

# STATES OF JERSEY



Jersey

## **DRAFT COVID-19 (SCREENING, ASSESSMENT AND ISOLATION) (JERSEY) REGULATIONS 202-**

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**Lodged au Greffe on 25th March 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 (Screening, Assessment and Isolation) (Jersey) Regulations 202- (“the draft Regulations”) provide a range of powers which will help Jersey to contain the spread of Covid-19. The powers are proposed because Jersey’s existing public health legislation<sup>1</sup> is either too out-of-date or is too limited in its provision to allow the Island to respond to the threats posed by Covid-19.

### Background to the powers

#### *Commencement and duration of powers*

The powers set out in these draft Regulations are extensive and are only intended to respond to Covid-19. For this reason, they are of limited duration.

It is intended that all the powers will come into force on the day after the draft Regulations are made (this being Saturday 28th March if adopted by the Assembly). The exception will be the power to prohibit any person in Jersey from going to, or remaining in, a public place. This power, which can conversely be expressed as a power to require people to “stay at home”, must be triggered by Order of the Minister for Health and Social Services (“the Minister”), at the point at which it is determined it should be triggered.

The draft Regulations, and all the associated Orders, will expire on 30th September 2020, unless the States Assembly determine that new Regulations are required. This is deemed a reasonable date because –

- it is 6 months from the day the powers come into force (i.e. the duration period is restricted), and
- it is anticipated that peak period of Covid-19 will have passed by that date.

At any point before 30th September 2020 the Minister may, by Order, suspend all or any part of the draft Regulations, whether on a permanent or temporary basis. This is to allow the powers which do have an impact on individual freedoms to be dialled down, or back up again, as necessary.

#### *Who do the powers apply to?*

All the powers provided under these Regulations apply to any person in Jersey, unless they are exempted by Order from some or all of the provisions (for example, essential workers will be exempted from some of the restrictions).

These powers apply to children and adults but, where the powers are applied to a child, the adult who is responsible for the child is responsible for taking all practicable steps to ensure the child’s compliance.

If the adult does not take practicable steps to ensure the child complies, the adult may have committed an offence. This would not apply, however, in the scenario where an older child, over whom the parent has no control, refuses to comply.

The Children’s Commissioner has been consulted in relation to these provisions.

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<sup>1</sup> General powers to protect public health in the event of an epidemic are provided in the [Loi 1934 sur la Santé Publique](#) (the “1934 Law” / “Public Health Law”), the [Public Health \(Vessels and Aircraft\) \(Jersey\) Law 1950](#) (the “1950 Law”), and associated Orders. More specific powers relating to standards and nuisances are provided via a network of other environmental health / health and safety legislation.

*What the powers do not do*

The draft Regulations provide powers to compel individuals to take certain actions (for example, to be screened for Covid-19, to stay at home for a specified period), but they do not provide all the ‘lockdown’ powers which some other jurisdictions have deployed in their response to Covid-19. For example, they do not compel non-essential businesses to shut, nor do they enforce guidance on social distancing. These powers will be provided via different means –

- Closure of non-essential businesses: as it currently stands there is no single, comprehensive power in law to close all non-essential businesses. Work is currently being undertaken to bring forward those powers (which may include further amendments to the Statutory Nuisances (Jersey) Law 1999 and/or new primary law provisions<sup>2</sup>). In the meantime, any pub, bar or nightclub which does not heed advice to close will be at risk of a referral by H.M. Attorney General to the Licensing Assembly under Article 9 of the Licensing (Jersey) Law 1974.

Powers to close non-essential businesses are still required in the event that the ‘stay at home’ powers provided in these Regulations are not brought into force.

- Social distancing: The draft Regulations impose screening, assessment and isolation measures, but do not negate the requirement for people to practice social distancing when they are in contact with each other (for example, when shopping for food). Given that social distancing requires measures such as keeping 2 metres apart, it will be very challenging to legislate for. However, where a person behaves in public in a way that is unacceptable, in view of social distancing advice, this could, in serious cases, be dealt with as –
  - Breach of the Peace: a customary concept and flexible enough to cover behaviours that would cause unrest or alarm to the Public, without the need for those behaviours to be threatening of themselves. Breach of the Peace could, therefore, be used to respond to intentional or persistent breaches of social distancing; or
  - Disorderly behaviour under Article 2 of the Crime (Disorderly Conduct and Harassment) (Jersey) Law 2008.

*Who exercises the powers?*

The draft Regulations provide that the powers, except for those solely exercised by the Minister and/or the Medical Officer of Health (“MoH”) will be exercised by –

- (a) enforcement officers. An enforcement officer will, in most cases, be a police officer. However, in the event that Covid-19 places pressures on police numbers, enforcement officers may also include prison officers, customs officers and immigration officers;
- (b) health officers. Health officers include paramedics, environmental health officers, people appointed as health inspectors by the MoH or doctors acting under direction from the MoH.

Some of the powers set out in the draft Regulations are exercisable by either enforcement officers or health officers, some are exercised by both enforcement officers and health officers (collectively referred to as authorised officers).

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<sup>2</sup> Primary Law provision would be dependent on the adoption by the States Assembly of the Draft Covid-19 (Enabling Provisions) (Jersey) Law 202- by the States Assembly on 27th March and by H.M. Privy Council on 15th April 2020. The Law is required to enable the States to amend primary legislation by Regulations during the Covid-19 pandemic.

### *Rights of review*

The draft Regulations provide that any person may request the Minister to review the decision to impose a requirement on them under these Regulations (for example, a person may ask the Minister to review a requirement for them to self-isolate). The Minister must conduct that review, unless satisfied that the request is vexatious, and may as a result revoke or vary the requirement.

### **The Powers**

#### ***A: Self-isolation (people who have travelled to Jersey)***

A person who has arrived in Jersey from an infected area must self-isolate for 14 days.

The starting-point is that anywhere outside Jersey is an infected area, unless the Minister declares, by Order, which areas are infected areas – in which case travel from any area that is not declared infected will not trigger self-isolation.

The person can self-isolate at home or in another suitable place, such as a hotel, but anyone who lives with them must also self-isolate for 14 days. This would include anyone who shares rooms with them (for example, a shared bathroom or kitchen), but would not include, for example, another resident in a hotel if there were no shared rooms.

