STATES OF JERSEY

DRAFT COVID-19 (CONTROL OF TESTING) (JERSEY) REGULATIONS 202- (P.87/2020): COMMENTS

Presented to the States on 9th July 2020
by the Health and Social Security Scrutiny Panel

STATES GREFFE

COMMENTS

1. P.87/2020 Draft Covid-19 (Control of Testing) (Jersey) Regulations 202- ('P.87') was lodged by the Minister for Health and Social Services on 2nd July 2020, in light of the ongoing Covid-19 pandemic.

2. The Panel would like to thank the Health and Community Services Department for sharing the draft Regulations with it prior to formal lodging. It would also like to thank Departmental Officers from the Strategic Policy, Planning and Performance Department and Law Officers' Department for briefing the Panel on the draft Regulations on 25th June. At the time of the briefing, the Panel noted that the draft Regulations were yet to be finalised and that it was possible that they could be altered prior to lodging. The Panel received a final draft on 1st July and they were formally lodged au Greffe on 2nd July 2020. Whilst the Panel notes that a number of amendments were made to the draft Regulations following the briefing it received on 25th June, the changes were all incremental improvements and did not reflect any material alteration in the underlying policy.

3. As outlined in the report accompanying P.87/2020, if adopted, the draft Regulations would enable the regulation (oversight, inspection and sanction) of testing kits and services used and provided by private providers in Jersey. The Panel notes that the draft Regulations were created in order to address the proposals contained within P.62/2020 – 'Regulation of Covid-19 testing undertaken by private entities' – which was lodged by Deputy K.F. Morel of St. Lawrence on 17th May and subsequently approved (as amended) by the States Assembly on 16th June 2020.

4. At the briefing, the Panel was given an overview of the technical aspects of the draft Regulations, which included the implications for the Consumer Safety (Jersey) Law 2006, (the "Consumer Safety Law") the right to inspection of testing providers, the power of entry granted to health officers and the obligation to report positive cases 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.

5. The Panel noted that Regulation 13 of the draft Regulations introduces a requirement for the regulated testing service provider to immediately notify the Medical Officer of Health ("MOH") if a person's test results either indicate that they are infected or contaminated with Covid-19 or give the service provider reasonable cause to suspect that the person is infected or contaminated with Covid-19. The Panel asked for more information about the requirement under Regulation 13 to notify the MOH of a suspected case of Covid-19. It was advised that, under Article 23 of the Loi (1934) sur la Santé Publique ('the Public Health Law'), when an individual who has a disease liable to spread by contagion or otherwise, such as Covid-19, has not been examined by a doctor, those who care or nurse for this person are required to notify the MOH. The Panel notes that Regulation 13 of the draft Regulations, imposes a requirement on providers of testing services to notify the MOH of suspected Covid-19 cases, and Regulation 14 requires the MOH to publish guidance to assist service providers and others required to make a notification under the

Public Health Law as to determining grounds for a reasonable suspicion of Covid-19 infection or contamination. The Panel wished to know how Regulation 13 would operate alongside the data protection of individuals suspected to be infected with Covid-19 and referred to the MOH. It was advised that Regulation 13 imposed a statutory requirement to notify the MOH of suspected cases of Covid-19. Therefore, the statutory provisions permit data sharing of suspected cases of Covid-19, as required under the law.

6. The Panel notes that Regulation 14 of the draft Regulations introduces a requirement for the MOH to issue guidance to assist a person responsible for providing a testing service, or a person's carer, in determining whether the person is displaying symptoms that suggest they are infected with Covid-19. The guidance will also assist those providing a testing service to determine whether or not a person's test results give reasonable suspicion that they are infected with the virus. The Panel notes the current Deputy Medical Officer of Health's professional expertise in medical microbiology and virology. During the briefing the Panel asked whether the absence of this knowledge (if, for example, the Deputy MOH was to be taken ill) would have an impact on the issuing of the relevant guidance. It was advised that the absence of the Deputy MOH would not affect the operation of the draft Regulations as there are other expertise with similar medical backgrounds on the Island that could be drawn upon if required. It was also advised that, if deemed necessary, the MOH is permitted to recommend the adoption of Regulations from other jurisdictions such as Public Health England.

7. The Panel queried whether the guidance, that the MOH was required to issue, would be available for the Panel, and the States Assembly as a whole to review before the debate on the draft Regulations. We were told that the Public Health Team was currently working with the MOH on the guidance necessary to underpin the regulatory regime and that the intention was to share the guidance with States Members prior to the debate.

8. The Panel notes that Regulation 15 of the draft Regulations proposes an amendment to Article 2 (the meaning of consumer goods) of the Consumer Safety (Jersey) Law 2006. During the briefing, the Panel was advised that the purpose of the amendment is to broaden the definition of 'consumer goods' in order to ensure Covid-19 testing kits are captured under the Consumer Safety Law. The Panel queried the reasons why the Consumer Safety Law could not be applied, in the absence of the proposed amendment, to Covid-19 testing kits. It was advised that the current definition of 'consumer goods' did not allow for goods that are administered by a third party to another individual and not used or consumed by that individual himself or herself. We were also advised that the draft Regulations would govern the application of a physical test by authorised staff at an established Covid-19 testing centre, where the test would be retained and subsequently discarded.

9. The Panel asked how the draft Regulations compared to, and were benchmarked against, measures implemented in other jurisdictions. It was advised that, to date, as far as officers were aware the majority of testing sites in the UK are operated by the UK Government and all of their test procedures therefore align with UK Government guidance. We were also advised that private testing sites in the UK have been commissioned by the UK Government at the outset of the

outbreak. The Panel notes that mail order testing kits are available in the UK from private contractors and that the testing kits meet EU product standards and are processed in authorised laboratories. It was further noted that the standard of Covid-19 testing kits are accounted for by UK consumer safety laws with the power to deem what is safe.

10. The Panel was reassured that the Jersey Care Commission (the "Commission") had been consulted during the development of the draft Regulations and were given the opportunity to ask questions and comment on the drafting instructions. It was advised that early discussions had taken place with the Commission about the possibility of taking on the responsibility for the regulatory activity. However, we were further advised that due to the tight timeframe required for the introduction of the draft Regulations, it was not possible for the Commission to be up and running in time to provide this service. It was noted that the Commission is one of the authorities that would receive reports on the operation of Covid-19 testing and that the Commission had regulatory scope to intervene under the Regulation of Care (Jersey) Law 2014.

11. The Panel notes that the draft Regulations, if enacted, would come into force on the day after they are made. We also note that, unlike the majority of Regulations that have been brought forward in response to Covid-19, the draft Regulations do not expire on 30th September 2020. Due to the likelihood that Covid-19 testing will remain a feature of the new public health environment beyond the end of September and because P.62/2020 requires a regulatory regime to be in place around the provision of a testing service, an expiry date was not included in the draft Regulations.

12. The Panel supports the adoption of the draft Regulations in the context of the current pandemic and would recommend that Members support the Proposition.