

# STATES OF JERSEY



Jersey

## **DRAFT COVID-19 (CONSTRUCTION WORK) (JERSEY) REGULATIONS 202-**

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

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**STATES GREFFE**



## REPORT

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These draft Regulations would be made under the [Covid-19 \(Enabling Provisions\) \(Jersey\) Law 2020](#). They would make it an offence, punishable by a fine, to undertake restricted construction work. Restricted construction work being work that is undertaken in contravention of a restriction Order.

The intention is to limit transmission of Covid-19 by limiting some forms of construction.

The Minister for Health and Social Services may only make a restriction Order if advised by the Medical Officer of Health that the risk to public health from Covid-19 is such that it is necessary and proportionate to do so. The Minister must consult with the Minister for Economic Development, Tourism, Sport and Culture, who has oversight of the construction industry, before doing so.

The Order may end either on the same day as a restricted movement Order made under Regulation 5 of the [Covid-19 \(Screening, Assessment and Isolation\) \(Jersey\) Regulations 2020 \(as amended\)](#) (i.e. the 'stay at home' order), or it may specify an end date which is no more than 14 days after it was made (with a new Order being made as required). The time limits placed on the Orders are an essential safeguard to ensure proportionality and necessity.

The Order cannot apply to construction work undertaken by individuals at home (i.e. DIY), or to work undertaken by a single contractor in an unoccupied site, because these activities do not present a Covid-19 risk.

Regulation 3 sets out the types of construction work that the Order may apply to. This could include all types of construction or some types of construction, except for where certain conditions are met. Conditions could include, for example –

- the work complies with Medical Officer of Health or Ministerial guidance
- the work is authorised under permit scheme
- the work is undertaken by certain classes of people or for certain classes of people (for example, commercial clients or only domestic clients)
- the work is of a certain size (for example, a major construction project or a construction site with no more than two contractors)
- the work can only be undertaken if people on site can maintain a certain distance from each other (i.e. adhere to the 2-metre social distancing guidelines).

Importantly, Regulation 3(6) provides that the Order, as set out in Article 11(4) of the [Interpretation \(Jersey\) Law 1954](#), is not limited to any particular types of construction or particular conditions, which allows for precise targeting of those sites that either do, or do not, present a high risk of Covid transmission. This targeting can be dialled up or down as required.

Whilst the Regulations provide for the permit scheme to operate as part of the Order, the Regulations do not provide for fees or charges to be associated with any such scheme. This is because contractors / clients would be applying for permission to undertake an activity which has been 'stopped' by the Government of Jersey and for which, in many cases, they will already have paid associated planning and/or building control fees.

The Regulations provide that it is an offence to undertake restricted construction work, to allow another person to undertake restricted construction work, or to fail to take reasonable steps to prevent another person from doing so.

The offence carries an unlimited fine, but that fine only applies to commercial clients or contractors, it does not apply to householders. In the event that restricted construction takes place in a person's home, it will be the contractor who is fined.

The rationale for an unlimited fine is that defined levels of fine applicable in Jersey cannot exceed £10,000, which may not be sufficient to constitute a deterrent for some large-scale high-cost construction projects.

It is also an offence, liable to a fine and/or up to 2 years in prison, to knowingly give false or misleading information in connection with an application for a permit.

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

### **Financial and manpower implications**

There are no financial or manpower implications for the States arising from the adoption of these draft Regulations.

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## EXPLANATORY NOTE

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These Regulations would, if passed, enable the Minister for Health and Social Services (the “Minister”), in certain circumstances, to impose temporary prohibitions or restrictions on construction work.

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

*Regulation 1* contains interpretation provisions. The Health and Safety (Management in Construction) (Jersey) Regulations 2016 (the “Health and Safety Regulations”) regulate health and safety on construction sites, and several expressions used in those Regulations are given the same meaning in these.

*Regulation 2* provides that the Regulations apply only to “relevant construction work”, which is work that is undertaken during a restriction period and is not excluded. The excluded categories are owner-builders of dwellings (who are excluded from the Health and Safety Regulations) and work where only one person is on the site. That means that the Order cannot cover these excluded categories (or work done outside of a restriction period), but the Order can also provide for further excluded categories (see notes on Regulation 3 below).

*Regulation 3* enables the Minister to make an Order (a “restriction Order”) prohibiting or restricting some or all kinds of construction work covered by the Regulations. The Minister can only make the Order if satisfied that, in relation to construction work, the risk to public health caused by Covid-19 has reached a level at which it is proportionate and necessary to do so, and must consult the Medical Officer of Health for that purpose. The Minister must also, before making the Order, consult the Minister for Economic Development, Tourism, Sport and Culture.

The restriction Order must specify the period (the “restriction period”) during which the prohibitions or restrictions apply. It can do so by reference to a period of restricted movement declared by an Order under Regulation 5 of the Covid-19 (Screening, Assessment and Isolation) (Jersey) Regulations 2020, as that period may be extended by amendments to that Order. (The Covid-19 (Restricted Movement) (Jersey) Order 2020 is currently in force and its period is due to end at 8 a.m. on Monday 27th April 2020.) Alternatively, the restriction Order can set a special period for these Regulations, lasting a maximum of 14 days, but extendable for a further 14 days at a time.