Guidance will be published to help people determine where they can self-isolate.

The requirement to self-isolate for 14 days applies to anyone who arrived in Jersey on, or after, 20th March 2020. For example, a person arrived in Jersey on Friday 20th March, who has chosen not to self-isolate to date, must now self-isolate until Friday 3rd April.

The Minister may –

- exempt certain categories of essential workers from the requirement to self-isolate (this could include, for example, non-resident domiciliary care providers who rotate between Jersey and the UK on a fortnightly basis); and/or
- increase or decrease the 14-day period in order to better response to an evolving situation.

It is an offence for a person who is required to self-isolate not to do so unless –

- they have a reasonable excuse (for example, they have no food and no means of getting food except by breaking self-isolation); or
- an authorised officer has given them written permission not to self-isolate (for example, the person can evidence they have had Covid-19 and no longer represent a public health risk).

#### ***B: Prohibit a person from being in public (any person in Jersey)***

Any person in Jersey may be prohibited from going to, or remaining in, public places, unless they are exempted (in the UK this has been expressed as a person must ‘stay at home’). This is a significant power which comes with the following safeguards –

- the power will only come into effect if triggered by Ministerial Order;
- the Minister must consult the Medical Officer of Health before making the Order, and may only do so if satisfied that the risk to public health has reached such a level that it necessary to do so;
- the period during which people cannot be in public places must be no more than 14 days (unless the Minister determines it is necessary to make a further Order).

The Order must set out –

- the people it does not apply to. This would include essential workers who must be able to travel to and from work or, be in public place, if their place of work is a public place (for example, police, postal workers, health workers, etc.);
- the places it does not apply to (for example, beaches, parks, etc.).

It will be an offence for any person to contravene unless they have a reasonable excuse for doing so.

The Minister is expected to publish guidance on what is reasonable for the purposes of this provision (for example, reasonable excuse could include a person walking their dog if the Minister has said it is reasonable for a person to walk their dog).

The Minister can issue fresh guidance on reasonable excuse as the situation changes and the level of precautions is ‘dialled up’ or ‘dialled down’. This allows for a flexible response which helps strike a balance between the risk and the need for people to be able to move round.

### ***C: Require a person to be screened or assessed***

The draft Regulations provide powers to require a person to be screened or assessed for Covid-19. These powers, which are modelled on the UK’s emergency powers, include –

- powers to direct a person to a place for screening and assessment
- powers that apply to a person at the place of screening and assessment
- powers that may apply to some people after screening and assessment.

#### Powers to direct a person to a place for screening and assessment

Where an authorised officer has grounds to believe a person may be infectious, they may tell the person to go to a place to be screened or assessed, or they may take the person there, but they may only do so if they believe –

- it is in the person’s best interest,
- for the protection of others, or
- for the maintenance of public health.

The draft Regulations are not prescriptive as to the place where screening and assessment may take place. It could be any place where the person is, that is considered suitable for screening and assessment (for example, in a person’s home, a quiet side-room in a shop, a police station, etc.).

It is an offence for any person not to go for screening or assessment if they are directed to do.

#### Powers that apply to any person at a place of screening and assessment

Once the person is at the place where they may be screened or assessed for Covid-19 infection, this could include providing a biological sample and/or providing any necessary information, including contact information for tracing or other purposes.

An enforcement officer, who has directed a person to be screened or assessed, cannot undertake the actual screening, but they can keep the person at the place for up to 24 hours whilst they arrange for a health officer to do so. However, they can only keep the person at the place if they believe that it is –

- in the person's best interest,
- for the protection of others, or
- for the maintenance of public health.

A health officer cannot keep a person at the place.

An authorised officer, whether an enforcement officer or a health officer, may also require a person to remain at the place – as distinct from keeping a person at the place – for up to 48 hours for the purposes of screening and assessment. This is because the screening and assessment process can be multi-phased and can, in some circumstances, take more time (for example, where it is necessary for a person to provide documents to evidence their movements and travel).

It is an offence for a person not to comply with any requirement to be screened or assessed, unless they have a reasonable excuse not to do so, including a requirement to remain in the place for up to 48 hours.

#### Powers that may apply to some people post-screening

If a person has been screened and is found to be infected or contaminated with Covid-19, or if the test was inconclusive, the results are not available (as above), or there are still reasonable grounds to believe the person is infectious, a number of requirements or restrictions may be imposed on them in order to protect them and/or other people.

This could include a requirement to provide more information, to undergo further screening or assessment, or a 'requirement to remain' –

- in place for screening and assessment for a specified period of time which cannot exceed 14 days, or
- in a place of isolation for a specified period which cannot exceed 14 days. A place of isolation may be the person's own home, which is likely to be the best option in many cases.

The restrictions, which can also be imposed for up to 14 days, may relate to the person's movement or travel (for example, they may not be allowed to leave Jersey), to their work (for example, they may not be able to work for a period of time), or their contact with others (for example, they may be able to work, but not if that work brings them into contact with people at high risk of contracting Covid-19).

If a 'requirement to remain' or any restriction is imposed on a person, the person must be assessed within 48 hours to reconsider if it is necessary and/or should be amended.

Where a person has been required to remain in a place for a period of up to 14 days, or a restriction has been imposed for a period of up to 14 days, the period may be extended for up to an additional 14 days, if the authorising officer suspects that the person will be potentially infectious, and if they believe it is proportionate and necessary to do so.

Where a 14-day period is extended it must be –

- reviewed, at the very least, on a 24-hour period, and
- revoked if it is no longer necessary.

The ability to extend the 14-day period is a power that, it is anticipated, will be very rarely applied, but may be required in extreme cases of prolonged infection, or in cases where it is not believed that the individual will comply with directions to keep themselves or others safe.

It is an offence for a person to contravene any requirement or restriction, unless they have a reasonable excuse not to do so.

#### ***D: Ancillary powers***

In addition to self-isolation, ‘stay at home’, and screening and assessment powers imposed on people, and as described above, the draft Regulations also provide a number of ancillary powers to –

- (a) authorised officers: this includes the power to give reasonable instructions to a person when directing them to do something in accordance with these Regulations, including when removing a person or keeping a person at a place.

