

STATES OF JERSEY



DRAFT COVID-19 (SCREENING, ASSESSMENT AND ISOLATION) (JERSEY) REGULATIONS 202- (P.32/2020): COMMENTS

**Presented to the States on 27th March 2020
by the Health and Social Security Scrutiny Panel**

STATES GREFFE

COMMENTS

1. P.32/2020 – Draft Covid-19 (Screening, Assessment and Isolation) (Jersey) Regulations 202- was lodged by the Minister for Health and Social Services on 25th March 2020, in light of the ongoing Covid-19 pandemic.
2. The Panel would like to thank the Department of Health and Community Services for sharing the Regulations with it prior to formal lodging. It would also like to thank Law Officers and Legislative Drafters for making themselves available to the Panel to answer any queries we had in respect of the draft Regulations. In addition, we would like to thank the Minister for Health and Social Services and his Officers for briefing the Panel on the draft Regulations on 26th March 2020.
3. As outlined in the report accompanying P.32/2020, if adopted, the draft Regulations would enable the States Assembly to introduce new powers required to impose requirements on people to be screened or assessed for coronavirus. In addition, the draft Regulations would provide powers enabling appropriate officers to enforce requirements on individuals to remain in a place to which they would be conveyed for the purposes of screening and/or assessment and/or isolation and/or self-isolation during the period of the outbreak of Covid-19. The Panel will discuss some of the points raised during the briefing to help inform States Members ahead of the debate on the draft Regulations.
4. During the briefing with the Minister and his Officers, it was recognised that the draft Regulations proposed extensive new powers, but that it was also important to note that the draft Regulations would be bound solely to Covid-19 and the response to the virus as a public health issue.
5. Regulation 4 introduces powers relating to self-isolation. It was noted that, due to the lack of powers within our current legislation, the Government has only had the ability to advise members of the Public to self-isolate. The draft Regulations, if approved, would introduce the power to enforce isolation and would enable non-compliance to be penalised with a fine. The Panel was advised that the powers under this Regulation could be backdated. For instance, if a member of the Public entered Jersey from any date after 20th March 2020 and chose not to isolate then, once enacted, these draft Regulations would introduce powers to enforce that person to self-isolate for 14 days from the date that they arrived in the Island. It was also noted, however, that the draft Regulations would not enable prosecution retrospectively, i.e. cannot penalise (fine) a member of the Public for not following advice that was not legislation in force at the time.
6. Regulation 5 enables the Minister, by Order, to prohibit members of the Public from going to or remaining in public places, and is comparable to legislation in the United Kingdom. The Panel was advised that this power was different to all the other powers contained within the draft legislation, as it can only be enacted once the Minister for Health and Social Services has determined by Order that it shall be enacted. It was noted that, whilst the decision to ‘lockdown’ the Island has not yet been taken, the draft Regulations allow the power to be in place for when that decision is made by the Minister. The Panel was advised that the

Order brought by the Minister must include details as to who is exempt from the Order and any public places that it does not apply to. The Order will introduce the power to prohibit people from going into public places (unless exempt), and anyone then found in a public place will be committing an offence and will liable to a fine, unless they have a “reasonable excuse” to be there. The Panel noted that guidance would be issued as to what a “reasonable excuse” is before the Order is brought by the Minister. The Panel was advised that the guidance was currently being drafted, but it was anticipated that it would most likely contain, among other things, exercise and food shopping. It was further advised that a “reasonable excuse” was hard to define within legislation, and by putting the details in guidance allowed the advice to be “dialled up or down” in order to achieve its public health objective.

