

STATES OF JERSEY



Jersey

DRAFT COVID-19 (SAFE DISTANCING) (JERSEY) REGULATIONS 202-

**Lodged au Greffe on 20th May 2020
by the Minister for Health and Social Services**

STATES GREFFE

REPORT

These draft Regulations are intended to help control the transmission of coronavirus by requiring that people remain 2 metres away from other people who are not in their household, unless they are in a home, garden or workplace. The decision to proceed with that specific restriction follows advice from the Medical Officer of Health.

These draft Regulations are intended to replace the Restricted Movement Orders made under Regulation 5 of the [Covid-19 \(Screening, Assessment and Isolation\) \(Jersey\) Regulations 2020](#) with a less restrictive regime. They will not that require that people limit their time away from home to any given duration or require that people are away from home for any particular reason.

The requirement to remain physically distant from others will be enforced by means of an offence of wilfully failing to comply with the direction of a police officer to cease to gather at less than 2 metres with someone who is from another household. The penalty is a fine of up to £1,000 (level 2 on the standard penalty scale).

‘Wilfully failing’ means refusing to do so when it is reasonably possible, which rules out any circumstances in which a person cannot comply, because of their physical capacity, their surroundings etc. ‘Gather’ has been chosen to underpin the offence as its natural meaning means that an exhaustive list of exemptions is not required to allow people within 2 metres of each other in passing, by accident, momentarily, etc. The requirement for a direction to be issued by a police officer to trigger the offence is intended to ensure that people cannot be criminalised for any breaches without warning.

‘Household’ takes its meaning from the [Residential Tenancy \(Jersey\) Law 2011](#) and treats groups of people who share facilities (e.g. kitchens, bathrooms etc.) as a single household. This decision is based on advice about coronavirus transmission between people sharing such facilities.

There are exemptions to the offence which mean that people from different households will not commit an offence if they come within 2 metres of each other to meet their legal obligations, in an emergency or to provide medical attention. If necessary, the Minister for Health and Social Services can create new exemptions by Order but cannot remove existing exemptions.

Children are subject to the requirements to follow physical distancing, but the draft Regulations recognise that it is not always reasonable to give them a direction where they are under the oversight of an adult. To accommodate that, Regulation 3 provides that a person in charge of a child commits an offence if they wilfully fail to comply with the direction of a police officer to take reasonably practicable steps to stop the child breaching safe distancing. This maintains the safeguard of requiring a direction to be issued before an offence is committed.

This does not mean that the offences cannot apply to children. For example, if a child is not under the supervision of an adult, or wilfully fails to stop breaching safe distancing and is old enough to receive and understand a direction, then they are committing an offence. This is intended to manage the situation where under 18-year olds gather together in breach of the restrictions but without adults supervising.

The Minister will be required to keep the operation of the Regulations under review, and the Medical Officer of Health will provide a report on the Covid-19 situation at least once a fortnight, which the Minister must lay before the Assembly. This will provide the Assembly with a series of updates on the developing situation to establish the continuing need for the restrictions. As such it is an improvement over the renewal

arrangements in the Covid-19 (Screening, Assessment and Isolation) (Jersey) Regulations 2020, which require a time-consuming series 14-day extending Orders, but no dedicated reporting to the Assembly.

If the Medical Officer of Health reports that the criminal offences in these draft Regulations are no longer a necessary and proportionate response, the Minister will be required (this is not optional) to make an Order suspending the effect of the offence provision, or to propose an amendment to Regulations 2 and/or 3, or to entirely repeal the Regulations.

If approved, these Regulations will come into force when the [Covid-19 \(Restricted Movement\) \(Jersey\) Order 2020](#) expires.

In line with the suite of Covid-19 emergency legislation, the Regulations expire on 30th September 2020 unless actively renewed by the Assembly. In addition, the Minister can make an Order suspending the offences at any time.

Financial and manpower statement

This legislation will require a degree of enforcement by the Honorary Police and States of Jersey Police. However, this is a necessary step in moving away from the current high level of control over individual activity, which itself requires resources to enforce.

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

EXPLANATORY NOTE

These Regulations, if passed, will create an offence of wilfully failing to comply with the direction of a police officer to cease to gather at less than 2 metres with someone who is from another household.