It is an offence for a person to contravene any instruction unless they have a reasonable excuse not to do so.

- (b) enforcement officers: this includes the power to use reasonable force to exercise a power under the draft Regulations or to enter a place to exercise that power.

#### ***E: Offences***

The majority of offences set out carry a fine, the level of which varies between offences, as highlighted in the drafter’s Explanatory note to the draft Regulations. The offence of obstructing, absconding or providing false or misleading information carries the option for a sentence of 6 months’ imprisonment to be imposed.

#### **Human Rights**

It is recognised that the proposed provisions, though essential to meeting legitimate public health objectives, will impact on individuals in a way that will engage their human rights.

As these draft Regulations are secondary legislation, as opposed to primary legislation, they are not required to be accompanied by a published statement in relation to compatibility with the European Convention on Human Rights (“ECHR”). However, consideration has been given to the following ECHR matters –

- Powers in the draft Regulations to detain potentially infected persons, to impose requirements for such persons to undergo screening or assessment, and associated requirements or restrictions, are not considered to surpass the required threshold for there to be inhuman or degrading treatment (prohibited under Article 3 ECHR). Generally speaking, that threshold is a high one and requires particularly injurious, degrading or humiliating treatment before the right is engaged.
- Detention powers, such as those requiring a potentially infected person to remain at a place for screening or assessment, will engage the right to liberty (provided for in Article 5 ECHR). This right is a qualified right, meaning that a person may be lawfully deprived of their liberty for, among other things, the lawful detention of persons for the prevention of the spreading of infectious diseases. The detention powers may be exercised only for the purpose of the prevention of infection or contamination, and the provisions set out clear procedures for the exercise of the powers, including the time periods for which a person may be detained, and the identity of those who may exercise the powers. It is considered that these powers are the minimum necessary to respond to the public health issues posed by Covid-19 in Jersey, and the process

set out in the draft Regulations for imposing detention will safeguard against the risk of unlawful or arbitrary detention.

- The draft Regulations will provide a person, on whom an official requirement is imposed, the right to request that the Minister reviews the decision to impose it. It is considered that a review by the Minister of the imposition of such requirements by authorised officers will, in the present circumstances, amount to an appeal that is compatible with the right to a fair trial (provided for in Article 6 ECHR).
- The imposition of detention powers, for example to go and remain in a specified place, to submit to screening and assessment requirements, and to provide information to authorised officers, will engage the right to private life (provided in Article 8 ECHR). That right is a qualified right, and it is considered that the powers in the draft Regulations are in accordance with the law and are necessary in a democratic society in the interests of the protection of health. Procedural requirements around the exercise of the powers, and the legitimate purposes for which they may be exercised, will mean that the powers are proportionate in principle.
- The draft Regulations are temporary measures and, if circumstances permit, their effect can be suspended, thereby enabling measures to be lifted. While they remain in place, in all cases, Article 7 of the [Human Rights \(Jersey\) Law 2000](#) requires authorised officers, as a public authority, to act in a way which is compatible with the ECHR. This is a residual safeguard against excessive or disproportionate exercise of those powers.



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## EXPLANATORY NOTE

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These Triennial Regulations if passed will make provision, in relation to the Coronavirus outbreak and until 30th September 2020 at the latest, for the compulsory screening, assessment and isolation of potentially infectious persons, and to allow a period of restricted movement to be declared by Order.

*Part 1* provides for the interpretation of the Regulations and contains preliminary provisions.

*Regulation 1* is the interpretation provision. It defines the “Minister” as the Minister for Health and Social Services. It defines “health officer” as a health inspector (appointed under the Loi (1934) sur la Santé Publique, or “Public Health Law”) or a doctor acting under the direction of the Medical Officer of Health, and defines “enforcement officer” as a police officer, prison officer or immigration officer. It defines “screening”, which is to check a person’s possible infection (or contamination – in these notes infection is used to include contamination), as distinct from “assessment”, which is to assess appropriate measures to mitigate risk of the person infecting others. A person is “potentially infectious” if they are or may be infected with the virus and might infect others, or if they have been in an infected area in the previous 14 days.

*Regulation 2* classes the Medical Officer of Health, health officer and enforcement officers as “authorised officers”. The Minister can add other persons and descriptions by Order, and remove descriptions by published notice.

*Regulation 3* enables the Minister to make an Order declaring an area to be infected if there is a risk of infection from persons arriving in Jersey who have travelled from or through the area. Having been in an infected area in the past 14 days is the criterion for being subject to self-isolation under *Regulation 4* and is one of the criteria for being subject to the powers in *Part 3* as a potentially infected person. The area is treated as being infected from the date stated in the Order (or from its commencement if it does not state a date). At the coming into force of the Regulations everywhere outside Jersey is to be treated as an infected area, so the first Order would be to treat only certain areas as infected.

*Part 2* provides for self-isolation and for Orders to prohibit going to or remaining in public places.

*Regulation 4* provides for self-isolation, which a person must do without being individually directed or removed. A person (the “traveller”) who arrives in Jersey within 14 days after being in an infected area must go directly to, and remain for 14 days at, premises that the traveller reasonably believes are appropriate. The premises are appropriate if there are appropriate measures in place to mitigate the risk of infection and minimise the traveller’s contact with others (advice published by the Medical Officer of Health must be taken into account). If the traveller is part of a household residing at the premises, or shares any living accommodation (which might be as little as a toilet, shower, bathroom or cooking or eating space), then the premises are not appropriate unless the rest of the household or sharers all consent to the traveller being there and to the measures taken to mitigate risk. The rest of the household or sharers then have to remain in the premises for the same period as the traveller.

If a person arrived in Jersey between 20th March 2020 and the commencement of the Regulations, then they must self-isolate for the remainder of the 14 days following their arrival. They must either stay put where they happen to be when the Regulations come into force, or go directly to other appropriate premises (which do not count as

appropriate unless any other household members or sharers consent to the measures, although those persons would not be legally bound to remain in the premises).

