

# STATES OF JERSEY



Jersey

## **DRAFT COVID-19 (CONTROL OF TESTING) (JERSEY) REGULATIONS 202-**

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**Lodged au Greffe on 2nd July 2020  
by the Minister for Health and Social Services**

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**STATES GREFFE**



## REPORT

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These Regulations, if adopted, would introduce a regime to regulate Covid-19 testing conducted by private businesses in Jersey. They have been developed to meet the commitment the Minister for Health and Social Services (the “Minister”) made to the Assembly during the debate of [P.62/2020](#) on 16th June 2020.

Ministers recognise the potential risks associated with faulty or poor quality Covid-19 testing, and these Regulations will provide a system of oversight and control of the testing services provided on-Island by private providers.

Like most regulatory legislation, the Regulations are primarily focussed on the technical aspects of the regulatory regime, the grounds for and objectives of inspections, the powers available to the inspectors and the sanctions for failing to meet the requirements of the law. What constitutes an acceptable testing service is not a matter of law but of medical judgement, so the actual requirements are to be set out by guidance published by the Medical Officer for Health (the “MOH”) for that purpose.

The regime will apply to all testing services provided by private operators for a charge or for free, but not to those provided by the Government directly or under contract, undertaken by medical practitioners designated to do so by the Minister, undertaken under [Covid-19 \(Screening, Assessment and Isolation\) \(Jersey\) Regulations 2020](#), nor the self-administration of testing by the public. However, the classification of testing kits as ‘consumer goods’ will bring them into the established legal regime which requires that they be safe for use by the public.

The Regulations do not seek to develop a novel regulatory framework for Covid-19 testing, as this would require assigning or creating an oversight authority and developing a licencing regime, which would not be possible in the time available. Instead, the regulatory system will rest on the existing capacity of the Government to licence the operation of businesses by means of their undertakings licence under the [Control of Housing and Work \(Jersey\) Law 2012](#) (the “Control of Housing and Work Law”).

Businesses engaged in Covid-19 testing will be specifically licenced to do so in their undertakings licence, and that will be the method by which sanctions can ultimately be applied should providers fail to meet the necessary standards. This engages a pre-existing system of licencing and provides the bulk of the necessary offences and legal sanction to ensure compliance with the Regulations.

As detailed below, the final recourse of the Government would be either to revoke that part of the undertakings licence, which would mean that further Covid-19 testing by the business in question would be ‘unlicensed activity’ which would constitute a criminal offence, or to issue a notice requiring cessation of activity.

### Consumer Safety Law

The Minister indicated in the debate on 16th June that “*there will be a minor amendment to the Consumer Safety Law, which will be brought forward by the Minister for Economic Development, Tourism, Sport and Culture*”. Where minor amendments to other legislation are required to accommodate a proposition, it is normal practice that those are made as part of the item under debate, to avoid the need for 2 debates. In this case Regulation 15 makes the necessary consequential amendment to the [Consumer Safety \(Jersey\) Law 2006](#) (the “Consumer Safety Law”).

This amendment is necessary to ensure that the Consumer Safety Law applies, because Article 2 of that Law defines ‘consumer goods’, to mean goods which are “intended for

consumers” or “to be used by consumers”. However, it was not clear that the definition would extend to Covid-19 testing kits on the basis that those kits are not ‘consumed’ by the public as they are not used by the consumer. Instead, in the sale of a Covid-19 diagnostic service to the public, the diagnostic kit is applied to the consumer as part of the service, so the person is ‘consuming’ the service, not the testing kit itself.

Regulation 15 therefore makes a consequential amendment to Article 2 of the Consumer Safety Law, to ensure that Covid-19 testing products fall into the definition whether they are used by a person directly or administered to them as part of a service.

## Inspections

Health officers will have the power to inspect any premises at which a testing service is provided, and assess the testing services that performed there, to ensure that they meet the standards published by the MOH, which will address –

- (a) whether tests are applied in accordance with the manufacturers’ instructions;
- (b) whether tests are analysed in accordance with the manufacturers’ instructions;
- (c) the quality and accuracy of the advice provided to clients;
- (d) the hygiene and infection control arrangements at the premises at which the tests are applied and the results are analysed; and
- (e) notifiable disease notification to the MOH, which corresponds with the notification requirement, offence and punishment under Article 23 of the [Loi \(1934\) sur la Santé Publique](#) (the “Public Health Law”).

