

# STATES OF JERSEY



Jersey

## **DRAFT COVID-19 (MENTAL HEALTH) (JERSEY) REGULATIONS 202-**

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**Lodged au Greffe on 17th April 2020  
by the Minister for Health and Social Services**

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**STATES GREFFE**



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## REPORT

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### Introduction

Covid-19 will place significant pressures on the Island's healthcare system. In relation to mental health services, this could include –

- specialists / consultants being unavailable to make detention and treatment decisions in accordance with existing legislative requirements due to staff absence levels;
- existing mental health staff – doctors, nurses and other professionals – being redeployed to other priority healthcare services;
- UK-based specialists, including Second Opinion Approved Doctors, who are required to give second opinions in relation to specific types of treatment such as elect-convulsion therapy; and UK-based interim staff, being unable to support delivery of Jersey services due travel restrictions and/or pressures on the UK's mental health system.

The Draft Covid-19 (Mental Health) (Jersey) Regulations 202- (the “draft Regulations”) amend some of the existing statutory requirements set out in the [Mental Health \(Jersey\) Law 2016](#) (“the 2016 Law”), in order to support continued delivery of mental health services to people who are a risk to themselves or others during the Covid-19 period.

The amendments are in line with the UK's emergency provisions.

### Draft Regulations

#### Regulation 1

As with all Covid-19 legislation amendments, the draft Regulations are time-limited and will expire on 30th September 2020. This is a safeguard to ensure that any divergence from existing policy and practice is permitted for the shortest possible timeframe.

Regulation 1, however, also provides an additional safeguard. It sets out that –

- (a) the Minister must, by Order, declare the start of an ‘extraordinary period’ in order for the proposed amendments to the 2016 Law to take effect; and that
- (b) the Minister may only declare an extraordinary period if satisfied that it is necessary to do because Covid-19 is disrupting the provision of care and treatment to people suffering mental disorder. The Minister cannot declare an extraordinary period on the grounds of a Covid-19 outbreak alone, it must be on the grounds that the outbreak is disrupting mental health services.

The extraordinary period can be for a maximum of 28 days, albeit this period can be reduced or extended for a further period of up to 28 days by Order, as deemed necessary by the Minister.

#### Regulation 2

Regulation 2 brings forward changes to existing provisions relating to the detention and treatment of people who, due to their mental health, present a risk to themselves or others. This includes changes to existing controls and safeguards designed to protect the interests of these people. Hence under Regulation 2 the provisions can only be activated if the Minister declares an extraordinary period.

Those provisions include:

- **Emergency admissions** – Where a patient must be admitted to a hospital or another appropriate place of treatment, because they represent a potential danger to their own safety or another person’s safety, that admission may be made by a registered medical practitioner as distinct from an approved practitioner where none is available (an approved practitioner being a register medical practitioner who the Minister has approved for the purposes of the 2016 Law). Furthermore, the period of emergency admission is extended from 72 hours to 120 hours to allow for sufficient time for assessment and care during periods of reduced staffing.
- **Detention by nurse** – The existing 6-hour period in which a patient can be detained by a nurse due to concerns about their safety is extended up to 12 hours, allowing more time for them to be assessed by a clinician.
- **Applications for compulsory admission to hospital for assessment or treatment** – Compulsory admission to hospital can be approved by one instead of two registered medical practitioners, but only where it is determined that the requirement for two recommendations is impractical or would involve undesirable delay (i.e. the delay that would put the patient at risk). Furthermore, that registered medical practitioner must be an approved practitioner unless it would create undesirable delay.
- **Second opinion approved doctor (“SOAD”)** – Where certain treatments such as the administration of medicine are required, and the patient has not given consent because they do not have the capacity to do so, the treatment may be provided if a SOAD has certified that the treatment will be beneficial to the patient. Regulation 2 sets out that, in providing that certificate the SOAD need only consult one person as opposed to two people as per the 2016 Law, and the person consulted must be someone who has been professionally concerned with the patient’s treatment but is not the patient’s responsible medical officer. This is because the SOAD’s role is to provide an additional safeguard to protect the patient’s rights, by deciding whether certain treatments proposed by the responsible medical officer are, in fact, appropriate. SOADs act as independent professionals and must reach their own judgment about whether the proposed treatment is appropriate.
- **Powers of court in relation to accused persons suffering mental disorder** – Where a court requires evidence from two registered medical practitioners, allow the court to proceed on the basis of the evidence from one medical practitioner, but only where the Court determines that obtaining evidence from two practitioners would create undesirable delay, which may put the patient at risk.
- **Conveyance of accused or convicted persons to hospital** – Where a prisoner needs to be transferred to a hospital (or other appropriate place) for care and treatment, that transfer must, under the 2016 Law, take place within 7 days of the Court determining that the transfer is necessary. Under the draft Regulations that 7 days is extended to up to 28 days in the event that due to staffing pressures arising under Covid-19, there is no capacity in the appropriate facility.

### **Financial and manpower implications**

There are no financial or manpower implications for the States arising from the adoption of these draft Regulations.

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## EXPLANATORY NOTE

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These Regulations, if passed, will allow for temporary modifications to be made to the Mental Health (Jersey) Law 2016 (“the Law”). They also provide for the Minister for Health and Social Services to declare an extraordinary period if the Covid-19 outbreak in Jersey has disrupted the provision of care and treatment of persons suffering mental disorder.

*Regulation 1* is an Order-making power that allows the Minister for Health and Social Services to declare the start of an extraordinary period if the Covid-19 outbreak in Jersey has disrupted the provision of care and treatment of persons suffering mental disorder. The Order may only declare a period of up to 28 days. The Order may be amended to reduce the period or to extend the period. Each extension may only be for a period of up to 28 days.