The requirements do not apply to the extent that they are incompatible with any other statutory requirement (Triennial Regulations cannot amend other laws), or with a requirement imposed under any of the other provisions of these Regulations (so, for example, a person in self-isolation can be required to come out to go for screening and assessment). An authorised officer can give written permission to do something that would otherwise be a contravention of these requirements. The Minister can publish a notice designating categories of essential workers, who will not be subject to these requirements. The Minister can also, by Order, substitute a longer or shorter self-isolation period for all cases.

It is an offence to contravene these requirements without reasonable excuse. The offence carries a fine of up to level 2 on the standard scale under the Criminal Justice (Standard Scale of Fines) (Jersey) Law 1993, which is currently £1,000.

*Regulation 5* provides for a prohibition on going to or remaining in public places. The prohibition does not apply unless and until the Minister makes an Order declaring the start of a period of restricted movement. The declaration must also fix the end of the period, which must be no later than 14 days after the start (but can be extended by amending the Order, but only for up to 14 days at a time). The Minister must consult the Medical Officer of Health, and be satisfied that the risk to public health caused by Covid-19 has reached a level at which it is proportionate and necessary to start the period.

During the period all persons must not, unless an exception applies, go into or remain in a public place. The Order must provide exceptions for specified descriptions of person (and it may specify what is or is not a public place). It is an offence to contravene this requirement without a reasonable excuse. The offence carries a fine of up to level 2 on the standard scale (currently £1,000). If a police officer reasonably suspects a person is contravening the requirement, the officer can remove the person from the public place to their usual residence or to another suitable place, or exercise the officer's powers under *Part 3* (as if there were reasonable grounds to suspect that the person was potentially infectious).

*Part 3* gives powers to authorised officers in relation to persons suspected to be potentially infectious.

*Regulation 6* provides powers in cases where the person is not already at a place suitable for screening or assessment (which can be a person's home in appropriate circumstances). It applies if the authorised officer has reasonable grounds to suspect that the person is potentially infectious. The officer can direct the person to go to a place suitable for screening or assessment, or remove the person to the place, as long as the officer considers it necessary and proportionate to do so in the person's interests, for the protection of others, or for the maintenance of public health.

The officer must inform the person of the reason for the direction or removal, and of the relevant offences (in general terms, not necessarily specifying the provisions concerned). An enforcement officer must, if and to the extent that it is practicable to do so, consult a health officer (or the Medical Officer of Health) before directing or removing the person.

It is an offence to contravene a direction without reasonable excuse. The offence carries a fine of up to level 3 on the standard scale under the Criminal Justice (Standard Scale of Fines) (Jersey) Law 1993, which is currently £10,000. Under *Regulation 13* (see notes below) it is also an offence (carrying the same fine, or imprisonment for up to a year, or both) to abscond while being removed (or to obstruct the officer).

*Regulation 7* provides for powers exercisable when the person is at a place suitable for screening or assessment (regardless of whether they were there already or were taken there). The authorised officer can require the person to be screened or assessed (or both), and impose any other requirement in connection with the screening or assessment. The officer can also require the person to remain at the place for up to 48 hours, direct the person to go to (or remove the person to) another place suitable for screening or assessment. The person can be required to provide a biological sample (and co-operate with it being taken), to give information or documents about the person's health, travel history, previous contacts and other relevant matters, and to give details by which the person can be contacted.

An enforcement officer cannot require the person to be screened or assessed, but can (after taking medical advice where practicable, and only where necessary and proportionate) keep the person at the place for a period of up to 24 hours, until a health officer can require the person to be screened or assessed.

The authorised officer can also direct the person to go to (or remove the person to) another place suitable for screening or assessment, in which case the powers apply afresh on arrival there.

The officer must inform the person of the reason for the exercise of the power, and of the relevant offences (in general terms, not necessarily specifying the provisions concerned).

It is an offence to contravene a requirement or direction without reasonable excuse. The offence carries a fine of up to level 3 on the standard scale (currently £10,000). Under *Regulation 13* (see notes below) it is also an offence (carrying the same fine, or imprisonment for up to a year, or both) to abscond while being removed or kept (or to obstruct the officer).

*Regulation 8* provides for powers exercisable after screening or assessment, if the screening confirms infection or is inconclusive, if the results of a test are not yet available, or if a health officer has reasonable grounds to suspect that the person is potentially infectious. The authorised officer can impose upon the person any requirement or restriction that the officer considers necessary and proportionate in the person's interests, for the protection of others, or for the maintenance of public health.

The requirements can include providing information, giving contact details, going for further screening or assessment, remaining at a place for a period, or remaining in isolation at a place. The restrictions can include restrictions on the person's movements, activities and contacts with others. The officer must inform the person of the reasons and the relevant offences. An officer imposing a requirement to remain in a place must have regard to the person's wellbeing and personal circumstances. A requirement to remain, or a restriction, can last for up to 14 days, but must be reconsidered every 48 hours. It can be extended for another 14 days (or more in the case of a requirement to remain in isolation), subject to reviews every 24 hours. A requirement to remain can be enforced by keeping the person at, or removing or returning them to, the specified place.

It is an offence to contravene a requirement or direction without reasonable excuse. The offence carries a fine of up to level 3 on the standard scale (currently £10,000). Under *Regulation 13* (see notes below) it is also an offence (carrying the same fine, or imprisonment for up to a year, or both) to abscond while being removed or kept (or to obstruct the officer).

*Regulation 9* provides powers ancillary to the other powers. The authorised officer can give a reasonable instruction to the person in connection with a direction, removal or

keeping, and it is an offence to contravene the instruction without reasonable excuse, carrying a fine of up to level 3 on the standard scale (currently £10,000).

A power to remove a person includes power to keep the person for a reasonable period pending removal. An enforcement officer can use reasonable force if necessary, and can enter any place, to exercise a power.

*Part 4* makes miscellaneous and final provisions.

*Regulation 10* provides for the application of the Regulations to children. An individual with responsibility for the child must, so far as reasonably practicable, secure that the child complies with the requirements imposed, and must provide information and assistance. That individual can be directed or required to take the child to a place. It is an offence to contravene these duties without reasonable excuse, carrying a fine of up to level 3 on the standard scale (currently £10,000).

