

# STATES OF JERSEY



Jersey

## **DRAFT COVID-19 (WORKPLACE RESTRICTIONS) (JERSEY) REGULATIONS 202-**

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**Lodged au Greffe on 14th May 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

The Draft Covid-19 (Workplace Restrictions) (Jersey) Regulations 202- (the “draft Regulations”) would be made under the [Covid-19 \(Enabling Provisions\) \(Jersey\) Law 2020](#). They would make it an offence, punishable by a fine, to open a workplace in contravention of a restriction Order.

The draft Regulations provide legislative measures that support a managed relaxation of the public health controls imposed to protect against the spread of Covid-19. Whilst most of the emergency legislation passed by the Assembly to date either provided for the introduction of controls (for example, the [Covid-19 \(Screening, Assessment and Isolation\) \(Jersey\) Regulations 2020](#)) or for measures designed to respond to the impact of Covid-19 on individuals and services (for example, the [Covid-19 \(Residential Tenancy\) \(Temporary Amendment of Law\) \(Jersey\) Regulations 2020](#)), these new Regulations are intended to support a safe transition “back to business”.

### Workplace

A workplace can include any place in which a person works, whether that is outdoors or indoors, in any part of a building, vehicle or vessel, except for a construction site or a person’s home – unless a service is provided to another person in that home (for example, clients being seen in the psychotherapist’s home).

If adopted, the draft Regulations would replace the existing [Covid-19 \(Restricted Trading\) \(Jersey\) Regulations 2020](#) (the “Trading Regulations”), but not the existing [Covid-19 \(Construction Work\) \(Jersey\) Regulations 2020](#) (the “Construction Regulations”), which will remain in place.

Replacement of the Trading Regulations ensures that there is one single legislative regime that applies to all workplaces, and thus avoids the significant complications that could occur in some dual or multiple businesses that, for example, trade with the Public and provide business-to-business services from a single site.

The Construction Regulations are maintained, as they focus on single-function construction sites which are inspected by building control professionals. Furthermore, the Construction Regulations provide for a permit scheme which is not replicated in the draft Regulations, on the basis that an ‘*all Jersey businesses*’ permit scheme is an unrealistic proposition on the grounds of operability, cost or proportionality.

### Restriction Order

The Minister for Health and Social Services may only make a restriction Order if, having consulted the Medical Officer of Health, the Minister is satisfied that the risk, or potential risk to public health caused by Covid-19 continues to be such that it is necessary and proportionate to do so. The Minister must consult with the Minister for Economic Development, Tourism, Sport and Culture.

The Order must specify an end date which is no more than 14 days after it was made (with a new Order being made if required). The time limits placed on the Orders are an essential safeguard to ensure proportionality and necessity.

The Order may set out the classes of workplace that may open, or which are prohibited from opening based on a range of factors including, for example, a description of the workplace, numbers of people in the workplace, opening hours and the type of work undertaken.

The Order may set out that workplaces are only allowed to open subject to specified conditions and/or if they comply with relevant guidance. This guidance could be issued by the Minister, the Medical Officer of Health, or under the [Health and Safety at Work \(Jersey\) Law 1989](#). At this point in time that guidance would require adherence to Covid-19-related control measures. For example, provision of sufficient space to allow for 2 metre physical distancing, but these measures will be adjusted to reflect changing levels of risk. Provision is made for the Minister to endorse guidance provided by professional trade bodies where the Minister deems it appropriate to do so.

Importantly, Regulation 3(4) provides that the Order, as set out in Article 11(4) of the [Interpretation \(Jersey\) Law 1954](#), is not limited to any particular class of workplace, which allows for precise targeting of those workplaces that either do, or do not, present a high risk of Covid-19 transmission. This targeting can be dialled up or down as required.

### **Offences / Enforcement**

The draft Regulations provide that it is an offence if, in contravention of a restriction Order, a person –

- opens a workplace,
- allows a person into a workplace / fails to take reasonable steps to prevent a person entering the workplace, or
- fails to take reasonable steps to comply with a condition.