*Regulation 2* contains modifications to the Law. These will apply only during an extraordinary period declared by an Order made under Regulation 1. The modifications –

- Allow an emergency admission under Article 15 to be made by a registered medical practitioner who is not an approved practitioner (as defined in Article 1 of the Law). The limit on such an admission is extended from 72 hours to 120 hours.
- Extend from 6 hours to 12 hours the period that a person may be detained by a nurse under Article 17.
- Allow an application for the admission of a patient under Article 18 to be made on the recommendation of one medical practitioner instead of 2. This may only be done where the authorized officer considers that it is not reasonably practicable or would involve unreasonable delay to obtain the recommendations of 2 medical practitioners. Unless it is not be reasonably practicable or would involve unreasonable delay, the single medical practitioner must be an approved practitioner.
- Allow the second opinion approved doctor to consult only one person (instead of 2) when providing a certificate under Article 41 allowing treatment to be given. The person consulted must be someone who has been professionally concerned with the patient’s treatment but is not the patient’s responsible medical officer.
- Where a court requires evidence from 2 registered medical practitioners (one of whom must be an approved practitioner) under Articles 62 to 67 and 69, allow the court to proceed on the basis of the evidence from one medical practitioner who should be an approved practitioner, unless this would not be practicable. The court may only accept the evidence of only one practitioner where it considers that obtaining the evidence of two would result in unreasonable delay.
- Extend from 7 days to 28 days the period under Article 69 within which a prisoner in respect of whom a transfer order has been made must be transferred to a specified approved establishment.
- Where in any case an extended time limit applies at the end of the extraordinary period or when the temporary provisions expire, provide that the shorter of the balance of the extended time limit or the time limit that would have applied but for the extension will apply.

- Provide that the provisions expire on 30th September 2020.

*Regulation 3* is a citation, commencement provision and expiry provision. The Regulations will come into force on the day after they are made and expire on 30th September 2020.



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## DRAFT COVID-19 (MENTAL HEALTH) (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 2020<sup>1</sup> –

### **1 Power to declare that an extraordinary period exists**

- (1) This Regulation applies if the Minister for Health and Social Services is satisfied that the disruption caused by the Covid-19 outbreak in Jersey to the provision of care and treatment to persons suffering mental disorder has reached a level that it is proportionate and necessary to make the Order described in paragraph (2).
- (2) The Minister may, by Order, declare the start of an extraordinary period and the end of that period, being no later than 28 days after the start.
- (3) Despite Article 11 of the Interpretation (Jersey) Law 1954<sup>2</sup>, the provision declaring the end of the period may not be amended other than –
  - (a) to declare an earlier end; or
  - (b) to declare a later end, being no later than 28 days after the commencement of each Order making such an amendment.

### **2 Temporary amendment of the Mental Health (Jersey) Law 2016**

After Part 12 of the Mental Health (Jersey) Law 2016<sup>3</sup> there is inserted –

#### **“PART 12A**

#### **MODIFICATIONS DURING THE COVID-19 OUTBREAK**

##### **89A Modification of the Law where the Minister has made an Order that an extraordinary period exists**

- (1) If the Minister has made an Order under Regulation 1 of the Covid-19 (Mental Health) (Jersey) Regulations 202-<sup>4</sup>, during the

extraordinary period covered by that Order this Law applies with the following modifications.

- (2) Article 15 has effect as if –
  - (a) the references to an “approved practitioner” are to a “registered medical practitioner”;
  - (b) in paragraph (4)(a) the reference to “72 hours” is to “120 hours”.
- (3) Article 17(2) has effect as if the reference to “6 hours” is to “12 hours”.
- (4) Despite Article 18(3), where the authorized officer considers that it is not reasonably practicable or would involve unreasonable delay for an application under Article 18 to be accompanied by recommendations of 2 registered medical practitioners, the application may be accompanied by the recommendation of one medical practitioner who must, unless it is not reasonably practicable or would involve unreasonable delay, be an approved practitioner and paragraphs (2), (3) and (4) of Article 18 are to be interpreted accordingly.
- (5) Despite Article 41(4), where a SOAD considers that it is not reasonably practicable or would involve unreasonable delay to consult the persons referred to in Article 41(4), the SOAD may give the certificate in Article 41(1) after consulting a person who –
  - (a) has been professionally concerned with the patient’s treatment; and
  - (b) is not the patient’s responsible medical officer.
- (6) Despite Articles 62 to 67 and 69, where the court considers that obtaining the evidence of 2 medical practitioners, one of whom is an approved practitioner, would result in unreasonable delay, the court may proceed on the basis of the evidence of one registered medical practitioner who must, where practicable, be an approved practitioner, and those Articles are to be interpreted accordingly.
- (7) Article 69(5)(a) has effect as if the reference to “7 days” is to “28 days”.
- (8) Where in a particular case any time limit has been modified under this Article and the extraordinary period ends or this Part has expired before the time limit has elapsed, the shorter of the following time limits will apply to that case –
  - (a) the balance of that time limit as modified by this Article;
  - (b) the time limit that would have applied but for the modification in this Article starting on the day after the extraordinary period ended or this Part has expired.
- (9) This Part expires on 30th September 2020.”.

**3 Citation, commencement and expiry**

- (1) These Regulations may be cited as the Covid-19 (Mental Health) (Jersey) Regulations 202-.
- (2) These Regulations come into force on the day after they are made and expire on 30th September 2020.

## ENDNOTES

### Table of Endnote References

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<i>1</i>	<i>L.2/2020</i>
<i>2</i>	<i>chapter 15.360</i>
<i>3</i>	<i>chapter 20.650</i>
<i>4</i>	<i>P.46/2020</i>