

# STATES OF JERSEY



Jersey

## **DRAFT COVID-19 (ENABLING PROVISIONS) (AMENDMENT) (JERSEY) LAW 202-**

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**Lodged au Greffe on 11th August 2020  
by the Minister for Health and Social Services**

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**STATES GREFFE**





Jersey

## **DRAFT COVID-19 (ENABLING PROVISIONS) (AMENDMENT) (JERSEY) LAW 202-**

### **European Convention on Human Rights**

In accordance with the provisions of Article 16 of the Human Rights (Jersey) Law 2000, the Minister for Health and Social Services has made the following statement –

In the view of the Minister for Health and Social Services, the provisions of the Draft Covid-19 (Enabling Provisions) (Amendment) (Jersey) Law 202- are compatible with the Convention Rights.

Signed: **Deputy R.J. Renouf of St. Ouen**  
*Minister for Health and Social Services*

Dated: 10th August 2020



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## REPORT

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### Overview

The Draft Covid-19 (Enabling Provisions) (Amendment) (Jersey) Law 202- (the “draft Law”) would, if adopted, amend the [Covid-19 \(Enabling Provisions\) \(Jersey\) Law 2020](#) to extend its operation to 31 July 2021.

Jersey is not yet free from the threat of Covid-19. As a community, we need to be able to live safely with the virus until an effective vaccine is successfully deployed. A key part of doing so will be to have a legislative framework that enables decisive action when it is needed but which restricts Islanders’ liberties as little as possible while our situation remains stable.

### Background

On 27th March 2020, the Assembly approved the [Draft Covid-19 \(Enabling Provisions\) \(Jersey\) Law 202-](#), which enabled the Assembly to introduce the emergency legislation required “*to make any provision necessary or expedient as a direct or indirect result of the outbreak of Covid-19 in Jersey or its aftermath*”<sup>1</sup>, to manage the effects and impact of the pandemic in Jersey. For a time-limited period, this allowed the Assembly to make Regulations which have the effect of primary Laws. This arrangement is due to expire on 31st December 2020.

This was considered desirable because, unlike Regulations, before a draft Law can come into force it must receive the approval of the Privy Council and be registered by the Royal Court. This is a standard process during ordinary times which can take anything between a few weeks and a few months. The process does not, however, lend itself to the need to pass critical legislation on an expedited basis to deal with the extraordinary circumstances in which the Island still finds itself. It remains crucial to ensure that the States Assembly has the powers that it needs to be able to pass any legislation required to address additional challenges related to the Covid-19 pandemic, and that this can be implemented quickly.

### Extension

If adopted, the associated proposition to extend the duration of much of the emergency legislation (suspended or active) to 30th April 2021 will take its duration beyond the current period of the special legislative arrangements under the Enabling Law.

If those arrangements were to expire, no new emergency Regulations, and no Order under the existing Regulations, could be made after 31st December 2020. This would have immediate effects on the control of Covid-19 if Orders are still being used to apply controls into 2021, as these could not be renewed. In addition, there would be no scope to modify or add to the emergency legislation.

Most problematically, this would also preclude the existing emergency Regulations from being repealed without recourse to primary law.

In light of this, Council did not consider it appropriate to bring the proposal to extend the emergency legislation to the Assembly without assurance on the position on the Enabling Law. Thus, this draft Law will amend the Enabling Law to extend its operation to 31st July 2021.

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<sup>1</sup> Covid-19 (Enabling Provisions) (Jersey) Law 2020, long title

The date of 31st July 2021 has been chosen as it falls 3 months after the new expiry date for the emergency legislation, which mirrors the current position and should allow whatever arrangements are necessary at that point to be made in good time.

### **The scope (*vires*) of the Enabling Law**

The current *vires* provided by the Enabling Law is more limited in scope than the ongoing situation demands. While it has provided sufficient scope for the Assembly to make the necessary emergency legislation, as noted above it limits the Assembly to “[making] such provision as appears to them to be necessary or expedient as a direct or indirect result ... of the **outbreak** of Covid-19 in Jersey ... of the **aftermath** of that outbreak” (emphasis added).

If Jersey successfully achieves zero on-island cases, or even maintains the current very low number of active cases, it would not seem entirely appropriate to argue that there was an ‘*outbreak*’ of Covid-19 in Jersey indefinitely. Instead, Government could rely on the ‘*aftermath*’ concept, which is widely cast, but this does not explicitly allow for the necessary measures to preclude or limit any future outbreak. There is a risk that without the necessary *vires*, Government will be required to wait for an outbreak and respond rapidly, with the resulting return to emergency arrangements, foreshortened lodging times etc.