The offence carries an unlimited fine on the basis that the £10,000 maximum fine on the standard scale of fines is not considered sufficient to constitute a deterrent for larger businesses. This is in common with the Construction Regulations and the Trading Regulations (to be repealed).

The person who commits the offence is the person who occupies the property. If a condition imposed via a restriction Order is contravened by a person other than the occupier, that person will not have committed an offence.

For example, if it is a condition that only 10 customers are allowed in a small shop, but customer number 11 enters, customer number 11 will not have committed an offence under the Regulations. The occupier may have committed an offence if they did not take reasonable steps to prevent customer number 11 from entering, but not if they did take reasonable steps (for example, displaying notices or asking customer number 11 to leave the shop).

These draft Regulations, as per other Covid-19-related Regulations, expire on 30th September 2020 unless extended by the Assembly.

### **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 enable the Minister for Health and Social Services to make Orders prohibiting or restricting the opening of workplaces as specified in the Order, or imposing certain conditions on their opening. Such an Order must be proportionate and necessary in light of the risk or potential risk to public health caused by Covid-19.

*Regulation 1* contains the defined terms. In particular, “workplace” is defined to cover anywhere where a person carries out work but excludes construction work (most of which is already regulated by the Covid-19 (Construction work) (Jersey) Regulations 2020) as well as work conducted from home with no non-householder present. The Regulations do not derogate from the Health and Safety at Work (Jersey) Law 1989.

*Regulation 2* sets out the conditions for making an Order (known as a restriction Order) as set out above. There is a requirement for the Minister to consult the Minister for Economic Development, Tourism, Sport and Culture before making an Order. The Order must set out a restriction period, which is the period during which the Order applies, limited to a maximum of 14 days.

*Regulation 3* sets out the provisions that may be included in a restriction Order. These provisions include being able to prohibit all workplaces from being open, some workplaces only as specified, including by class of workplace and if relevant guidance or specified conditions are complied with, or prohibiting only certain workplaces or type of workplace from being open. Various factors or conditions are set out that may be specified.

*Regulation 4* provides for enforcement to be undertaken by police officers, health and safety inspectors and environmental health officers. These enforcement officers are empowered to enter workplaces to enforce a restriction Order and to examine and investigate as necessary. The examination or investigation does not allow an enforcement officer to disclose or make use of information received during the course of the examination or investigation other than for the purposes of the Regulations or and Order made under them.

*Regulation 5* makes it an offence punishable by an unlimited fine for an occupier or operator to open a workplace, or allow a person into a workplace, in contravention of a restriction Order, to fail to prevent a person from entering a workplace in such contravention, or to fail take all reasonable steps to comply with a restriction Order. An “occupier” is a person entitled to occupy the workplace or if there is no operator, the owner. Reasonableness is assessed by having regard to relevant guidance published by the Minister, any relevant health and safety code of practice or other standards endorsed by the Minister. It is a defence for the occupier or operator to prove that he or she took all reasonable steps to avoid the commission of the offence or that it was due to the fault of another person.

*Regulation 6* makes standard provision for offences by bodies corporate, etc.

*Regulation 7* limits the liability of the Minister and any enforcement officer so that no damages are payable for anything done under the Regulations unless done in bad faith.

*Regulation 8* repeals the Covid-19 (Restricted Trading) (Jersey) Regulations 2020 on the coming into force of the first restriction Order.

*Regulation 9* includes the citation provision. It also provides for the Regulations to come into force on the day after they are made and for them to expire on 30th September 2020.