The inspection itself can be carried out at the direction of the Minister or at the request of officers authorised to enforce the Control of Housing and Work Law. Inspections are carried out by health officers, who may be accompanied by a police officer if it is considered necessary.

Health officers may inspect premises to assess compliance with the MOH’s guidance as above, inspect, copy or take documents, access computer systems, and inspect any relevant material. With the consent of the person being tested, they may watch tests being conducted and interview the recipients of tests in private. Any removed material can be held for as long as is necessary for the purpose of inspection, with an inventoried receipt provided.

In addition, a health officer may require that the provider carry out a test on them, in order to allow the officer to see exactly what is involved in the process and understand the way the test is conducted.

As soon as possible after an inspection has been conducted, the health officer must inform the service provider of the results of any analysis of material that has been removed, or the findings resulting from any tests conducted on the health officers themselves.

A more detailed report will then be produced detailing the findings and recommendations of the health officer and identifying to what extent the MOH’s guidelines are being met by the service. It will also contain details and required timings for any remedial action considered necessary.

Where the service is safe but improvements are necessary, the report will be sent to the provider in draft and they will be given 28 days to reply, which might include responding with any factual corrections that they feel are necessary (which may nor many not be accepted). The Minister will then decide whether or not to accept the officer’s recommendations for required improvements and if so whether or not to have the provider re-inspected once they should have been completed.

If a re-inspection finds that the service is still not at the required standard, then the Minister must request the Chief Minister to decide if the element of the undertakings licence that allows the provider to carry out Covid-19 test should be revoked under Article 30 of the Control of Housing and Work (Jersey) Law 2012, with one month's notice.

Where the service is found to be not just in need of improvement but actually presenting a risk to health, the final report will be sent to the service provider and the Minister, and also to the MOH, the Chief Consumer Safety Inspector and the Health and Social Care Commission, to allow those authorities to consider using their powers under their established legal regimes to manage the risk. In such cases, the Minister must ask the Chief Minister within 7 days to decide if a notice should be issued under Article 37(2) of the Control of Housing and Work (Jersey) Law 2012 requiring the provider to cease conducting the testing activity. This would be possible as the unsafe operation of Covid-19 testing outside of the MOH's guidance would be outside scope of the business licence and therefore not a permitted activity.

Article 41 of the Control of Housing and Work Law contains an appeal process that allows either method of sanction to be challenged by the service provider within 2 months.

### **Powers of entry**

Health officers may enter premises without a warrant at any reasonable time, which is not restricted to a business's opening hours, but which would allow health offices to seek entry if the premises was staffed but the front door was locked, for instance.

A warrant for entry may be applied or where entry to the premises has been refused, or a refusal is expected. In these cases, the owner or occupier must be informed that a warrant will be sought, which should incentivise them to allow voluntary inspection before a warrant is needed. In some cases, where there may be concern that a testing provider might remove evidence or hamper an inspection, a warrant can be sought without informing the owner or occupier. A warrant may also be necessary where the relevant premises is not currently in use, or the owner or occupier cannot be contacted, and the situation is sufficiently urgent that entry is needed immediately.

This power extends to the private home of a testing provider, where they are using that home as a premises to conduct or analyse tests, as well as the home of a private individual who has been visited by a testing provider to have a test carried out. However, unlike a commercial premises a private home can be entered only with prior consent of the owner or occupier.

A warrant can be granted to enter a private home (as is normal in regulatory legislation, including the [Data Protection Authority \(Jersey\) Law 2018](#)) but one would only be issued if the Bailiff or a Jurat considered it was necessary in all of the circumstances. Without this provision it would be extremely difficult to inspect testing services that operate tests only in people's homes.

If a provider or any other person obstructs a health officer in the course of their duties as they inspect, take samples or enter the relevant premises then they will commit an offence with a maximum fine of £10,000 and up to 6 months imprisonment. Giving false information in relation to an inspection is also an offence with the same penalty.

Unlike the other legislation brought forward in response to the Covid-19 situation, these Regulations are not time-limited as Ministers recognise that Covid-19 screening services may continue to operate in Jersey after 30th September 2020 when other Covid-19 emergency legislation is scheduled to fall away (unless extended). The

regulatory regime will therefore persist, as will the amendment to the Consumer Safety Law.

