physical barrier which prevents viral droplets from infecting others (the *control*). Source control is important because COVID-19 spreads mainly through respiratory droplets and smaller particles (aerosols) which are produced when we breathe out, sigh, clear our throat or cough and sneeze. Even if someone is infected and feels healthy and does not have any symptoms (either asymptomatic or pre-symptomatic) they are still able to spread COVID-19 and other respiratory viruses in this way.

There is good evidence for source control even when the worst performing masks are used as these still retain a strong ability to retain respiratory droplets and aerosols within the mask, preventing them from being released into the air. A key finding by the DELVE Institute concluded cloth-based case masks reduce emission of viral particles by between 50 to 100% depending on mask design.

As Personal Protective Equipment (to protect the individual from being infected by others)

There is very good evidence for medical masks and respirators for the purpose of preventing inhalation of another person's respiratory droplets. There is also emerging evidence non-medical cloth masks offering some personal protection to the wearer (especially alongside 1m physical distancing and in comparison to not wearing a mask at all).

In prevention of respiratory disease outbreaks

Due to previous respiratory epidemics (H1N1, MERS and SARS) there is strong evidence for community mask wearing as a preventative public health measure. As the current COVID-19 pandemic has progressed so has research directly on masks and COVID-19 which again has shown a significant benefit. A recent systematic review found wearing a facemask reduced chance of viral infection or transmission from 17.4% (no mask) to 3.1% (with mask). Studies in Germany suggest mask wearing has reduced the daily growth rate of Covid-19 infections by around 40%.

Comparisons of counties with and without mask use policies has also yielded beneficial results of early and sustained community wide mask wearing. The ECDC publish weekly country overviews of EU/EEA and the UK which details non-pharmacological interventions (such as mask use) alongside infection and testing data. While evidence of community mask use can be inferred through these weekly updates the wider contexts of each countries' strategic aims, compliance levels, testing capacity and other key factors need to also be taken into account.

Emerging hypothesis on mask use, reduced severity and potential immune response

A new hypothesis based on past and current evidence of respiratory viruses and mask use has also emerged. As this is a relatively new hypothesis further evidence is needed to confirm the validity and strength of this hypothesis. It is thought that universal mask wearing might help reduce the severity of disease and ensure that a greater proportion of new infections are asymptomatic. This possibility is consistent with a long-standing theory of viral pathogenesis, which holds that the severity of disease is proportionate to the viral inoculum received. Since masks can filter out some virus-containing droplets (with filtering capacity determined by mask type), masking might reduce the viral particles that an exposed person inhales. In other words, if a mask allows for a small number of virus particles to reach the wearer then it is potentially exposing them to just enough of the virus to mount an immune response but not cause harm - which could offer some immunity protection in the future. The concept is similar to variolation an early medical immunisation treatment before vaccinations existed in which a small amount of smallpox infected tissue or liquid secretions was inserted into cuts in the skin.

Other relevant or secondary findings

Potential social and behavioural consequences of mask wearing

Aside from viral transmission there is emerging but limited evidence that mask wearing has potential for improved social and behavioural consequences.

Mandatory rather than voluntary policies

Research in Germany found that implementing a mandatory rather than voluntary mask wearing policy increased compliance (despite moderate acceptance), reduced stigma around mask use, and was perceived as more "fair" than voluntary policies.

Mask use as a social nudge and reminder of the virus

Some studies argue that ubiquitous mask wearing, as a very visual reminder of the dangers of the virus, could actually act as a "behavioural nudge" to populations for following overall better personal hygiene. The mask reminds people not to touch their faces or serve as a visual reminder of a dangerous virus lurking.

Balancing benefits with potential disadvantages

Key sources of guidance produced by both the WHO and ECDC list a wide range of benefits and potential disadvantages of mask use. Potential disadvantages include: mask

supply logistics, communication, discomfort, self-contamination and giving a false sense of security. These and other issues will be taken into account in developing mitigations and alongside exemptions and alternatives in developing policy and guidance for mask use.