Jersey

## **DRAFT COVID-19 (WORKPLACE RESTRICTIONS) (JERSEY) REGULATIONS 202-**

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## **DRAFT COVID-19 (WORKPLACE RESTRICTIONS) (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 Interpretation**

- (1) In these Regulations –
- “enforcement officer” has the meaning assigned by Regulation 4(1);
  - “Health and Safety Law” means the Health and Safety at Work (Jersey) Law 1989<sup>2</sup>;
  - “Medical Officer of Health” means a person appointed as such under Article 10 of the Loi (1934) sur la Santé Publique<sup>3</sup>;
  - “Minister” means the Minister for Health and Social Services;
  - “open” in relation to a workplace means open to access by any person for the purpose of the person’s work;
  - “publish” means publish online or in any other manner appearing to the person publishing to be likely to bring the matter published to the attention of those whom it concerns;
  - “relevant guidance” means –
    - (a) any guidance published for the purpose of these Regulations, by the Minister or by the Medical Officer of Health;
    - (b) any relevant code of practice approved under Article 10 of the Health and Safety Law; and
    - (c) any standards produced by any other person or body that is endorsed by the Minister.
  - “restriction Order” means an Order made under Regulation 2;
  - “restriction period” means a period specified under Regulation 2(4);
  - “specified” means specified in a restriction Order;
  - “workplace” means the part of a building, place, vehicle, vessel or aircraft in which a person carries out work within the meaning of Article 1(2) of the Health and Safety Law other than –

- (a) construction work within the meaning of the Health and Safety (Management in Construction) (Jersey) Regulations 2016<sup>4</sup>; or
  - (b) work undertaken in a private dwelling, vehicle or vessel by one person alone (with no physical contact with any other person other than a member of the person's household).
- (2) Nothing in these Regulations is to be read as derogating from any provision of or under the Health and Safety Law.
- (3) A power to publish any guidance includes the power to vary or revoke the guidance.

## **2 Period of restricted opening of workplaces**

- (1) The Minister may make a restriction Order if the Minister, after consulting the Medical Officer of Health, is satisfied that, in relation to workplaces, the risk or potential risk to public health caused by Covid-19 is such that it is proportionate and necessary to do so.
- (2) The Minister must, before making a restriction Order, consult the Minister for Economic Development, Tourism, Sport and Culture.
- (3) A restriction Order may contain any of the provisions set out in Regulation 3.
- (4) The Order must specify a restriction period during which the Order applies by declaring that the period starts on a specified date, being no sooner than the coming into force of the Order, and ends at the end of a specified day, being no later than 14 days after the start of the period.
- (5) Despite Article 17 of the Interpretation (Jersey) Law 1954<sup>5</sup>, a provision specifying the end of a period under paragraph (4)(b) 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.

## **3 Provisions that may be included in restriction Order**

- (1) A restriction Order may include provision to –
- (a) prohibit all workplaces from being open;
  - (b) prohibit all workplaces from being open other than –
    - (i) specified workplaces or a specified class of workplace,
    - (ii) workplaces complying with any relevant guidance,
    - (iii) workplaces complying with any other specified condition; or
  - (c) prohibit only specified workplaces or only a specified class of workplace from being open.
- (2) Workplaces, or a class of workplace, may be specified for the purpose of paragraph (1)(b)(i) or (1)(c) by reference to any or any combination of the following factors –
- (a) any description of workplace;
  - (b) physical, structural, spatial or other characteristics of workplaces;

- (c) the location of the workplace;
  - (d) the numbers of people in the workplace;
  - (e) the characteristics of any person who may enter the workplace;
  - (f) the hours of operation of the workplace;
  - (g) the types of work carried on at the workplace.
- (3) A restriction Order may specify the conditions that a workplace must meet in order to be open based on –
- (a) any of the factors mentioned in paragraph (2)(b) to (g); and
  - (b) any other factor that the Minister considers necessary in the interests of public health.
- (4) Nothing in this Regulation limits the application of Article 11(4) of the Interpretation (Jersey) Law 1954<sup>6</sup>.

#### **4 Enforcement**

- (1) The following are enforcement officers for the purpose of these Regulations –
- (a) a police officer;
  - (b) an inspector within the meaning of Article 12 of the Health and Safety Law;
  - (c) a health officer within the meaning of Regulation 1(1) of the Covid-19 (Screening, Assessment and Isolation) (Jersey) Regulations 2020<sup>7</sup>.
- (2) An enforcement officer may, for the purpose of ensuring compliance with a restriction Order and subject to the production by the person, if so required, of evidence of the person's authority, exercise the powers set out in paragraph (3).
- (3) The powers are –
- (a) at any reasonable time to enter any workplace which the enforcement officer has reason to believe is open in contravention of a restriction Order or otherwise failing to comply with such an Order; and
  - (b) to make such examination and investigation as may in any circumstances be necessary for the purpose mentioned in paragraph (2).
- (4) Nothing in this Regulation allows an enforcement officer to make an examination or investigation or to disclose or make use of any information received in the course of such examination or investigation other than for the purposes of these Regulations or a restriction Order.