**Obligation to report**

Service providers will have a positive duty to immediately notify the MOH of any test result indicating that a person is infected with Covid-19, or where there is reasonable cause to suspect that that they are. In line with the offence and punishment under Article 23 of the Loi (1934) sur la Santé Publique (the “Public Health Law”), the penalty is a fine of up to £1,000.

**Financial and manpower implications**

These draft Regulations impose additional duties on health officers and others and thus will have some impact on the budget of the Health and Social Services and the Growth, Housing and Environment Departments. At the current time the prevalence and quality of private Covid-19 testing cannot be accurately predicted into the future, especially in light of rapidly developing technology in the area, so the ultimate cost of the legislation is not known. However, it is understood that there will be no additional staff engaged as a result of passing these draft Regulations.

## EXPLANATORY NOTE

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These Regulations, if passed, will provide for the inspection and regulation of Covid-19 private testing services. The Medical Officer of Health (“MOH”) will set and publish standards which providers of such services are required to comply with. If an inspection reveals that a provider has failed to comply with the standards, or the testing service presents a health risk to the public or individuals, the Minister for Health and Social Services (the “Minister”) will request the Chief Minister to consider exercising powers under the Control of Housing and Work (Jersey) Law 2012 (the “Control of Housing and Work Law”) to revoke the provider’s business licence or to require cessation of activities.

*Part 1 (Regulations 1 to 12)* contains provisions about the setting of standards and for the inspection of testing services.

*Regulation 1* defines particular words and expressions used throughout these Regulations. In particular, a “testing service” is a service which administers, analyses or gives the result of a Covid-19 test. Such a service may provide all or some of those things either privately to individual members of the public, or more widely under a contract for services with the Government of Jersey.

*Regulation 2* requires the MOH to set and publish standards in respect of the provision of testing services. This Regulation provides for the manner of publication and what matters the standards must address, which include things such as the use of testing kits, how a person receiving a test is told of his or her test result and whether the service provider is complying with their legal obligation to notify the MOH of Covid-19 infection, or suspected infection.

*Regulation 3* clarifies what does not constitute a testing service for the purposes of these Regulations and the circumstances in which the standards apply to testing services under these Regulations.

*Regulation 4* requires health officers (as defined in *Regulation 1*) to carry out inspections of testing services when so directed by the Minister or if requested by the Chief Minister if he or she considers it necessary. This Regulation sets out specific things which may be inspected to see if the standards are being complied with, including any premises at which all or part of a testing service is being delivered. This could include the testing officer’s own private dwelling.

*Regulation 5* gives a health officer a wide range of powers to supplement the duty to inspect, including inspecting and taking copies of documents or records, removing or seizing items used in connection with the testing service, taking samples for analysis and interviewing staff or persons receiving a test.

*Regulation 6* requires service providers to give health officers a test as part of the inspection process, and to treat the inspecting health officer as if he or she were an ordinary member of the public receiving a test.

*Regulation 7* enables a health officer to enter premises for the purpose of inspection without a warrant, but in the case of a private dwelling, the owner or occupier’s prior consent is required.

*Regulation 8* enables the Bailiff or a Jurat to grant a warrant permitting a health officer to enter any premises if he or she is satisfied that there are reasonable grounds for a health officer to believe that there are on those premises, testing kits, apparatus, records and other documents etc. pertaining to the inspection and that entry to the premises would be refused etc.

*Regulation 9* makes it an offence for a person intentionally to obstruct a health officer in the execution of specified functions under these Regulations. A person guilty of that offence is liable to imprisonment for a term of 6 months and a fine of level 3 on the standard scale (currently £10,000). It is also an offence if a person fails, without reasonable excuse, to comply with a requirement imposed under *Regulation 5* or *6*. A person guilty of that offence is liable to imprisonment for a term of 6 months and a fine of level 3 on the standards scale.

*Regulation 10* requires a health officer to notify the service provider of his or findings in relation to the analysis or testing of any items removed from premises, or of the conduct of the testing service under *Regulation 6*.

*Regulation 11* requires a health officer, on completion of an inspection to make a written report to the Minister setting out the extent to which the standards have, or have not been complied with. If any standards have not been complied with, the health officer must, in that report, recommend the remedial action which the service provider must take in order to comply with the standard in question. In a case appearing to present a serious risk to public health or the health of individuals, the health officer must indicate in the report why that appears to be the case.