Key sources – see Appendix for tables relating to some of the below

- [Using face masks in the community Reducing COVID-19 transmission from potentially asymptomatic or pre-symptomatic people through the use of face masks](#). ECDC 2020
- [Guidelines for the implementation of non-pharmaceutical interventions against COVID-19](#). ECDC 2020
- [Advice on the use of masks in the context of COVID-19](#). WHO 2020
- [Advice on the use of masks for children in the community in the context of COVID-19](#). WHO 2020
- [Coronavirus disease \(COVID-19\) advice for the public: When and how to use masks](#). WHO 2020
- [Face Masks for the General Public](#). DELVE Institute 2020
- [Report on Face Masks for the General Public - An Update](#). DELVE Institute 2020
- [Face coverings: when to wear one, exemptions, and how to make your own](#). PHE 2020

Secondary evidence sources for mask use within community settings

(systematic reviews, evidence-based synopses, guidelines, regulatory guidelines)

- [Physical interventions to interrupt or reduce the spread of respiratory viruses. Part 1 - Face masks, eye protection and person distancing: systematic review and meta-analysis](#). Jefferson et al. 2020, preprint
- [Physical interventions to interrupt or reduce the spread of respiratory viruses](#). Cochrane Review 2011
- [Evidence summary for face mask use by healthy people in the community](#). Health Information and Quality Authority.
- [Canadian Thoracic Society recommendations regarding the use of face masks by the public during the SARS-CoV-2 \(COVID-19\) pandemic](#). Canadian Thoracic Society 2020
- [Physical distancing, face masks, and eye protection to prevent person-to-person transmission of SARS-CoV-2 and COVID-19: a systematic review and meta-analysis](#). Chu et al. 2020, The Lancet
- [Considerations in the Use of Homemade Masks to Protect Against COVID-19](#). Covid-19 Ad hoc papers, Government of Canada 2020
- [COVID 19 – Masks on or off?](#) Oxford COVID-19 Evidence Service 2020
- [The use of masks by asymptomatic people to reduce COVID transmission](#) Sax Institute Evidence Check 2020
- [Respiratory Infection Transmission \(Community\): Face Masks and Respirators](#) Covid-19 Ad hoc papers 2020, JBI

- [Masks for Prevention of COVID-19 in Community and Healthcare Settings: A Living Rapid Review](#). JBI 2020
- [Effectiveness Of Fabric Mask In The Community](#). MaHTAS Covid-19 Rapid Evidence Updates 2020
- [Efficacy of face mask in preventing respiratory virus transmission: A systematic review and meta-analysis](#). Travel Med Infect Dis 2020
- [Guidelines for the implementation of nonpharmaceutical interventions against COVID-19](#). ECDC Sept 2020 update
- [Face Masks Against COVID-19: An Evidence Review](#). Preprint Version 3, July 2020
- [Face coverings: when to wear one, exemptions, and how to make your own](#). PHE 2020

Other resource (primary research and other peer reviewed or evidence based communications)

- [The role of community-wide wearing of face mask for control of coronavirus disease 2019 \(COVID-19\) epidemic due to SARS-CoV-2](#). Journal of Infection 2020
- [Professional and Home-Made Face Masks Reduce Exposure to Respiratory Infections among the General Population](#). PloS One 2008
- [Protection by Face Masks against Influenza A\(H1N1\)pdm09 Virus on Trans-Pacific Passenger Aircraft](#). Emerging Infectious Diseases 2009.
- [Respiratory virus shedding in exhaled breath and efficacy of face masks](#). Nature Medicine 2020
- [Public use of masks to control the coronavirus pandemic](#). Preprint 2020
- [Influenza Virus Aerosols in Human Exhaled Breath: Particle Size, Culturability, and Effect of Surgical Masks](#). PloS Pathogens 2013
- [Rational use of face masks in the COVID-19 pandemic](#). The Lancet 2020
- [Simple Respiratory Mask](#). Emerging Infectious Diseases 2006
- [Facemasks and hand hygiene to prevent influenza transmission in households: a cluster randomized trial](#). Annals of internal medicine 2009
- [SARS Transmission, Risk Factors, and Prevention in Hong Kong](#). Emerging Infectious Diseases 2004
- [Mass masking in the COVID-19 epidemic: people need guidance](#). The Lancet 2020
- [Time to encourage people to wear face masks as a precaution, say experts](#). British Medical Journal 2020
- [Facial Masking for Covid-19 — Potential for “Variolation” as We Await a Vaccine](#). New England Journal Med 2020
- [Social and behavioral consequences of mask policies during the COVID-19 pandemic](#). Proceedings of the National Academy of Sciences of the USA 2020
- [Face Masks Considerably Reduce COVID-19 Cases in Germany: A Synthetic Control Method Approach](#). IZA Institute of Labor Economics 2020