Regulation 1 contains defined terms. In particular, “home” is defined as a residential unit in which a person resides, and it includes an associated garden or other area. Residential unit is in turn defined in the Residential Tenancy (Jersey) Law 2011. One person is treated as being from another household from another person if they do not reside in the same home.

Regulation 2 sets out what amounts to breaching “safe distancing”, which is to gather at less than 2 metres with another person (or persons) who is from another household (or households), when no exception applies. It is an offence if a person does so, and then wilfully fails to comply with the direction of a police officer to cease to do so. The offence carries a maximum penalty of up to level 2 on the standard scale (which is currently £1,000). The exceptions are as follows. There is an exception for when the persons gather in a home (including another person’s home). There is an exception for workplaces (including construction sites), where other legislation can provide for safe distancing. There are exceptions for when the person is required to breach safe distancing by a legal obligation, or in an emergency (to avoid a risk of harm to a person or of substantial damage to property) or to provide medical attention. The Minister for Health and Social Services (the “Minister”) is given power, by making an Order after consulting the Medical Officer of Health, to add further exceptions. As exceptions to an offence in these Regulations, these provisions do not limit any existing powers of police or health officers, or limit the restrictions that may be imposed under other legislation in relation to workplaces or construction sites, or to screening, assessment or isolation for Covid-19.

Regulation 3 makes it an offence if an individual, who has responsibility for a child, wilfully fails to comply with the direction of a police officer to take reasonably practicable steps to secure that the child ceases to breach safe distancing (subject to the same exceptions, so not in a home or a workplace such as a school or nursery). There is the same maximum penalty as for the social distancing offence itself under Regulation 2.

Regulation 4 requires the Minister to keep the operation of the Regulations under review, and requires the Medical Officer of Health to provide reports at least once a fortnight, which the Minister must lay before the Assembly. Each report must cover whether there has been change (a decrease, increase or other difference) in the risk of the spread of Covid-19 since the last report, and the foreseeable likelihood of any change to that risk in the next 14 days. If there is a change, the report must also state whether it leads the Medical Officer of Health to recommend that the Minister should consider taking any action under this Regulation. The Minister must respond to any recommendation, and lay a copy of the response before the Assembly (along with the report).

If, as a result of the duty to keep the Regulations under review (and after consulting the Medical Officer of Health) or as a result of considering a report, the Minister is satisfied that the criminal offences in these Regulations are no longer necessary and proportionate for reducing the foreseeable risk of the spread of Covid-19, the Minister must make an Order (see Regulation 5 below) suspending the effect of the offence

provision, or bring a proposition to the Assembly to amend either or both of Regulations 2 and 3, or to repeal these Regulations in their entirety.

Regulation 5 provides the short title of the Regulations. It also brings the Regulations into force at the end of the period of restricted movement under the Covid-19 (Restricted Movement) (Jersey) Order 2020. The Regulations expire on 30th September 2020. The Minister can make an Order suspending the effect of the offence provisions until the Regulations expire, until the Order is revoked, or for a period specified in the Order or determined in any other way (but in any case no later than 30th September 2020). No act that takes place after the expiry, or during any suspension, will be an offence under these Regulations.



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DRAFT COVID-19 (SAFE DISTANCING) (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 2020¹ –

1 Interpretation

- (1) In these Regulations –
 - “home” means a residential unit, within the meaning of the Residential Tenancy (Jersey) Law 2011², in which a person resides, and includes any associated garden, yard or other outdoor space to which the public do not have access without permission;
 - “household” means one or more persons who reside in the same home, and a person is from another household in relation to another person if they do not both reside in the same home;
 - “Medical Officer of Health” means a person appointed as such under Article 10 of the Loi (1934) sur la Santé Publique³;
 - “Minister” means the Minister for Health and Social Services.
- (2) Nothing in these Regulations is to be read as limiting the power to make an Order under Regulation 5 of the Covid-19 (Screening, Assessment and Isolation) (Jersey) Regulations 2020⁴.