*Regulation 12* provides that on receipt of the report, the Minister must determine whether to accept the health officer's recommendation as to remedial action. If the recommendation is accepted, the Minister may direct a re-inspection of the testing service after the timescale within which remedial action must be taken has expired. Where there is failure to take the required remedial action, or where it appears that the testing service presents a significant health risk, the Minister must request the Chief Minister to consider taking appropriate action under the Control of Housing and Work Law.

*Part 2 (Regulations 13 to 16)* contains miscellaneous provisions including MOH notifications and guidance.

*Regulation 13* places a duty on a service provider immediately to notify the MOH of any test result indicating that a person is infected or contaminated with Covid-19, or there is reasonable cause to suspect that that person is so infected or contaminated. Failure to make that notification is an offence punishable with a fine of level 2 on the standard scale (currently £1000).

*Regulation 14* places a duty on the MOH to issue and publish guidance to assist service providers, care home or domiciliary care managers, in complying with their respective notification requirements under these Regulations and the Public Health Law.

*Regulation 15* amends the Consumer Safety (Jersey) Law 2006 so as to bring Covid-19 testing kits within the definition of consumer goods.

*Regulation 16* provides for the title by which these Regulations may be cited and for them to come into force on the day after they are made.



Jersey

## DRAFT COVID-19 (CONTROL OF TESTING) (JERSEY) REGULATIONS 202-

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Jersey

## DRAFT COVID-19 (CONTROL OF TESTING) (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> and Article 2(5) of the Consumer Safety (Jersey) Law 2006<sup>2</sup> –

### PART 1

#### STANDARDS AND INSPECTION

#### 1 Interpretation

(1) In these Regulations unless indicated otherwise –

“administer”, in relation to a test, means administer a test to a person by way of a pin prick, nasal swab, urine or blood sample using a kit designed for that purpose, or in any other way;

“authorised person” means the Chief Minister or any individual authorised by the Chief Minister under Article 33 of the Control of Housing and Work (Jersey) Law 2012<sup>3</sup> to perform functions under Part 7 of that Law;

“consumer safety inspector” has the meaning given in Article 10 of the Consumer Safety Law;

“Consumer Safety Law” means the Consumer Safety (Jersey) Law 2006<sup>4</sup>;

“Control of Housing and Work Law” means the Control of Housing and Work (Jersey) Law 2012<sup>5</sup>;

“health officer” means –

(a) a person appointed under Article 10 of the Public Health Law, other than the Medical Officer of Health; or

(b) a doctor acting under the direction of the Medical Officer of Health;

“inspection” means an inspection carried out under Regulation 4;

“Medical Officer of Health” means a person appointed as such under Article 10 of the Public Health Law;

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

“premises” means any premises at which a testing service is provided, or at which a health officer reasonably believes such a service is provided, and include a private dwelling which, subject to Regulation 4(5), may be that of the person receiving the test, the testing officer, or any other person;

“Public Health Law” means the Loi (1934) sur la Santé Publique<sup>6</sup>;

“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;

“Regulation of Care Law” means the Regulation of Care (Jersey) Law 2014<sup>7</sup>;

“relevant guidance” means guidance published by the Medical Officer of Health as to the steps to be taken by individuals who are confirmed or suspected as being infected or contaminated with Covid-19;

“report” is construed in accordance with Regulation 11;

“Safety Order” has the meaning given in Article 9 of the Consumer Safety Law;

“service provider” means the person who is responsible for providing a testing service and includes a testing officer;

“standards” are construed in accordance with Regulation 2;

“test” includes any form of diagnostic test, including (but not limited to) polymerase chain reaction testing and serology (antibody) testing to determine whether a person is infected or contaminated with Covid-19 or has acquired Covid-19 antibodies;

“testing kit” means a kit designed to administer, analyse and give the results of a test;

“testing officer” means a person who is engaged by a service provider to perform, in respect of a person provided with a testing service, one or more of the following –

- (a) the administration of a test;
- (b) the analysis of a test;
- (c) the giving of the results of a test;

“testing service” means a service provided to an individual or an administration of the States under a contract for services with the Minister assigned responsibility for that administration, for the purpose of administering, analysing or giving the results of a test, whether on the same premises, or at different premises.

- (2) Nothing in these Regulations is to be read as derogating from any provision of the Public Health Law.