7. The Panel noted that for the purpose of these draft Regulations, an “authorised officer” is the Medical Officer of Health, a health officer or an enforcement officer. The Panel queried whether an “enforcement officer” included the honorary police and community support officers. It was advised that the honorary police would be considered an authorised officer under the draft Regulations, but the community support officers would not, as an authorised officer had to be trained in, and legally able to use, reasonable force.
8. Regulation 6 introduces powers to direct or remove persons to a place suitable for screening or assessment. Under the draft Regulation, an authorised officer will have the power to direct a person to a place which is suitable for testing. The Panel was advised that this could include going back to their home address, or even remaining in the place they are in, if considered suitable for such purposes. It was also advised that the place may vary depending on the screening or assessment taking place. For instance, we were informed that this could vary from asking a person for some details (i.e. name, address, travel history), taking a person’s temperature, or taking a biological sample. It would not be appropriate, for example, to take a biological sample in the street, hence the interpretation of a suitable place is very broad.
9. Under Regulation 7, an authorised officer may require a person to remain at the place for screening or assessment purposes for a period not exceeding 48 hours and require a person to be screened or assessed. An enforcement officer could, for instance, tell a member of the Public to go home and stay there for 48 hours in order to allow time for a health officer to assess the person. If they leave that property, they would have committed an offence and could be fined. In addition, there is also a power for an enforcement officer to keep a person for up to 24 hours if they do not comply. The Panel was advised that, whilst there was an assumption that most people would comply with the draft Regulations, there may be some people who did not, so powers were needed to detain those people.
10. Regulation 8 provides a range of powers to be used depending on the post-screening outcome – i.e. whether the test was positive for Covid-19, the screening was inconclusive, or the test results were not yet available. It was advised that the Regulation allows for an authorised person to impose a requirement or restriction. A requirement, for instance, may include requesting more information, further screening or to remain at a specified place. The officer can require a person to remain at a property for up to 14 days and the Panel was advised that this could be extended for another 14 days, if deemed

necessary, but would have to be reviewed every 24 hours. The Panel was advised that imposing a restriction could mean on the person's travel, their activities, and on essential workers going to work. The Panel queried whether the draft Regulations recognised and allowed for the delay in test results coming back to Jersey from the UK. It was advised that Regulation 8 deals with that instance by requiring a person to be detained for up to 14 days, if a health officer has reasonable grounds to suspect that the person has been infected with Covid-19 and therefore presents a risk to the Public.

11. The Panel was advised that the powers contained within the draft Regulations apply to everyone in Jersey (unless they are exempt by Order), including children. Children can be required to be tested under the draft Regulations, and it would be the parent's responsibility (or, another adult who is responsible for the child, including where the child is a looked-after child) to ensure that their child complies with the requirement. It was noted that if the parent does not take reasonable actions they would be committing an offence. However, it was also noted that if the child refused to comply and it was found that the parent had taken reasonable action, then an offence by the parent would not have been committed.
12. The Panel raised a question about the powers that would be exercised under these Regulations and the issue of a person's mental health. It was advised that throughout the draft Regulations, all offences were caveated with "reasonable excuse" and, therefore, if a person did not comply because they did not have the capacity to comply, that would be considered a reasonable excuse. It was also advised that whilst the Regulations require a person to submit to a requirement (for example, to be tested), they do not allow a health officer to force a person to submit. If they did not comply and did not have a reasonable excuse, then they would face a penalty. The Panel raised further questions regarding a person's capacity and seeking consent for a screening or assessment. It was advised that seeking consent under the draft Regulations would be the same as any other medical examinations in a person's life; if someone has no capacity, then the decision would lay with their lasting power of attorney or equivalent. It was also noted that extensive legislation already exists that addresses the issue of capacity and would still apply to the Regulations introduced under the Law.
13. Regulation 11 creates a right to a review by the Minister if a requirement is imposed on a person, in order to test whether they are reasonable and proportionate measures. The Panel was advised that the Minister is currently looking at practical ways of how such a review would be carried out, and consideration was being given to forming a 'review panel' to assist the Minister in making such a decision. The Panel queried whether guidance on how a review by the Minister may be exercised would be available before the debate on the draft Regulations. The Minister confirmed that, due to other time pressures, it was unlikely that the guidance would be available to present to States Members before the debate.
14. The Panel noted that the draft Regulations, if enacted, would expire on 30th September 2020, just after the States were due to reconvene after the summer recess. It was advised that if, by September, Jersey was still in the throes of the Covid-19 pandemic, there would be an option to bring new Regulations which carried the same powers as under these draft Regulations.

15. As a final comment, the Minister wanted to reassure the Panel that his intention was not to impose dictatorial laws or initiate a police state. An Order to stay in a place can only be made on public health grounds and to deal with an emergency. It was further advised that the powers under the draft Regulations would only be used to protect the health of the Public and not to deal with policing matters in general.
16. The Panel has reviewed the draft Regulations, albeit briefly given the current circumstances, and understands the rationale for their introduction at this stage. The Panel supports the enactment of the draft Regulations in the context of the current pandemic and would recommend that Members support the Proposition.