The screening and assessment requirements, and the post-screening requirements, can only be imposed in the presence of an adult with responsibility for the child (or another appropriate adult if the child is not accompanied by an adult with responsibility for the child). If the child is unaccompanied the officer must contact the responsible adult before exercising the power, if practicable, and otherwise must take reasonable steps to do so afterwards. A child's consent can be given, and a review can be sought for the child, by the responsible adult.

*Regulation 11* creates a right to a review by the Minister if a requirement is imposed on a person. The Minister must, unless satisfied that the request is vexatious, conduct the review within a reasonable time. The Minister can direct an authorised official to revoke or vary the requirement or to inform the person that the requirement is unchanged. The requirement must be complied with in the meantime. The Minister can delegate the review to a States employee under Article 28(2)(b) States of Jersey Law 2005.

*Regulation 12* provides for formalities, guidance and advice. Requirements can be imposed orally or in writing, but oral post-screening requirements must be followed up in writing as soon as reasonably practicable. Those exercising the powers must have regard to guidance from the Minister or Medical Officer of Health, and to advice from health officers on particular cases.

*Regulation 13* creates offences of obstruction, absconding and knowingly providing false or misleading information. These offences carry imprisonment for up to 6 months, a fine of up to level 3 on the standard scale (currently £10,000), or both.

*Regulation 14* requires the Minister to keep the operation of the Regulations under review. If the Minister considers the threat no longer justifies the powers, the Minister must instruct some authorised officers to cease or limit their exercise of any or all of the powers, terminate the authorisation of some officers, or suspend the operation of all or part of the Regulations.

*Regulation 15* is the citation provision. It would also bring the Regulations into force on the day after they are made (at the midnight following the Assembly meeting). The Regulations expire on 30th September 2020. The Minister can make an Order suspending the effect of all or part of the Regulations until they expire, until the Order is revoked, or for a period specified in the Order or determined in any other way (but no later than 30th September 2020). Any requirements or restrictions outstanding cease to have effect when the Regulations expire or are suspended.



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## **DRAFT COVID-19 (SCREENING, ASSESSMENT AND ISOLATION) (JERSEY) REGULATIONS 202-**

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*Made* [date to be inserted]  
*Coming into force* [date to be inserted]

**THE STATES** make these Regulations under the Order in Council dated 28th March 1771<sup>1</sup> –

### **PART 1**

#### **INTERPRETATION AND PRELIMINARY PROVISIONS**

##### **1 Interpretation**

- (1) In these Regulations –
- “area” includes a country or territory;
  - “assessment” means, in relation to a person, assessment of the measures that it would be appropriate to take in relation to the person (under these Regulations or otherwise) to mitigate the risk that the person might infect or contaminate others with Covid-19;
  - “authorised officer” has the meaning given by Regulation 2;
  - “enforcement officer” means –
    - (a) a police officer;
    - (b) a prison officer within the meaning of the Prison (Jersey) Law 1957<sup>2</sup>;
    - (c) an officer within the meaning of the Customs and Excise (Jersey) Law 1999<sup>3</sup>; or
    - (d) an officer appointed under paragraph 1 of Part 1 of Schedule 2 to the Immigration Act 1971 as extended to Jersey by the Immigration (Jersey) Order 1993<sup>4</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;
  - “infected area” means an area declared under Regulation 3;

- “Jersey” includes the territorial sea adjacent to Jersey;
- “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;
- “potentially infectious person” has the meaning given by paragraph (2);
- “Public Health Law” means the Loi (1934) sur la Santé Publique<sup>5</sup>;
- “publish” is to be read in accordance with paragraphs (4) and (5);
- “screening” means, in relation to a person –
- (a) assessing the extent to which the person has been exposed to Covid-19;
  - (b) determining whether the person is infected or contaminated with Covid-19; or
  - (c) assessing the person’s symptoms and state of health.
- (2) In these Regulations a person is “potentially infectious” at a particular time if –
- (a) the person is, or may be, infected or contaminated with Covid-19, and there is a risk that the person might infect or contaminate others with Covid-19; or
  - (b) the person has been in an infected area within the 14 days preceding that time.
- (3) Nothing in these Regulations is to be read as derogating from any provision of the Public Health Law.
- (4) A power to impose a requirement, or to publish a notice or advice, is to be read as including a power, in the like manner, to vary or revoke the requirement, notice or advice.
- (5) In these Regulations a reference to publishing a notice or advice is to –
- (a) publishing it online; and
  - (b) as soon as practicable after online publication, publishing it by at least one other means appearing likely, to the person publishing it, to bring it to the attention of those unlikely to see it online.
- (6) Nothing in these Regulations is to be read as meaning that a place is not suitable for screening or assessment merely by virtue of being a person’s home.
- (7) A reference in these Regulations to informing a person of an offence under a provision is to be read as a reference to informing the person in general terms and not as requiring mention of the particular provision concerned.

## **2 Authorisation of officers**

- (1) The Medical Officer of Health is an authorised officer for the purpose of these Regulations.
- (2) A health officer is an authorised officer for the purpose of these Regulations.
- (3) An enforcement officer is an authorised officer for the purpose of these Regulations.

- (4) The Minister may, by Order, provide that any other person, or any other description of persons, is to be treated as an authorised officer for the purpose of these Regulations.
- (5) The Minister may, by published notice, declare that any description of authorised officer is not to be so treated.

### **3 Infected area**

- (1) The Minister may, by Order, declare an area to be an infected area, if the Minister is satisfied that there is a risk that persons arriving in Jersey, after travelling from or through that area, may be infected or contaminated with Covid-19.
- (2) The area is to be treated as infected –
  - (a) from the date of the commencement of the Order; or
  - (b) if another date is specified in the Order (regardless of whether that date is before or after the date of its commencement), from that specified date.
- (3) From the commencement of these Regulations until the commencement of the first Order, every area outside Jersey is to be treated as being an infected area and to have been such an area since 20th March 2020.
- (4) Nothing in paragraph (3) makes any act or omission an offence if it was done or omitted before the commencement of these Regulations.