## **2 Standards in respect Covid-19 testing services**

- (1) Subject to paragraph (4), the Medical Officer of Health must set and publish standards in respect of the provision of testing services.
- (2) A service provider must comply with those standards.
- (3) The standards set by the Medical Officer of Health may be –

- (a) revised from time to time and must be published in their revised form; or
  - (b) replaced or withdrawn and notice of any such replacement or withdrawal must be published.
- (4) The Medical Officer of Health is not required to set any standards under paragraph (1) if he or she endorses standards set and published by any other person or body in the British Islands or elsewhere, that the Medical Officer of Health considers to be an expert authority on Covid-19 testing.
- (5) Nothing in paragraph (4) prevents the Medical Officer of Health from setting and publishing standards which are in addition to, or complement other standards endorsed by him or her.
- (6) The standards, whether set by the Medical Officer of Health or endorsed by him or her –
- (a) must address compliance with the following matters –
    - (i) where a service provider uses testing kits, that everything comprised within those kits is applied and processed in accordance with the testing kit manufacturer's instructions,
    - (ii) that a person who has received a test –
      - (A) is given the result of that test accurately,
      - (B) is given sufficient information to enable the person to understand what the result means for him or her, and
      - (C) is advised as to what action, if any, that person may take in accordance with relevant guidance;
    - (iii) hygiene and infection control measures implemented at the premises at which the test is administered or analysed,
    - (iv) that a service provider follows guidance issued by the Medical Officer of Health under Regulation 14, and that any test result which gives rise to a reasonable suspicion that a person is infected or contaminated with Covid-19 is immediately reported to the Medical Officer of Health in accordance with Regulation 13.
  - (b) may address compliance with such other matters as the Medical Officer of Health, or, in the case of standards endorsed by him or her, the other person or body, considers appropriate.

### **3 Application of standards**

- (1) These Regulations apply only in respect of testing services within the meaning of these Regulations.
- (2) For the avoidance of doubt –
  - (a) screening or assessment under Part 3 (powers in relation to persons suspected to be potentially infectious) of the Covid-19 (Screening, Assessment and Isolation) (Jersey) Regulations 2020<sup>8</sup>, by a health officer within the meaning of those Regulations, is not a testing service;
  - (b) a person designated by any Minister to administer, analyse or give the results of a test is not providing a testing service; and

- (c) a person who purchases a testing kit so as to self-administer a test, analyse it and receive the results of that test, is not in receipt of a testing service.
- (3) The standards apply regardless of –
  - (a) whether or not the testing service is provided free of charge or at a charge;
  - (b) whether or not the test is administered, analysed, or the result is given by a doctor, a health care practitioner registered under Health Care (Registration) (Jersey) Law 1995<sup>9</sup>, or any other person;
  - (c) the method by which the test is administered, analysed or the result is given; or
  - (d) the premises at which the test is administered or analysed.
- (4) The standards apply where, at any premises, a testing officer –
  - (a) administers, analyses, or gives the result of the test; or
  - (b) does some of the things mentioned in sub-paragraph (a) and the person receiving the test, or any other person does the rest.

#### **4 Inspection of testing services**

- (1) It is the function of a health officer to carry out the inspection of a testing service for the purpose of determining whether or not the service provider is complying with the standards.
- (2) An inspection under paragraph (1) must be carried out –
  - (a) when the Minister so directs; or
  - (b) at the request of an authorised person, if in the course of exercising functions under Part 7 (controls on working) of the Control of Housing and Work Law, the authorised person considers that such an inspection is necessary.
- (3) A health officer carrying out an inspection of premises –
  - (a) may be accompanied by a police officer and such other persons as he or she considers necessary for the purposes of the inspection; and
  - (b) may have with him or her such equipment as he or she considers necessary for carrying out the inspection.
- (4) In discharging the function under paragraph (1), a health officer may, subject to paragraph (5), inspect any of the following –
  - (a) the condition or state of the premises at which the testing service is delivered, including a testing officer's own private dwelling if all, or part of the testing service is delivered there;
  - (b) the hygiene and infection control measures implemented at the premises at which the test is administered or analysed, provided that where a test is administered to a person, or analysed in that person's own private dwelling or that of another person, those persons consent to the carrying out of that inspection in their own dwelling;
  - (c) the treatment of the person receiving the test at the premises, provided that where a test is administered to a person in that person's own private dwelling or the private dwelling of another person,