Under Article 11(4) of the Interpretation (Jersey) Law 1954, the restriction Order can cover all cases, or provide for exceptions or conditions, or apply to just some types of case, and it make different provision for different types of case or purpose. Regulation 3 does not limit that, but gives a non-exhaustive list of provisions that can be made in the restriction Order. That includes setting up a permit scheme (but without allowing a fee to be charged for permits), and setting criteria by reference to concepts in the Health and Safety Regulations or to guidance published, and amended, by the Medical Officer of Health or others, particularly on social distancing.

*Regulation 4* makes it an offence for a person to undertake construction work, during a restriction period, in contravention of a restriction Order or of conditions in or under that Order (including a condition that another person must obtain a permit). The offence carries an unlimited fine (as do all the other offences in the Regulations, but see note below on the offence in Regulation 6).

*Regulation 5* makes it an offence to allow another person to undertake restricted construction work, or to fail to take reasonable steps to prevent that. The offence can only be committed by a person (including a company or other body) who is not the one undertaking the work, but is the commercial client or contractor (as those are defined in the Health and Safety Regulations). The offence does not apply to any other person, so it excludes a domestic client (as defined in the Health and Safety Regulations). Relevant guidance must be taken into account in assessing whether a step is reasonable.

*Regulation 6* creates an offence of providing false or misleading information in connection with a permit application, which carries an unlimited fine or imprisonment for up to 2 years (or both).

*Regulation 7* makes the usual provision for liability of directors and others where offences are committed by companies, other corporate bodies and certain types of partnerships.

*Regulation 8* gives the citation for these Regulations and provides that they come into force on the day after they are made and expire on 30th September 2020.



Jersey

## **DRAFT COVID-19 (CONSTRUCTION WORK) (JERSEY) REGULATIONS 202-**

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Jersey

## **DRAFT COVID-19 (CONSTRUCTION WORK) (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> –

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### **1 Interpretation**

- (1) In these Regulations –
- “Health and Safety Regulations” means the Health and Safety (Management in Construction) (Jersey) Regulations 2016<sup>2</sup>;
  - “Medical Officer of Health” means a person appointed as such under Article 10 of the Loi (1934) sur la Santé Publique<sup>3</sup>;
  - “Minister” means the Minister for Health and Social Services;
  - “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;
  - “restriction Order” means an Order under Regulation 3;
  - “restriction period” means a period specified under Regulation 3(4);
  - “specified” means specified in a restriction Order.
- (2) In these Regulations the following expressions have the same meaning as in the Health and Safety Regulations –
- (a) “commercial client” and “domestic client”;
  - (b) “construction project”, “major construction project” and “minor construction project”;
  - (c) “construction site”;
  - (d) “construction work”;
  - (e) “contractor” and “relevant contractor”;
  - (f) “in the course or furtherance of a business”.

## 2 Application of Regulations

- (1) These Regulations apply to construction work (“relevant construction work”) if –
  - (a) it is undertaken during a restriction period; and
  - (b) it does not fall within either or both of paragraphs (2) and (3).
- (2) Construction work falls within this paragraph if, by virtue of Regulation 6 of the Health and Safety Regulations, those Regulations do not apply to it.
- (3) Construction work falls within this paragraph if it is undertaken by a single individual at a construction site at which no other person is present.

## 3 Order to restrict construction work

- (1) This Regulation applies if the Minister, after consulting the Medical Officer of Health, is satisfied that, in relation to construction work, the risk to public health caused by Covid-19 has reached a level at which it is proportionate and necessary to make a restriction Order.
- (2) The Minister must, before making a restriction Order, consult the Minister for Economic Development, Tourism, Sport and Culture.
- (3) The Minister may, by Order, prohibit or restrict relevant construction work.
- (4) The Order must specify a restriction period by declaring that it starts on a specified date, being no sooner than the coming into force of the Order, and ends –
  - (a) at the end of a period of restricted movement under a specified Order under Regulation 5 of the Covid-19 (Screening, Assessment and Isolation) (Jersey) Regulations 2020<sup>4</sup>, as that Order may be amended from time to time; or
  - (b) at the end of a specified day, being no later than 14 days after the start of the period.
- (5) Despite Article 17 of the Interpretation (Jersey) Law 1954<sup>5</sup>, a provision specifying the end of a period under paragraph (4)(b) may not be amended other than –
  - (a) to declare an earlier end; or
  - (b) to declare a later end, being no later than 14 days after the commencement of each Order making such an amendment.
- (6) Paragraphs (7) to (10) do not limit the application of Article 11(4) of the Interpretation (Jersey) Law 1954 to the power conferred by paragraph (3).
- (7) A restriction Order may include provision to –
  - (a) prohibit all relevant construction work;
  - (b) prohibit all relevant construction work other than –
    - (i) specified work or a specified class of work,
    - (ii) work complying with guidance published by the Minister, the Medical Officer of Health or any other specified person appearing appropriate to the Minister for the purpose,
    - (iii) work complying with any other specified condition; or