- [Comparison of Face-Touching Behaviors Before and During the Coronavirus Disease 2019 Pandemic](#). JAMA 2020
- [How to wear a facemask – results from an experiment with 4,099 UK adults](#). BI Team 2020
- [Facemasks: would you wear one?](#) BI Team 2020

Specific to Mask design

- [Coronavirus disease \(COVID-19\) advice for the public: When and how to use masks](#). WHO 2020
- [Covid-19: 3D Printing of N95 Respirators and Face Shields: Supplemental Information](#) Health Quality Ontario 2020
- https://www.consumer.org.hk/ws_en/news/2020/covid-19-diymasks Hong Kong Consumer Council 2020
- <https://smartairfilters.com/en/blog/best-diy-coronavirus-homemade-mask-material-covid/> Testing of multiple materials (as micron particle filters)
- [Face coverings: when to wear one, exemptions, and how to make your own](#). PHE 2020

Appendix – Types of masks and their applications

The below table has been received from

[https://www.who.int/publications/i/item/advice-on-the-use-of-masks-in-the-community-during-home-care-and-in-healthcare-settings-in-the-context-of-the-novel-coronavirus-\(2019-ncov\)-outbreak](https://www.who.int/publications/i/item/advice-on-the-use-of-masks-in-the-community-during-home-care-and-in-healthcare-settings-in-the-context-of-the-novel-coronavirus-(2019-ncov)-outbreak)

Type of mask	Respirator (also known as filtering face piece / FFP)	Medical (also known as surgical or procedure mask)	Non-medical (also known as cloth or community masks)
Intended use	PPE to protect inhalation of viral particles. Valved respirators insufficient for source control	PPE to protect inhalation of viral particles and/or as source control	Source control to reduce exhalation of viral particles
Recommended for	Healthcare professionals during aerosol generating procedures	<ul style="list-style-type: none"> - Healthcare professionals in health settings and in community settings if there is widespread community transmission - Vulnerable people in community settings if there is widespread community transmission - Vulnerable people, symptomatic or assumed Covid-19 positive when in healthcare settings 	<ul style="list-style-type: none"> - Healthy not-at risk populations - Not for clinical use or by healthcare professionals, not considered PPE
Standards	N95 or FFP2 or FFP3 standard, or equivalent.	ASTM F2100, EN 14683, or equivalent	<p>Unlikely to be standardised although recommended standards have been developed by AFNOR*</p> <p>WHO have released guidelines on most effective 3-layer masks</p>
<p>*French Standardization Association (AFNOR Group) define minimum performance in terms of filtration (minimum 70% solid particle filtration or droplet filtration) and breathability (maximum pressure difference of 0.6 mbar/cm² or maximum inhalation resistance of 2.4 mbar and maximum exhalation resistance of 3 mbar) see: (https://masquesbarrieres.afnor.org/home/telechargement)</p>			

EXPLANATORY NOTE

These Regulations, if passed, would make amendments to the Covid-19 (Workplace Restrictions) (Jersey) Regulations 2020 (as stated by *Regulation 1*).

Regulation 2 inserts some defined terms used later on in the Regulations.

Regulation 3 enables a restriction Order made by the Minister for Health and Social Services under the amended Regulations to declare the period during which the Order applies to last for up to 31 days instead of 14 days, and for the period to be extended for periods of up to 31 days instead of 14 days.

Regulation 4 makes revised provision allowing a restriction Order to prohibit workplaces from opening or allowing them to open only for specified purposes or subject to specified conditions.

It adds provision allowing a restriction Order to impose a requirement to wear a mask covering the mouth and nose. That requirement cannot be imposed on a child under the age of 12 or on a person who is in the workplace to work there. It applies only to workplaces (or classes of workplaces) specified in the Order, and must include an exemption related to health or disability. It can include other exemptions, and can set the standards for masks and how they are worn.