- those persons consent to the carrying out of that inspection in their own dwelling;
- (d) whether the person who has received a test –
    - (i) is given the result of that test accurately,
    - (ii) is given sufficient information to enable the person to understand what the result means for him or her, and
    - (iii) is advised as to what action, if any, that person may take in accordance with relevant guidance;
  - (e) where testing kits are used –
    - (i) whether everything within those kits is being used in accordance with the kit manufacturer's instructions,
    - (ii) whether they are being used in contravention of any Safety Order for the time being in force, or
    - (iii) regardless of clause (ii), whether their use gives cause for concern over their safety such as to warrant informing a consumer safety inspector;
  - (f) records to determine whether the service provider is following guidance issued by the Medical Officer of Health under Regulation 14 and, if the case so requires, complying with the requirement to inform the Medical Officer of Health under Regulation 13.
- (5) However, in paragraph (4) "premises" –
- (a) in sub-paragraph (a) does not include the private dwelling of the person receiving the test, or the private dwelling of a person who is not the testing officer;
  - (b) in sub-paragraph (b) includes a testing officer's own private dwelling if the test is administered or analysed there;
  - (c) in sub-paragraph (c) includes a testing officer's own private dwelling if the test is administered there;
- (6) A health officer may inspect any other matter as may be set out in the standards.

## **5 Powers of inspection - supplementary**

- (1) For the purpose of carrying out an inspection, a health officer may –
- (a) inspect and take copies of any documents or other records;
  - (b) have access to, and check the operation of, any computer, and any associated apparatus or material which is or has been in use in connection with any documents;
  - (c) seize and remove from the inspected premises any documents, records and any other items, including those mentioned in sub-paragraph (d);
  - (d) have access to, and check the operation of apparatus, testing kits, samples or other material used for, or in connection with the testing service;
  - (e) take samples or swabs for the purpose of scientific analysis;

- (f) inspect any other item;
  - (g) with the consent of the person receiving a test, witness the administering, analysis or giving the result of the test by a testing officer;
  - (h) with the person's consent, interview in private any person receiving a test, a service provider, testing officer (if different) or any other person working at the premises at which the testing service is delivered.
- (2) The power under paragraph (1)(a) includes the power to –
- (a) require any person holding or accountable for documents or records (whether or not kept at the premises) to produce them for inspection at the premises; and
  - (b) to require any records which are kept by means of a computer to be produced in a form in which they are legible and can be taken away.
- (3) The power under paragraph (1)(h) to interview a service provider includes, in the case of a body corporate, limited liability partnership or separate limited partnership, the power to interview, in private, any director, manager, secretary, partner or other similar officer of the body corporate or partnership.
- (4) A health officer may –
- (a) require any person to afford the health officer such facilities and assistance with respect to matters within the person's control as are necessary to enable the officer to carry out the inspection; and
  - (b) take such measurements and photographs, and make such recordings, as the health officer considers necessary for the purposes of the inspection.
- (5) Any of the documents, records and other items removed or seized from premises under paragraph (1) may be detained for as long as the health officer considers necessary.
- (6) After completing an inspection, the health officer must provide the service provider with an inventory of all the documents, records and other items removed or seized under paragraph (1).
- (7) In this Regulation –
- (a) “documents or records” includes a reference to personal records such as the person's contact information, correspondence between that person and the service provider, details of the test administered and the result of the test;
  - (b) “limited liability partnership” is construed in accordance with Article 2 of the Limited Liability Partnerships (Jersey) Law 2017<sup>10</sup>, and references to “partner” and “secretary” in relation to such an entity carry the definitions respectively assigned under that Law;
  - (c) “separate limited partnership” is construed in accordance with Article 3 of the Separate Limited Partnerships (Jersey) Law 2011<sup>11</sup>, and a “partner” in relation to such an entity carries the definition assigned under that Law.

**6 Power of health officers to sample a testing service**

- (1) For the purpose of carrying out an inspection, a health officer may require a service provider to provide that officer with a testing service.
- (2) Where paragraph (1) applies, the service provider must deliver the testing service as if the health officer were an ordinary member of the public receiving that service.
- (3) A service provider is entitled to payment for a testing service required under this Regulation, if that service is ordinarily provided at a charge.

**7 Power of health officers to enter premises without a warrant**

- (1) For the purpose of carrying out an inspection a health officer may enter any premises at any reasonable time, but in the case of a private dwelling where all or part of the testing service is provided, may only do so with the owner or occupier's prior consent.
- (2) If requested by the owner or occupier of the premises to do so, a health officer must produce evidence of his or her authority to carry out an inspection and to enter premises for that purpose.