## **PART 2**

### **SELF-ISOLATION AND ORDER TO PROHIBIT GOING TO OR REMAINING IN PUBLIC PLACES**

#### **4 Self-isolation, without individual direction or removal**

- (1) A person (the “traveller”) who arrives in Jersey, and has been in an infected area within the 14 days preceding that arrival, must –
  - (a) go directly to premises that the traveller reasonably believes to be appropriate; and
  - (b) remain in those premises until the end of a period of 14 days (the “self-isolation period”) from the date on which the traveller arrives in Jersey.
- (2) Each person who shares the premises with the traveller must remain in the premises until the end of the same self-isolation period as the traveller.
- (3) Premises are appropriate if –
  - (a) they are premises at which appropriate measures are in place for the self-isolation period –
    - (i) to minimise the traveller’s contact with other persons, and
    - (ii) to mitigate to a reasonable degree the risk that the traveller might infect or contaminate other persons with Covid-19; and
  - (b) either –

- (i) no other person shares the premises with the traveller, or
  - (ii) the condition in paragraph (4) is met.
- (4) The condition is that each person who shares the premises with the traveller consents to –
  - (a) the traveller going to and remaining in the premises for the self-isolation period; and
  - (b) the measures described in paragraph (3)(a) being in place.
- (5) A person shares premises with a traveller if the person –
  - (a) resides in the premises as part of the same household as the traveller; or
  - (b) otherwise shares any living accommodation in the premises with the traveller.
- (6) In determining whether a belief is reasonable for the purpose of paragraph (1)(a), advice published by the Medical Officer of Health must be taken into account.
- (7) On the commencement of these Regulations, a person who arrived in Jersey on or after 20th March 2020, but before that commencement, must –
  - (a) remain in the premises in which the person is present on that commencement, until the end of 14 days after the day on which the person arrived in Jersey; or
  - (b) go directly to premises that the person reasonably believes to be appropriate, and remain in those premises until that time.
- (8) A provision of paragraph (1), (2) or (7) does not apply to a person to the extent that –
  - (a) it is incompatible with a requirement imposed on the person –
    - (i) under these Regulations,
    - (ii) by or under the Public Health Law, or any enactment under that Law,
    - (iii) by or under Public Health (Vessels and Aircraft) (Jersey) Law 1950<sup>6</sup>, or any enactment under that Law, or
    - (iv) by any other enactment;
  - (b) an authorised officer gives the person written permission to do or omit anything that would otherwise constitute a contravention of paragraph (1), (2) or (7); or
  - (c) the person falls within a category designated in a notice published by the Minister as a category of essential workers for the purposes of this Regulation.
- (9) The Minister may, by Order, after consulting the Medical Officer of Health, amend paragraph (1)(b) to substitute a different length of self-isolation period.
- (10) A person who, without reasonable excuse, contravenes paragraph (1), (2) or (7) commits an offence and is liable to a fine of level 2 on the standard scale.
- (11) In paragraph (5)(b) “living accommodation” includes accommodation used or designed for cooking, eating, washing and disposal of waste.

## **5 Power by Order to prohibit going to or remaining in public places**

- (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 paragraph (2) to give effect to paragraphs (5) to (7).
- (2) The Minister may, by Order, declare the start of a period of restricted movement and the end of that period, being no later than 14 days after the start.
- (3) Despite Article 17 of the Interpretation (Jersey) Law 1954<sup>7</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 14 days after the commencement of each Order making such an amendment.
- (4) The Order –
  - (a) must provide for exceptions from the requirement of paragraph (5) for specified descriptions of person; and
  - (b) may specify places that are, or are not, to be treated as public places.
- (5) A person must not, unless an exception applies, go into or remain in a public place during a period of restricted movement.
- (6) A person who, without reasonable excuse, contravenes paragraph (5) commits an offence and is liable to a fine of level 2 on the standard scale.
- (7) A police officer who reasonably believes that a person is contravening paragraph (5) may, regardless of whether the person is to be prosecuted for an offence under paragraph (6) –
  - (a) remove the person to a place that the police officer reasonably believes is the usual residence of the person, or to any other place appearing suitable to the police officer; or
  - (b) exercise any power under Part 3 in relation to the person that may be exercised by an enforcement officer in relation to a person who the officer has reasonable grounds to suspect is potentially infectious.

## **PART 3**

### **POWERS IN RELATION TO PERSONS SUSPECTED TO BE POTENTIALLY INFECTIOUS**

## **6 Powers to direct or remove persons to a place suitable for screening or assessment**

- (1) This Regulation applies if an authorised officer has reasonable grounds to suspect that a person is potentially infectious.
- (2) The authorised officer may –
  - (a) direct the person to go immediately to a place specified in the direction which is suitable for screening or assessment; or
  - (b) remove the person to a place suitable for screening or assessment.

- (3) Paragraph (2) does not apply unless the authorised officer considers that it is necessary and proportionate to exercise the power –
  - (a) in the interests of the person;
  - (b) for the protection of other persons; or
  - (c) for the maintenance of public health.
- (4) The authorised officer must inform the person –
  - (a) of the reason for the direction or removal; and
  - (b) of the offences created by paragraph (6) and Regulation 13.
- (5) If the authorised officer is an enforcement officer he or she must, before directing or removing the person, consult a health officer or the Medical Officer of Health, if and to the extent that it is practicable to do so.
- (6) A person commits an offence, and is liable to a fine of level 3 on the standard scale, if the person without reasonable excuse, contravenes a direction under this Regulation.

## **7 Powers exercisable at a screening or assessment place**

- (1) This Regulation applies if –
  - (a) a person is at a place that is suitable for screening or assessment; and
  - (b) an authorised officer has reasonable grounds to suspect that a person is potentially infectious.
- (2) The authorised officer may do any one or more of the following –
  - (a) require the person to remain at the place for screening or assessment purposes for a period not exceeding 48 hours;
  - (b) direct the person to go immediately to another place specified in the direction that is suitable for screening or assessment;
  - (c) remove the person to another place suitable for screening or assessment;
  - (d) require the person to be screened or assessed;
  - (e) impose any other requirement on the person in connection with the screening or assessment.
- (3) Requirements under paragraph (2)(d) may include a requirement –
  - (a) at a time specified by the authorised officer –
    - (i) to provide a biological sample, or
    - (ii) to co-operate with a doctor, or other person designated by the Minister for the purpose, taking a biological sample by appropriate means; or
  - (b) to answer a question or provide information about the person's health or any other relevant matter, including travel history and others with whom the person may have had contact.
- (4) Requirements under paragraph (2)(e) may include a requirement –
  - (a) to produce any document that may assist in the assessment; or