- (c) prohibit only specified relevant construction work or only a specified class of relevant construction work.
- (8) Work, or a class of work, may be specified for the purpose of paragraph (7)(b)(i) or 7(c) by reference to –
- (a) the person undertaking the work, including whether that person is a contractor, a principal contractor, a relevant contractor or any other person;
  - (b) the person for whom the work is undertaken, including whether that person is a commercial client, a domestic client or any other person;
  - (c) the nature or location of the work, including whether it is undertaken in the course or furtherance of a business, is undertaken at a person’s residence, or otherwise;
  - (d) any construction project to which the work relates, including whether it relates to a major construction project, a minor construction project or any other project;
  - (e) the purpose of the work, including whether the purpose is related to dealing with the outbreak of Covid-19, or to any other interest of Jersey, or to any other matter;
  - (f) a criterion published by the Medical Officer of Health, as that criterion may be from time to time; or
  - (g) any other criterion appearing relevant to the Minister.
- (9) A restriction Order may include provision –
- (a) imposing a condition on the undertaking of the work;
  - (b) requiring a person, having a specified connection to the undertaking of the work, to obtain a permit from the Minister for that work;
  - (c) empowering the Minister to attach a condition to such a permit, or to attach conditions to a class of permit by published notice; or
  - (d) empowering the Minister to cancel such a permit.
- (10) A condition imposed under paragraph (9) may include –
- (a) a requirement as to the space between persons undertaking the work, including as to whether each such person is reasonably able to maintain a specified distance between himself or herself and any other person on the construction site;
  - (b) a requirement to have regard to any relevant guidance issued, before or after the commencement of these Regulations, by the Minister or by the Medical Officer of Health;
  - (c) a requirement to display a permit or other notice; or
  - (d) any other requirement appearing appropriate to the Minister.

#### **4 Offence of undertaking restricted construction work**

- (1) A person commits an offence, and is liable to a fine, if the person undertakes restricted construction work.
- (2) Construction work is “restricted construction work” if –
- (a) it is relevant construction work; and

- (b) it is undertaken in contravention of a restriction Order, or of a condition imposed by or under a restriction Order.
- (3) For the purpose of paragraph (2)(b) a requirement for any person (whether or not the person undertaking the work) to obtain a permit under Regulation 3(9)(b) for the work is to be treated as a condition imposed by or under the restriction Order.

## **5 Offence of allowing restricted construction work or failing to take reasonable steps to prevent it**

- (1) A responsible person commits an offence, and is liable to a fine, if the person –
  - (a) allows another person to undertake restricted construction work; or
  - (b) fails to take reasonable steps to prevent another person from undertaking restricted construction work.
- (2) A person is a “responsible person” if the person is, in relation to the construction work or to the construction project to which the construction work relates –
  - (a) a commercial client; or
  - (b) a relevant contractor.
- (3) In this Regulation “restricted construction work” has the same meaning as in Regulation 4.
- (4) A person assessing the question of whether a step is reasonable, for the purpose of paragraph (1)(b), must have regard to any guidance that –
  - (a) is or was issued, before or after the commencement of these Regulations, by the Minister or by the Medical Officer of Health; and
  - (b) is relevant to the question.

## **6 Offence of giving false or misleading information**

A person commits an offence, and is liable to imprisonment for a term of 2 years and to a fine, if the person knowingly gives false or misleading information in connection with an application for a permit under a restriction Order.

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

- (1) In this Regulation –
  - “relevant offence” means an offence under these Regulations that is committed by a limited liability partnership, a separate limited partnership, an incorporated limited partnership or another body corporate;
  - “relevant person” means –
    - (a) if the relevant offence is committed by a limited liability partnership, a partner of the partnership;
    - (b) if the relevant offence is committed by a separate limited partnership or an incorporated limited partnership –

- (i) a general partner, or
    - (ii) a limited partner who is participating in the management of the partnership;
  - (c) if the relevant offence is committed by a body corporate other than an incorporated limited partnership –
    - (i) a director, manager, secretary or other similar officer of the body corporate, and
    - (ii) if the affairs of the body corporate are managed by its members, a member who is acting in connection with the member's functions of management; and
  - (d) a person purporting to act in any capacity described in subparagraphs (a) to (c) in relation to the partnership or body that commits the relevant offence.
- (2) If a relevant offence is proved to have been committed with the consent or connivance of a relevant person, that relevant person is also guilty of the offence and liable in the same manner as the partnership or body corporate to the penalty provided for that offence.
  - (3) Paragraph (4) applies if a relevant offence –
    - (a) is an offence that may be committed by neglect; and
    - (b) is proved to be attributable to any neglect on the part of a relevant person.
  - (4) The relevant person is also guilty of the offence and liable in the same manner as the partnership or body corporate to the penalty provided for that offence.

## **8 Citation, commencement and expiry**

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

**ENDNOTES**

**Table of Endnote References**

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<i>1</i>	<i>L.2/2020</i>
<i>2</i>	<i>chapter 05.300.61</i>
<i>3</i>	<i>chapter 20.875</i>
<i>4</i>	<i>R&amp;O.33/2020</i>
<i>5</i>	<i>chapter 15.360</i>