2 Safe distancing

- (1) For the purpose of this Regulation a person breaches safe distancing if the person gathers at less than 2 metres with one or more other persons who are from one or more other households, when no exception in or under paragraph (3) applies.
- (2) A person commits an offence, and is liable to a fine of level 2 on the standard scale, if the person –
 - (a) breaches safe distancing;
 - (b) is directed by a police officer to cease to breach safe distancing; and
 - (c) wilfully fails to comply with that direction within a reasonable time.
- (3) The exceptions are –

- (a) if the person is in –
 - (i) that person’s home or another person’s home,
 - (ii) a workplace, within meaning of the Covid-19 (Workplace Restrictions) (Jersey) Regulations 2020⁵, or
 - (iii) a construction site, within the meaning of the Covid-19 (Construction Work) (Jersey) Regulations 2020⁶;
 - (b) if the person is required to breach safe distancing to fulfil a legal obligation;
 - (c) if the persons who gather do so –
 - (i) to enable the provision of medical attention, or
 - (ii) in an emergency, to avoid a risk of harm to any person or of substantial damage to any property, when that emergency requires those persons to breach safe distancing;
 - (d) any other exception provided for by Order by the Minister after consulting the Medical Officer of Health.
- (4) An Order under paragraph (3)(d) may include consequential amendments to Regulation 1(1).
- (5) This Regulation is subject to any Order made under Regulation 5(4).

3 Responsibility for children

- (1) An individual commits an offence, and is liable to a fine of level 2 on the standard scale, if the individual –
- (a) has responsibility for a child who breaches safe distancing;
 - (b) is directed by a police officer to take reasonably practicable steps to secure that the child ceases to breach safe distancing; and
 - (c) wilfully fails to comply with that direction within a reasonable time.
- (2) For the purpose of paragraph (1) –
- (a) “child” means a person under the age of 18;
 - (b) an individual has responsibility for a child if –
 - (i) the individual has custody or charge of the child for the time being, or
 - (ii) the individual has parental responsibility, within the meaning of the Children (Jersey) Law 2002⁷, for the child; and
 - (c) safe distancing has the meaning given by Regulation 2(1).
- (3) This Regulation is subject to any Order made under Regulation 5(4).

4 Review, reporting, amendment and repeal

- (1) The Minister must keep the operation of these Regulations under review.
- (2) The Medical Officer of Health must report to the Minister, at intervals of no more than 14 days, on –
- (a) whether, since the last report, there is any change (by way of decrease, increase or otherwise) in the risk of the spread of Covid-19 in Jersey;

- (b) whether there is a foreseeable likelihood of any such change to that risk in the next 14 days; and
 - (c) whether any such change or likelihood leads the Medical Officer of Health to recommend that the Minister should consider taking any action under paragraph (5).
- (3) The Minister must, within a reasonable period after receiving a report under paragraph (2) –
 - (a) if the report contains a recommendation to consider action under paragraph (5), prepare a statement of the Minister’s response to that recommendation; and
 - (b) lay the report, and the statement (if any), before the Assembly.
- (4) The condition for the purpose of paragraph (5) is that the Minister is satisfied, after considering a report under paragraph (2) or otherwise after consulting the Medical Officer of Health, that it is no longer necessary and proportionate for the purpose of reducing the foreseeable risk of the spread of Covid-19 in Jersey for persons to be subject to criminal sanction for failure to comply with the requirements of Regulation 2 or 3.
- (5) If the condition in paragraph (4) is met, the Minister must –
 - (a) make an Order under Regulation 5(4) in relation to Regulations 2(2) and 3(1); or
 - (b) bring a proposition to the Assembly to amend either or both of Regulations 2 and 3, or to repeal these Regulations in their entirety.

5 Citation, duration and suspension

- (1) These Regulations may be cited as the Covid-19 (Safe Distancing) (Jersey) Regulations 202-.
- (2) These Regulations come into force immediately after the end of the period of restricted movement under the Covid-19 (Restricted Movement) (Jersey) Order 2020⁸.
- (3) These Regulations expire on 30th September 2020.
- (4) The Minister may, by Order, suspend the effect of Regulations 2(2) and 3(1) –
 - (a) permanently, until these 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.
- (5) Nothing in an Order under paragraph (4) is to be treated as derogating from paragraph (3).

ENDNOTES

Table of Endnote References

1	<i>L.2/2020</i>
2	<i>chapter 18.720</i>
3	<i>chapter 20.875</i>
4	<i>R&O.33/2020</i>
5	<i>R&O.65/2020</i>
6	<i>R&O.49/2020</i>
7	<i>chapter 12.200</i>
8	<i>R&O.34/2020</i>