It also expands the factors on which conditions for opening workplaces may be based to include requirements imposed on the occupier or operator of the workplace to do or refrain from doing any action or to impose such a requirement on any other person present at the workplace, and taking any other action that may assist in suppressing the spread of Covid-19 in the workplace. It goes on to provide that the action that may be taken includes the collection of relevant personal data from anyone present at the workplace. A person must be refused entry or required to leave a workplace if he or she refuses to comply with a requirement imposed under the Regulations, and if the person refuses to leave, the occupier or operator may call on a police officer to eject the person.

Regulation 5 enables the definition of “enforcement officer” to be extended by Order. It also widens the powers of enforcement officers to ensure compliance with a restriction Order to include taking measurements, etc. and examining documents.

Regulation 6 inserts provisions enabling enforcement officers to serve 2 types of notice. An improvement notice may be served on a person the enforcement officer believes is contravening a restriction Order or has done so in circumstances in which the contravention is likely to continue or be repeated. Reasons must be given and the person required to remedy the contravention within a period specified in the notice. If workplace activities risk spreading Covid-19 a prohibition notice may be served on the person carrying on the activities or under whose control they are carried on. Reasons must be given and a direction that the activity must not be carried on unless matters specified in the notice have been remedied. There is a power for any notice to include directions as to the measures to be taken to remedy matters and for a person to request a review on the issue of the notice to the Minister for Health and Social Services within 14 days.

Regulation 7 widens the existing offences so they can be committed by any person and not just occupiers or operators of workplaces. Additional offences are created (carrying the same maximum penalty of an unlimited fine) of contravening a requirement of an enforcement officer or a notice, and a general offence of obstructing an enforcement officer in the exercise or performance of his or her powers or duties. A further additional offence is created in relation to masks, carrying a penalty of up to level 2 on the standard

scale (which is currently £1,000). That offence is committed if a person in a specified workplace during a restriction period fails, without reasonable excuse, to wear a mask covering the person's mouth and nose in accordance with a mask requirement imposed on that person by an Order under the new paragraph (1A) of Regulation 3.

Regulation 8 provides for how the Regulations are to be cited and for them to come into force the day after they are made. The Regulations do nothing other than amend the Covid-19 (Workplace Restrictions) (Jersey) Regulations 2020, and do not amend their expiry provision, so those Regulations as amended would still expire at the end of 30th April 2021.



Jersey

DRAFT COVID-19 (WORKPLACE RESTRICTIONS) (AMENDMENT) (JERSEY) REGULATIONS 202-

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Jersey

DRAFT COVID-19 (WORKPLACE RESTRICTIONS) (AMENDMENT) (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 Amendment of Covid-19 (Workplace Restrictions) (Jersey) Regulations 2020

These Regulations amend the Covid-19 (Workplace Restrictions) (Jersey) Regulations 2020².

2 Regulation 1 (interpretation) amended

In Regulation 1(1) –

- (a) after the definition “Minister” there is inserted –
 - “ “notice” means an improvement notice or a prohibition notice;
 - “occupier” in relation to a workplace means –
 - (a) a person who is entitled to occupy the workplace or part of the workplace to the exclusion of the owner; or
 - (b) if there is no such person, the owner of the workplace or part of the workplace;”;
- (b) after the definition “relevant guidance” there is inserted –
 - “ “relevant personal data” means –
 - (a) a person’s name and documentation providing proof of identity;
 - (b) a person’s contact details;
 - (c) the date, time and duration of the person’s presence at a workplace;
 - (d) where in the workplace the person was present; and
 - (e) any other data that the Minister may specify by Order;”.

3 Regulation 2 (period of restricted opening of workplaces) amended

In Regulation 2(4) and (5)(b) for “14 days” there is substituted “31 days”.