- (b) to provide details of a means by which the person may be contacted promptly during a subsequent period specified by the authorised officer.
- (5) If the authorised officer is an enforcement officer he or she must, before directing or removing the person, consult a health officer or the Medical Officer of Health, if and to the extent that it is practicable to do so.
- (6) If the authorised officer is an enforcement officer he or she –
  - (a) may not impose a requirement under paragraph (2)(d) or (e); but
  - (b) may, if the conditions in paragraph (8) are met, keep the person at the place for a period of up to 24 hours, until a health officer can impose such a requirement.
- (7) The conditions are that the enforcement officer considers that it is necessary and proportionate to keep the person –
  - (a) in the interests of the person;
  - (b) for the protection of other persons; or
  - (c) for the maintenance of public health.
- (8) The authorised officer must inform the person –
  - (a) of the reason for exercising the officer's power under this Regulation; and
  - (b) of the offences created by paragraph (11) and Regulation 13.
- (9) For the purpose of paragraph (1)(a) it is irrelevant whether the person is at the place under a power under these Regulations or otherwise.
- (10) If the person is directed or removed under paragraph (2)(b) or (c), paragraph (2) applies afresh when the person is at the other place.
- (11) A person commits an offence, and is liable to a fine of level 3 on the standard scale, if the person without reasonable excuse contravenes a requirement or direction under this Regulation.

## **8 Powers exercisable after screening or assessment**

- (1) This Regulation applies if –
  - (a) a person has been screened by a health officer (under Regulation 7(2)(d) or (e) or otherwise) and –
    - (i) the screening confirmed that the person is infected or contaminated with Covid-19, or
    - (ii) the screening was inconclusive;
  - (b) a test has been conducted on a person, or on a sample taken from the person, for the purpose of determining whether the person is infected or contaminated with Covid-19 (under Regulation 7(2)(d) or (e) or otherwise), but the results of the test are not yet available; or
  - (c) a person has been assessed by a health officer (under Regulation 7(2)(d) or (e) or otherwise) and the officer has reasonable grounds to suspect that the person is potentially infectious.
- (2) An authorised officer may impose on the person any requirement or restriction that the officer considers necessary and proportionate –

- (a) in the interests of the person;
  - (b) for the protection of other persons; or
  - (c) for the maintenance of public health.
- (3) The requirements that may be imposed include any one or more of the following requirements –
  - (a) to provide information to the authorised officer or to any other specified person;
  - (b) to provide details of a means by which the person may be contacted promptly during a specified period;
  - (c) to go for the purposes of further screening or assessment to a specified place suitable for that purpose and to do anything that could be required under Regulation 7(2)(d) or (e);
  - (d) to remain at a specified place (which may be a place suitable for screening or assessment) for a specified period;
  - (e) to remain at a specified place in isolation from others for a specified period.
- (4) The restrictions that may be imposed include restrictions, for a specified period, on any one or more of the following –
  - (a) the person’s movements or travel (within or outside Jersey);
  - (b) the person’s activities, including work or business activities;
  - (c) the person’s contact with other persons generally or with other specified persons.
- (5) The authorised officer must inform the person –
  - (a) of the reason for imposing the requirement or restriction; and
  - (b) of the offences created by paragraph (15) and Regulation 13.
- (6) In deciding whether to impose a requirement referred to in paragraph (3)(d) or (e) (a “requirement to remain”) the authorised officer must have regard to the person’s wellbeing and personal circumstances.
- (7) The period specified for a requirement to remain, or for any restriction, may not exceed 14 days.
- (8) After the imposition of a requirement to remain or a restriction, an authorised officer must –
  - (a) assess the person within 48 hours; and
  - (b) in the light of that assessment, reconsider which requirements or restrictions it is necessary and proportionate to impose on that person under this Regulation.
- (9) The authorised officer may, following the reconsideration –
  - (a) revoke the requirement to remain or the restriction, or specify a different period not exceeding 14 days for it; or
  - (b) substitute a different requirement or restriction.
- (10) An authorised officer may extend, for a further specified period, the period specified (the “original period”) for a requirement to remain or restriction if, before the end of the original period, the officer –
  - (a) reasonably suspects that the person will be potentially infectious at the end of the original period; and

- (b) considers that the requirement or restriction is still necessary and proportionate.
- (11) Except in the case of a requirement referred to in paragraph (3)(e), the further period may not exceed 14 days.
- (12) If the period for a requirement to remain or restriction is extended, an authorised officer –
  - (a) must review the requirement or restriction at least once in every period of 24 hours; and
  - (b) if the officer –
    - (i) considers that the person is no longer potentially infectious, must revoke the requirement to remain or the restriction, or
    - (ii) considers that the requirement to remain or the restriction is no longer necessary and proportionate, may substitute a different requirement or restriction, which may not apply beyond the end of the further period.
- (13) A requirement to remain in a place may be enforced –
  - (a) by an authorised officer removing the person to the place;
  - (b) by an authorised officer keeping the person at the place; or
  - (c) if the person absconds, by an enforcement officer taking the person into custody and returning the person to that place or to another specified place.
- (14) In this Regulation “specified” means specified by the authorised officer.
- (15) A person commits an offence, and is liable to a fine of level 3 on the standard scale, if the person without reasonable excuse contravenes a requirement or restriction under this Regulation.

## **9 Ancillary powers**

- (1) An authorised officer may give a reasonable instruction to a person in connection with –
  - (a) a direction given to that person under these Regulations; or
  - (b) removing the person to or keeping the person at a place under these Regulations.
- (2) The authorised officer must inform the person –
  - (a) of the reason for the instruction; and
  - (b) of the offences created by paragraph (3) and Regulation 13.
- (3) A person commits an offence, and is liable to a fine of level 3 on the standard scale, if the person without reasonable excuse contravenes an instruction under paragraph (1).
- (4) A power under these Regulations to remove a person to a place includes a power to keep the person for a reasonable period pending the person’s removal.
- (5) An enforcement officer –
  - (a) may use reasonable force, if necessary, to exercise a power under these Regulations; and

- (b) may enter any place to exercise such a power.

