

STATES OF JERSEY



Jersey

DRAFT COVID-19 (RESTRICTED TRADING) (JERSEY) REGULATIONS 202-

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

STATES GREFFE

REPORT

These draft Regulations would be made under the [Covid-19 \(Enabling Provisions\) \(Jersey\) Law 2020](#). They would make it an offence, punishable by an unlimited fine, to open a business in a manner proscribed by Order. The intention is to limit the transmission of Covid-19 by reducing the number of locations where people interact.

To take effect, the draft Regulations would require the Minister for Health and Social Services to be advised by the Medical Officer of Health that the risk to public health from the Covid-19 pandemic is so severe that the controls therein are necessary and proportionate. The Minister for Health and Social Services could then make the relevant Order after consultation with the Minister for Economic Development, Tourism, Sport and Culture.

The definition of business is widely cast and includes service provision as well as retail, and vehicles as well as fixed premises.

The Order may require the closure of categories of businesses that are not essential to the operation of society during the pandemic period. It may also require that those businesses remaining open must carry out only certain work, or work for a certain purpose. For instance, a business could be required to stop selling food at tables, but still be permitted to continue take-away provision.

The Regulations do not directly address the protection of workers, as employers are already required by the [Health and Safety at Work \(Jersey\) Law 1989](#) to take all 'reasonably practicable' steps to maintain the health and safety of their workers, and this requirement applies equally to the risk of transmission of Covid-19. Different arrangements may need to be made in different cases, based on the layout of the premises, its levels of staffing, etc. As Covid-19 is a serious medical risk, the expectations on businesses for worker protection are high.

Should a business be found to be a significant risk for the transmission of Covid-19 for any reason, it can be closed individually by Order despite being in a permitted class.

The fine for offences is unlimited. This is because the defined levels of fine applicable in Jersey cannot exceed £10,000 and, on a significant trading day, a large business with no open competition could exceed that level of profit, making breaches of the law profitable.

The reliance on an Order reflects the rapid pace of change in the current situation, and the developing medical advice throughout the period. The Order triggering the Regulations and setting the initial conditions is under development and will reflect the circumstances at the time it is made.

The Order is time-limited to 14 days. At the end of this period a new Order must be made, or the restrictions will be lifted. This provision is made to align with the movement restrictions in the [Covid-19 \(Screening, Assessment and Isolation\) \(Jersey\) Regulations 2020 \(as amended\)](#), and to reflect that these restrictions are a significant step beyond the normal powers of government and, as such, they should require an active decision to keep them in place.

These Regulations self-expire on 30th September 2020 unless extended by the Assembly.

Financial and manpower implications

There are no resource implications for the States arising from the adoption of these draft Regulations.

EXPLANATORY NOTE

These Regulations would, if passed, enable the Minister for Health and Social Services (the “Minister”) to declare a period of restricted trading in certain circumstances, enabling the Minister to direct certain business premises to close or to open only for certain purposes and to direct the occupier or operator of certain business premises not to carry out certain work or to only carry out certain work for a specified purpose.

These Regulations are made under Article 2 of the Covid-19 (Enabling Provisions) (Jersey) Law 2020.

Regulation 1 contains interpretation provisions.

Regulation 2 enables the Minister to declare the start and end (being no later than 14 days after the start) of a period of restricted trading if the Minister, after consulting the Medical Officer of Health, is satisfied that the risk to public health caused by Covid-19 has reached a level at which it is proportionate and necessary to make an Order under Regulation 3.

The Minister must, before making the Order, consult with the Minister for Economic Development, Tourism, Sport and Culture in relation to the making of the Order.

Regulation 3 enables the Minister, during a period of restricted trading, to direct, by Order, that –

- (a) certain business premises or classes of business premises must be closed to members of the public;
- (b) certain business premises or classes of business premises may be open to members of the public only for a specified purpose (a “restricted opening” direction);
- (c) a person who is the occupier or operator of business premises must not carry out certain work; and
- (d) a person who is the occupier or operator of business premises may carry out certain work only for a specified purpose.

The Order may also specify exceptions to the directions.

The Minister must, before making the Order, consult with the Minister for Economic Development, Tourism, Sport and Culture in relation to the making of the Order.

It is an offence (with a penalty of an unlimited fine) to fail to comply with a direction under an Order made under Regulation 3.