**8 Warrant to enter premises**

- (1) The Bailiff or a Jurat may grant a warrant permitting a health officer to enter any premises (including a testing officer's private dwelling if all or part of a testing service is provided there) if satisfied that there are reasonable grounds for a health officer to believe that there are on those premises, apparatus, testing kits, samples or other material used for, or in connection with a testing service, or records and other documents inspection of which is necessary for the purpose mentioned in Regulation 7(1), and that –
  - (a) entry to the premises has been refused, or a refusal is expected, and that notice of the intention to apply for a warrant has been given to the owner or occupier;
  - (b) a request to the owner or occupier for admission or the giving of such a notice would defeat the purpose of the proposed entry; or
  - (c) the premises are unoccupied or the owner or occupier is temporarily absent, and the case is urgent.
- (2) A warrant granted under paragraph (1) continues in force for 30 days.

**9 Offence of obstructing or non-compliance**

- (1) A person who intentionally obstructs a health officer acting in the execution of functions conferred by any of Regulations 4, 5, 6, 7 or 8 commits an offence and is liable to imprisonment for a term of 6 months and to a fine of level 3 on the standard scale.
- (2) A person who –
  - (a) fails, without reasonable excuse to comply with a requirement mentioned in Regulation 5 or 6; or

- (b) when required to produce any document or give any other information, produces a document or gives information which is false in a material particular, knowing the document or information to be false in that particular,

commits an offence and is liable to imprisonment for a term of 6 months and to a fine of level 3 on the standard scale.

## **10 Duty to inform service provider of findings in relation to items removed for analysis etc.**

- (1) This Regulation applies where –
  - (a) under Regulation 5, apparatus, testing kits, samples or other material used for, or in connection with the testing service have been seized and removed from premises for the purpose of analysis or testing; or
  - (b) under Regulation 6 a health officer has received a testing service.
- (2) The health officer carrying out the inspection must, as soon as is reasonably practicable, notify the service provider of the officer's findings in relation to the analysis or testing of the items referred in paragraph (1)(a), or of the conduct of the testing service.

## **11 Inspection report**

- (1) The health officer carrying out the inspection must, following that inspection, prepare a written report containing his or her findings and recommendations.
- (2) The health officer must set out in the report the extent to which the standards have, or have not been complied with.
- (3) If a standard has not been complied with, the health officer must recommend what remedial action the service provider must take in order to comply with the standard in question, and a reasonable timescale within which that action must be taken.
- (4) If it appears that the testing service presents a significant risk to public health or the health of individuals, the health officer must set out in the report why that appears to be the case.
- (5) Subject to paragraph (6), the report must be sent to the Minister and a copy of it sent to the service provider.
- (6) In the case of a recommendation under paragraph (3), the health officer must, before finalising the report, send a draft copy of it to the service provider.
- (7) The service provider may submit a response to the draft not later than 28 days after the day it is received by that provider;
- (8) If a response submitted under paragraph (7) identifies an error of fact in the draft report, and the health officer accepts the error, he or she must correct the error before finalising the report.
- (9) Where paragraph (4) applies, a copy of the report must, as soon as is reasonably practicable, also be sent to the authorities listed in paragraph (10) and such other persons as the health officer considers necessary.

- (10) The authorities mentioned in paragraph (9) are –
  - (a) the Medical Officer of Health;
  - (b) the Chief Consumer Safety Inspector as defined by Article 3 of the Consumer Safety Law; and
  - (c) the Health and Social Care Commission established by Article 35 of the Regulation of Care Law.