## PART 4

### MISCELLANEOUS AND FINAL PROVISIONS

#### 10 Children

- (1) An individual who has responsibility for a child must, so far as reasonably practicable, secure that the child complies with any direction, instruction, requirement or restriction given to or imposed on the child under these Regulations.
- (2) An individual who has responsibility for a child must provide to a person exercising a power under these Regulations such information and assistance in relation to the child as is reasonably necessary and practicable in the circumstances.
- (3) A power under these Regulations to direct or require a child to go to a place may instead be exercised by directing or requiring an individual who has responsibility for the child to take the child to the place.
- (4) A power under Regulation 7(2)(d) or (e) or 8 may not be exercised in relation to a child except the presence of –
  - (a) an individual who has responsibility for the child; or
  - (b) if the child is not accompanied by such an individual, an adult (not being a person on whom a power is conferred by these Regulations) who the person exercising the power considers to be appropriate, having regard to any views of the child.
- (5) If a power under these Regulations is exercisable in relation to a child, but the child is not accompanied by an individual who has responsibility for the child, the person by whom the power is exercisable must –
  - (a) if practicable, contact an individual who has responsibility for the child before the power is exercised; or
  - (b) if that is not practicable, take reasonable steps after the power is exercised to contact such an individual and inform that individual of any exercise of the power in relation to the child.
- (6) If a child has a right to a review, the right may be exercised by an individual who has responsibility for the child.
- (7) If a child's consent is required to meet the condition in Regulation 4(4), the consent may be given by an individual who has responsibility for the child.
- (8) An individual who, without reasonable excuse, contravenes paragraph (1) or (2) commits an offence and is liable to a fine of level 3 on the standard scale.
- (9) In this Regulation –
  - (a) "adult" means a person aged 18 or over;
  - (b) "child" means a person under the age of 18;
  - (c) an individual has responsibility for a child if –

- (i) the individual has custody or charge of the child for the time being (without being a person on whom a power is conferred by these Regulations), or
- (ii) the individual has parental responsibility, within the meaning of the Children (Jersey) Law 2002<sup>8</sup>, for the child.

## **11 Right to review by Minister**

- (1) A person on whom an official requirement is imposed may request the Minister to review the decision to impose it.
- (2) The person may make the request directly to the Minister or to an authorised officer, who must notify the Minister.
- (3) The Minister must, unless satisfied that the request is vexatious, conduct the review within a reasonable time and direct an authorised officer to –
  - (a) revoke the official requirement, if the Minister satisfied that it should not be imposed;
  - (b) vary the official requirement, if the Minister satisfied that it should be varied; or
  - (c) in any other case, inform the person subject to the official requirement and the person aggrieved, if different, that the review has not resulted in any change to the official requirement.
- (4) The authorised officer must comply with the direction as soon as practicable.
- (5) Nothing in this Regulation, other than a revocation or variation under paragraph (3)(a) or (b), limits the effect of an official requirement.
- (6) In this Regulation “official requirement” means a requirement, direction, instruction or restriction imposed by an authorised officer under these Regulations.
- (7) A review under this Regulation is not an appeal for the purpose of Article 28(2)(b) States of Jersey Law 2005<sup>9</sup>.

## **12 Formalities, guidance and advice**

- (1) A requirement, direction, instruction, or restriction under these Regulations may be given or imposed orally or in writing.
- (2) If a requirement or restriction under Regulation 8 is given or imposed orally, the authorised officer must, as soon as reasonably practicable, give the person a notice in writing setting out the requirement or restriction.
- (3) A person exercising a power under these Regulations must have regard to –
  - (a) any relevant guidance issued, before or after the commencement of these Regulations, by the Minister or by the Medical Officer of Health; and
  - (b) any advice given by a health officer in relation to a particular case.

### **13 Offences of obstruction, absconding and misinformation**

A person 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, if the person –

- (a) obstructs another person exercising or attempting to exercise a power under these Regulations;
- (b) absconds while being removed to or kept at a place under these Regulations; or
- (c) knowingly provides false or misleading information in response to a requirement to provide information under these Regulations or otherwise in connection with the exercise of any power under these Regulations.

### **14 Review of operation of Regulations by Minister**

- (1) The Minister must keep the operation of these Regulations under review.
- (2) If the Minister considers that the threat from Covid-19 is no longer sufficient to justify the use of any or all of the powers conferred by these Regulations, the Minister must do one or more of the following –
  - (a) instruct a description of authorised officers to cease or limit their exercise of any or all of the powers conferred by these Regulations;
  - (b) publish a notice under Regulation 2(5) declaring that a description of authorised officers are not to be treated as such;
  - (c) make an Order under Regulation 15(4) suspending the effect of all or part of these Regulations.

### **15 Citation, duration and suspension**

- (1) These Regulations may be cited as the Covid-19 (Screening, Assessment and Isolation) (Jersey) Regulations 202-.
- (2) These Regulations come into force on the day after they are made.
- (3) These Regulations expire on 30th September 2020.
- (4) The Minister may, by Order, suspend the effect of all or part of these Regulations –
  - (a) permanently, until the Regulations expire;
  - (b) indefinitely, until the Order is revoked;
  - (c) for a period specified in the Order; or
  - (d) for a period to be determined in any manner specified in the Order, which may include reference to a determination by a person or body outside Jersey or to an event outside Jersey.
- (5) Nothing in an Order under paragraph (4) is to be treated as derogating from paragraph (3).
- (6) Despite Article 17 of the Interpretation (Jersey) Law 1954<sup>10</sup>, when these Regulations expire, or if their effect is suspended by an Order under paragraph (4), any requirement or restriction imposed under these Regulations ceases to have effect in respect of times after the expiry or after the start of the suspension.

## ENDNOTES

### Table of Endnote References

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1	<i>chapter 15.120</i>
2	<i>chapter 23.775</i>
3	<i>chapter 24.660</i>
4	<i>chapter 21.700</i>
5	<i>chapter 20.875</i>
6	<i>chapter 20.800</i>
7	<i>chapter 15.360</i>
8	<i>chapter 12.200</i>
9	<i>chapter 16.800</i>
10	<i>chapter 15.360</i>