#### **5 Offences**

- (1) A person who is an occupier or operator commits an offence, and is liable to a fine, if the person –
- (a) opens a workplace in contravention of a restriction Order;

- (b) allows any person into a workplace in contravention of a restriction Order;
  - (c) fails to take all reasonable steps to prevent another person from entering a workplace in contravention of a restriction Order; or
  - (d) fails to take all reasonable steps to comply with a specified condition.
- (2) In this Regulation “occupier” in relation to the 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.
- (3) A person assessing whether a step is reasonable, for the purpose of paragraph (1)(c) or (d), must have regard to any relevant guidance.
- (4) It is a defence for an occupier or operator to prove that he or she took all reasonable steps to avoid the commission of an offence under this Regulation or that the offence was due to an act or default of some other person who committed it without the occupier or operator’s consent, connivance or wilful default.

## **6 Offences by bodies corporate and others**

- (1) In this Regulation –
- “relevant offence” means an offence under these Regulations that is committed by a limited liability partnership, a separate limited partnership, an incorporated limited partnership or another body corporate;
- “relevant person” means –
- (a) if the relevant offence is committed by a limited liability partnership, a partner of the partnership;
  - (b) if the relevant offence is committed by a separate limited partnership or an incorporated limited partnership –
    - (i) a general partner, or
    - (ii) a limited partner who is participating in the management of the partnership;
  - (c) if the relevant offence is committed by a body corporate other than an incorporated limited partnership –
    - (i) a director, manager, secretary or other similar officer of the body corporate, and
    - (ii) if the affairs of the body corporate are managed by its members, a member who is acting in connection with the member’s functions of management; and
  - (d) a person purporting to act in any capacity described in subparagraphs (a) to (c) in relation to the partnership or body that commits the relevant offence.
- (2) If a relevant offence is proved to have been committed with the consent or connivance of a relevant person, that relevant person is also guilty of the

offence and liable in the same manner as the partnership or body corporate to the penalty provided for that offence.

- (3) Paragraph (4) applies if a relevant offence –
  - (a) is an offence that may be committed by neglect; and
  - (b) is proved to be attributable to any neglect on the part of a relevant person.
- (4) The relevant person is also guilty of the offence and liable in the same manner as the partnership or body corporate to the penalty provided for that offence.

## **7 Limitation of liability**

- (1) The Minister and any enforcement officer are not liable in damages for anything done or omitted in the discharge or purported discharge of any function under, or authorised by or under, these Regulations unless it is shown that the act or omission was in bad faith.
- (2) Paragraph (1) does not apply to prevent an award of damages made in respect of an act on the ground that the act was unlawful as a result of Article 7(1) of the Human Rights (Jersey) Law 2000<sup>8</sup>.

## **8 Repeal**

The Covid-19 (Restricted Trading) (Jersey) Regulations 2020<sup>9</sup> are repealed on the coming into force of the first restriction Order.

## **9 Citation, commencement and expiry**

- (1) These Regulations may be cited as the Covid-19 (Workplace Restrictions) (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**

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<i>1</i>	<i>L.2/2020</i>
<i>2</i>	<i>chapter 05.300</i>
<i>3</i>	<i>chapter 20.875</i>
<i>4</i>	<i>chapter 05.300.61</i>
<i>5</i>	<i>chapter 15.360</i>
<i>6</i>	<i>chapter 15.360</i>
<i>7</i>	<i>R&amp;O.33/2020</i>
<i>8</i>	<i>chapter 15.350</i>
<i>9</i>	<i>R&amp;O.48/2020</i>