## **12 Minister's determination**

- (1) On receipt of the report, the Minister must determine whether or not to accept the health officer's recommendation under Regulation 11(3).
- (2) If the Minister so accepts the recommendation, he or she must determine whether or not to direct the health officer to re-inspect the testing service upon the expiry of the timescale within which remedial action must be taken.
- (3) If it appears to the Minister that the risk mentioned in Regulation 11(4) is as a result of activities not permitted by a licence granted under Article 26 of the Control of Housing and Work Law, the Minister must request the Chief Minister to consider exercising his or her powers under Article 37(2) of that Law to serve a notice requiring the cessation of such activities.
- (4) If the Minister makes a determination under paragraph (2) and upon the health officer's re-inspection it appears that –
  - (a) the service provider has failed to take the remedial action required, the Minister must request the Chief Minister to consider exercising his or her powers under Article 30 (revocation of licence) of the Control of Housing and Work Law; or
  - (b) that the testing service presents a significant risk to public health or the health of individuals, the Minister must request the Chief Minister to consider exercising his or her powers under Article 37(2) of that Law to serve a notice requiring the cessation of such activities.
- (5) For the purposes of paragraph (4), a re-inspection may be carried out in such manner as the health officer considers appropriate in the circumstances of the case, and Regulations 4 to 10 apply for the purposes of a re-inspection.
- (6) Subject to paragraph (7), before finalising a re-inspection report the health officer must send a draft of it to the service provider, and Regulation 11(7) and (8) apply for the purposes of a re-inspection.
- (7) Paragraph (6) does not apply if it appears that the testing service presents a significant risk to public health or the health of individuals.
- (8) The Minister must make a determination under paragraphs (1) and (2), or paragraph (3), as the case may be, not later than 7 days after the Minister receives the report.
- (9) A determination under paragraph (4) must be made not later than 7 days after the Minister receives the re-inspection report from the health officer.
- (10) Notification of a determination must be given to the service provider as soon as possible after the determination is made.

- (11) A request to the Chief Minister under paragraph (3) or (4) must be made at the same time as the notification given under paragraph (10).

## **PART 2**

### **MISCELLANEOUS PROVISIONS**

#### **13 Duty to notify Medical Officer of Health of Covid-19 infection or suspected infection**

- (1) A service provider must immediately notify the Medical Officer of Health if a person's test results –
- (a) indicate that the person is infected or contaminated with Covid-19; or
  - (b) give the service provider reasonable cause to suspect that that person is infected or contaminated with Covid-19.
- (2) A person who fails, without reasonable excuse, to comply with the requirement in paragraph (1) commits an offence and is liable to a fine of level 2 on the standard scale.

#### **14 Duty of Medical Officer of Health to issue guidance**

- (1) Paragraph (2) applies for the purposes of assisting –
- (a) persons who, under Article 23 of the Public Health Law, are required to notify immediately the Medical Officer of Health of a person in their custody or care who has notifiable disease under that Law, but who has not been visited by a doctor; or
  - (b) a service provider to comply with the duty in Regulation 13.
- (2) The Medical Officer of Health must issue and publish guidance to assist the persons referred to in paragraph (1) in determining –
- (a) for the purpose of Article 23 of the Public Health Law, whether or not the symptoms displayed by the person in question, are such as to give rise to a reasonable suspicion that the person is infected or contaminated with Covid-19; or
  - (b) for the purpose of Regulation 13(1)(b), whether or not a person's test results are such as to give rise to a reasonable suspicion that the person is infected or contaminated with Covid-19.
- (3) For the avoidance of doubt and for the purposes of paragraphs (1)(a) and (2)(a), persons described in Article 23 of the Public Health Law as having the custody or care of a person, include a registered manager of a care home service or a person providing a home care service within the meaning of the Regulation of Care Law.

#### **15 Consumer Safety Law amended**

In Article 2 (meaning of consumer goods) of the Consumer Safety Law, after paragraph (1) there is inserted –

“(1A) Consumer goods include a product used to test whether or not a person is, or may have been infected or contaminated with Covid-19, as defined by the Covid-19 (Enabling Provisions) (Jersey) Law 2020<sup>12</sup>, regardless of whether or not that test is used by a consumer or administered to a consumer as part of a service provided by another person.”.

## **16 Citation and commencement**

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

**ENDNOTES**

**Table of Endnote References**

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<i>1</i>	<i>L.2/2020</i>
<i>2</i>	<i>chapter 05.100</i>
<i>3</i>	<i>chapter 18.150</i>
<i>4</i>	<i>chapter 05.100</i>
<i>5</i>	<i>chapter 18.150</i>
<i>6</i>	<i>chapter 20.875</i>
<i>7</i>	<i>chapter 20.820</i>
<i>8</i>	<i>R&amp;O.33/2020</i>
<i>9</i>	<i>chapter 20.300</i>
<i>10</i>	<i>chapter 13.475</i>
<i>11</i>	<i>chapter 13.780</i>
<i>12</i>	<i>L.2/2020</i>