4 Regulation 3 (provisions that may be included in restriction Order) amended

- (1) This Regulation amends Regulation 3.
- (2) For paragraph (1) there is substituted –
 - “(1) A restriction Order may include provision to –
 - (a) prohibit all workplaces or any specified workplace or class of workplace from being open;
 - (b) allow all workplaces to be open, or any specified workplace or class of workplace (by category, area or other characteristic, including the manner of its operation) to be open only –
 - (i) for any specified purpose, or
 - (ii) subject to any specified condition.
 - (1A) A restriction Order may include a provision (a “mask requirement”) that a person must wear a mask covering the person’s mouth and nose while in a specified workplace during a restriction period.
 - (1B) A mask requirement –
 - (a) must specify the workplaces, or classes of workplace in which it applies;
 - (b) does not apply to –
 - (i) a child under the age of 12, or
 - (ii) a person who is in the workplace for the purpose of carrying out work, within the meaning of Article 1(2) of the Health and Safety Law;
 - (c) must include an exemption related to the person’s health or disability;
 - (d) may include an exemption for any other description of person or circumstance;
 - (e) may include a requirement as to the standard to be met by a mask, being a standard that appears reasonable to the Minister for limiting the risk of spread of infection by breath;
 - (f) may include a requirement as to the manner in which a mask must be worn.”.
- (3) In paragraph (2) for “paragraph (1)(b) or (1)(c)” there is substituted “paragraph (1) or (1B)(a)”.
- (4) After paragraph (3)(a) there is inserted –
 - “(aa) any requirement on the occupier or operator of the workplace to do or refrain from doing any action, or to require any other person present at the workplace to do or refrain from doing any action;

- (ab) taking any other action that may assist in controlling the spread of Covid-19 in the workplace; and”.
- (5) For paragraph (4) there is substituted –
 - “(4) The action that may be required to be taken in compliance with a condition specified under paragraph (3) includes the collection of relevant personal data, from any person present at the workplace, for the purpose of assisting in suppressing the spread of Covid-19.
 - (5) If a person who has entered or wishes to enter any workplace refuses to comply with any requirement imposed under these Regulations by an occupier or operator of the workplace to do or refrain from doing any action, the occupier or operator must require the person to leave the workplace or refuse the person entry to the workplace as the case may be.
 - (6) If a person refuses to leave a workplace when requested to do so under paragraph (5), a police officer must, if so requested by the occupier or operator, eject the person from the workplace, using reasonable force if necessary.
 - (7) For the purposes of paragraph (4) a condition in a restriction Order may do any of the following –
 - (a) limit the workplaces to which and the circumstances in which the condition applies;
 - (b) specify the relevant personal data that may be collected and how it may be used;
 - (c) specify how and for what period that data must be retained.
 - (8) Nothing in this Regulation limits any of the following –
 - (a) the application of Article 11(4) of the Interpretation (Jersey) Law 1954³;
 - (b) the application of Article 16 of the Licensing (Jersey) Law 1974⁴;
 - (c) the processing of any data by the occupier or operator of the workplace as controller in accordance with the Data Protection (Jersey) Law 2018⁵.”.

5 Regulation 4 (enforcement) amended

- (1) This Regulation amends Regulation 4.
- (2) After paragraph (1)(c) there is inserted –
 - “(d) any other person or class of persons that the Minister may specify by Order.”.
- (3) For paragraph (3) there is substituted –
 - “(3) The powers are –
 - (a) at any reasonable time to enter a workplace to assess whether or not there is or has been any contravention of a restriction Order;
 - (b) to make the examinations and investigations that are necessary for the purpose mentioned in paragraph (2);

- (c) to take any measurements and photographs and make any recordings that the enforcement officer considers necessary for the purpose of an examination or investigation under sub-paragraph (b);
 - (d) to require the production of, inspect, and take copies of an entry in a book or document (including any electronic document) that it is necessary for the enforcement officer to see for the purposes of an examination or investigation under sub-paragraph (b);
 - (e) to require any person to provide the enforcement officer with such facilities and assistance as the person is able to provide to enable the enforcement officer to exercise any of the powers conferred by this Regulation;
 - (f) any other power necessary for ensuring compliance with a restriction Order.”.
- (4) After paragraph (4) there is inserted –
- “(5) For clarity, an enforcement officer may view any relevant personal data collected under Regulation 3(4).
 - (6) An enforcement officer who is not a police officer may exercise a power under this Regulation for the purpose of investigating a matter that is the subject of a police inquiry only in conjunction with a police officer conducting the inquiry.
 - (7) No person is required under this Regulation to answer any question or to give any evidence tending to incriminate the person.
 - (8) Nothing in this Regulation compels the production by any person of a document of which the person would on grounds of legal professional privilege be entitled to withhold production on an order for discovery in any proceedings in the Royal Court.”.