Regulation 4 makes it an offence (with a penalty of an unlimited fine) for a person who is the occupier or operator of business premises subject to a restricted opening direction to allow members of the public in or on the business premises unless reasonable steps are taken to ensure that each person on the premises has sufficient space and that any other requirement prescribed by Order is met. A person has sufficient space if the person is reasonably able to maintain the distance (prescribed by Order) between himself or herself and any other person on the premises (other than any member of the person’s household and any person employed to work on the premises). The Minister may also specify, by Order, what constitutes and does not constitute sufficient space.

The occupier or operator of business premises is also required to have regard to any relevant guidance issued, before or after the commencement of these Regulations, by the Minister or by the Medical Officer of Health.

Regulation 5 provides that these Regulations come into force on the day after they are made and expire on 30th September 2020.



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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 –

“business premises” means a building, place or vehicle –

- (a) at, on or in which an occupation, profession or trade is carried on for the provision of services directly to members of the public on a regular basis;
- (b) at, on or in which a service is provided directly to members of the public on a regular basis; or
- (c) used for the purpose of selling items by retail, or hiring or displaying items for the purpose of selling them or hiring them out, whether the items are goods or materials or whether also sold by wholesale;

“Minister” means the Minister for Health and Social Services;

“occupier” of business premises means –

- (a) a person who is entitled to occupy the premises or part of the premises to the exclusion of the owner; or
- (b) if there is no such person, the owner of the premises or part of the premises;

“prescribed” means prescribed by Order made by the Minister.

2 Period of restricted trading

- (1) This Regulation applies if the Minister, after consulting the Medical Officer of Health, is satisfied that the risk to public health caused by Covid-19 has reached a level at which it is proportionate and necessary to make the Order described in Regulation 3.
- (2) The Minister may, by Order, declare the start of a period of restricted trading and the end of that period, being no later than 14 days after the start.

- (3) Despite Article 17 of the Interpretation (Jersey) Law 1954², 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 14 days after the commencement of each Order making such an amendment.
- (4) The Minister must, before making an Order under this Regulation, consult with the Minister for Economic Development, Tourism, Sport and Culture in relation to the making of the Order.
- (5) In this Article, “Medical Officer of Health” means a person appointed as such under Article 10 of the Loi (1934) sur la Santé Publique³.

3 Direction of Minister concerning closure or partial closure of certain business premises

- (1) The Minister may, by Order, direct that during a period of restricted trading –
 - (a) certain business premises or classes of business premises must be closed to members of the public;
 - (b) certain business premises or classes of business premises may be open to members of the public only for a specified purpose;
 - (c) a person who is the occupier or operator of business premises must not carry out certain work; and
 - (d) a person who is the occupier or operator of business premises may carry out certain work only for a specified purpose.
- (2) The Order may provide for exceptions from paragraph (1) for specified business premises or classes of business premises or specified persons or classes of persons.
- (3) The Minister must, before making an Order under this Regulation, consult with the Minister for Economic Development, Tourism, Sport and Culture in relation to the making of the Order.
- (4) An occupier or operator of business premises who fails to comply with a direction made by Order under paragraph (1) is guilty of an offence and is liable to a fine.

4 Offence concerning persons allowed on business premises

- (1) This Regulation applies to business premises subject to an Order made under Regulation 3(1)(b).
- (2) A person who is the occupier or operator of business premises to which this Regulation applies must not allow members of the public to enter or remain in or on the business premises unless reasonable steps have been taken to ensure that –
 - (a) each person on the premises (other than any person employed to work on the premises) has sufficient space; and
 - (b) any other prescribed requirement is met.
- (3) For the purpose of paragraph (2)(a) –

- (a) a person has sufficient space if the person is reasonably able to maintain the prescribed distance between himself or herself and any other person on the premises (other than any member of the person's household and any person employed to work on the premises); and
 - (b) the Minister may, by Order, prescribe what does or does not constitute sufficient space.
- (4) The occupier or operator of business premises to which this Regulation applies must have regard to any relevant guidance issued, before or after the commencement of these Regulations, by the Minister or by the Medical Officer of Health.
- (5) A person who fails to comply with paragraph (2) is guilty of an offence and is liable to a fine.
- (6) In this Regulation, "household" means any persons living together in the same place of residence.

5 Citation, commencement and expiry

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

ENDNOTES

Table of Endnote References

<i>1</i>	<i>L.2/2020</i>
<i>2</i>	<i>chapter 15.360</i>
<i>3</i>	<i>chapter 20.875</i>