6 Regulations 4A to 4D inserted

After Regulation 4 there is inserted –

“4A Improvement notices

- (1) An enforcement officer may serve an improvement notice on a person if the enforcement officer believes that the person –
 - (a) is contravening a restriction Order; or
 - (b) has contravened a restriction Order in circumstances that make it likely that the contravention will continue or be repeated.
- (2) An improvement notice must –
 - (a) state the reasons for serving the notice; and
 - (b) require the person to remedy the contravention within such period as may be specified in the notice.

4B Prohibition notices

- (1) If an enforcement officer believes that there is a risk of spreading Covid-19 arising out of activities carried on in a workplace, the enforcement officer may serve a prohibition notice on the person carrying on the activities or under whose control the activities are being or are likely to be carried on.
- (2) A prohibition notice served under paragraph (1) must –
 - (a) state the reasons for serving the notice; and
 - (b) direct that the activities to which the notice relates must not be carried on unless the matters specified in the notice that give rise to the risk of spreading Covid-19 have been remedied.
- (3) A direction given under paragraph (2)(b) takes effect –
 - (a) at the end of the period specified in the notice; or
 - (b) if the notice so declares, immediately.

4C Provisions supplementary to Regulations 4A and 4B

- (1) A notice may (but need not) include directions as to the measures to be taken to remedy any contravention or matter to which the notice relates.
- (2) If directions are included in a notice, they may be framed to give the person on whom the notice is served a choice between different ways of remedying the contravention or matter.
- (3) If an improvement notice, or a prohibition notice that is not to take immediate effect, has been served –
 - (a) it may be withdrawn by an enforcement officer at any time before the end of the period specified in the notice under Regulation 4A(2)(b) or 4B(3)(a), as the case may be; and
 - (b) the period so specified may be extended or further extended by an enforcement officer at any time when an appeal against the notice is not pending.

4D Review of improvement or prohibition notice

- (1) A person on whom a notice is served may within 14 days of its service request a review from the Minister.
- (2) On a review under this Regulation the Minister may either cancel or affirm the notice and, if it is affirmed, may do so either in its original form or with such modification as the Minister may in the circumstances think fit.
- (3) If a review under this Regulation is requested in relation to a notice within the period allowed under paragraph (1), then in the case of –
 - (a) an improvement notice, the requesting of the review has the effect of suspending the operation of the notice until the review is concluded or, if the request is withdrawn, until the withdrawal of the request; or

- (b) a prohibition notice, the requesting of the review has the same effect if, but only if, on the application of the person requesting the review, the Minister so directs (and then only from the giving of the direction).”.

7 Regulation 5 (offences) amended

- (1) This Regulation amends Regulation 5.
- (2) For paragraphs (1) and (2) there is substituted –
 - “(1) A person commits an offence, and is liable to a fine, if the person –
 - (a) contravenes a restriction Order by –
 - (i) opening a workplace that is prohibited from opening,
 - (ii) opening a workplace other than for purposes for which it is permitted to be open,
 - (iii) failing to take reasonable steps to prevent a person from entering a workplace that is prohibited from being open, or
 - (iv) failing to take reasonable steps to comply with a specified condition;
 - (b) contravenes any requirement of an enforcement officer imposed under Regulation 4(3);
 - (c) contravenes any requirement or direction imposed by a notice;
 - (d) intentionally obstructs an enforcement officer in the exercise or performance of his or her powers or duties.
 - (2) A person commits an offence, and is liable to a fine of level 2 on the standard scale, if the person without reasonable excuse fails, while in a specified workplace during a restriction period, to wear a mask covering the person’s mouth and nose in accordance with a mask requirement imposed on that person under Regulation 3(1A).”.
- (3) In paragraph (3) for “paragraph (1)(c) or (d)” there is substituted “paragraph (1)(a)(iii) or (iv) or paragraph (4)”.
- (4) In paragraph (4) –
 - (a) for “an occupier or operator” there is substituted “a person”;
 - (b) for “the occupier or operator’s consent” there is substituted “the first person’s consent”.

8 Citation and commencement

These Regulations may be cited as the Covid-19 (Workplace Restrictions) (Amendment) (Jersey) Regulations 202- and come into force on the day after they are made.

ENDNOTES

Table of Endnote References

1	<i>L.2/2020</i>
2	<i>R&O.65/2020</i>
3	<i>chapter 15.360</i>
4	<i>chapter 11.450</i>
5	<i>chapter 15.240</i>