It is therefore proposed that the *vires* of the Enabling Law is amended to allow Regulations to be made to prepare for any future outbreak of Covid-19, in addition to dealing with active and past outbreaks. If desirable, it would be possible for such Regulations to be adopted and commenced in a ‘suspended’ form, ready to be ‘revived’ as required, or to require Orders to take effect.

### **The ability to repeal**

As noted above, the most problematic element of the potential expiry of the special legislative arrangements under the Enabling Law is the effect on civil liberties resulting from the inability to easily repeal emergency legislation in the (highly unlikely) event that the Law is allow to expire without those repeals being made first. In such a case the Assembly would need to adopt primary law (requiring Royal Assent) to repeal emergency Regulations, and this could result in unnecessary restrictions remaining in place until a Privy Council session could be arranged.

This is only a technical possibility but there is no reason not to resolve it, and so the draft Law amends the Enabling Law to allow the Regulations made under to be repealed by decision of the Assembly. This would serve to resolve that issue permanently.

For the avoidance of doubt, this would have no effect (permissive nor restrictive) on the capacity of the Assembly to make new emergency legislation.

### **Statement on financial and manpower implications**

No financial or manpower implications arise from the lodging of these Regulations.

### **Human Rights**

The notes on the human rights aspects of the draft Law in the **Appendix** have been prepared by the Law Officers’ Department and are included for the information of States Members. They are not, and should not be taken as, legal advice.

**APPENDIX TO REPORT****Human Rights Notes on the Covid-19 (Enabling Provisions)  
(Amendment) (Jersey) Law 202-**

These Notes have been prepared in respect of the draft Covid-19 (Enabling Provisions) (Amendment) (Jersey) Law 202- (the “**draft Law**”) by the Law Officers’ Department. They summarise the principal human rights issues arising from the contents of the draft Law and explain why, in the Law Officers’ opinion, the draft Law is compatible with the European Convention on Human Rights (“**ECHR**”).

**These notes are included for the information of States Members. They are not, and should not be taken as, legal advice.**

The draft Law if passed will amend the Covid-19 (Enabling Provisions) (Jersey) Law 2020 (the “Enabling Law”).

Article 1 of the draft Law will amend Article 2(1) of the Enabling Law, which provides that Regulations can be made if they appear to the States to be necessary or expedient as a direct or indirect result of the outbreak of Covid-19 in Jersey or of the aftermath of that outbreak. The amendment extends that to cover the need to prepare for the possibility of one or more subsequent Covid-19 outbreaks (and their aftermaths).

Taking this further power will not itself have any effect on ECHR rights, as the rights and obligations of Islanders will only be affected to the extent that this is provided for in Regulations. While the exercise of the power in Article 2(1) of the Enabling Law (as amended by Article 1 of the draft Law) may engage ECHR rights, as might other Regulation making powers, issues of ECHR compatibility can be considered in the usual way, as the Regulations are developed.

It will continue to be the case that, when exercising the Regulation making power under the Enabling Law, the States Assembly will be bound by Article 7(4)(a) of the Human Rights (Jersey) Law 2000 (the “Human Rights Law”), which makes it unlawful for the Assembly to exercise a power to make Regulations in a manner that is incompatible with a Convention right.

It will also continue to be the case that, while the power to make Regulations in Article 2(1) of the Enabling Law (and as amended by the draft Law) includes the power to make provision amending any enactment, this power may not be used to amend, repeal or revoke the Human Rights Law.

Article 2 of the draft Law amends Article 3(3) of the Enabling Law, under which that Law does not expire but no further Regulations or Orders can be made under it after a deadline (currently the end of 2020). The date for the deadline is amended to the end of July 2021. The amendment adds an exception to the bar, so that the only purpose for which Regulations and Orders can be made after the deadline is purely to repeal other Regulations and Orders made under the Enabling Law before the deadline (not to make any other amendments or any fresh provision). There are no ECHR issues arising from this aspect of the amendment.





## EXPLANATORY NOTE

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This Law if passed will amend the Covid-19 (Enabling Provisions) (Jersey) Law 2020 (the “Enabling Law”).

*Article 1* amends Article 2(1) of the Enabling Law, which provides that Regulations can be made if they appear to the States to be necessary or expedient as a direct or indirect result of the outbreak of Covid-19 in Jersey or of the aftermath of that outbreak. The amendment extends that to cover the need to prepare for the possibility of one or more subsequent Covid-19 outbreaks (and their aftermaths).

*Article 2* amends Article 3(3) of the Enabling Law, under which that Law does not expire but no further Regulations or Orders can be made under it after a deadline (currently the end of 2020). The date for the deadline is amended to the end of July 2021. The bar on making new Regulations and Orders does not affect the continued force of the Regulations and Orders already made before the deadline. The amendment adds an exception to the bar, so that the only purpose for which Regulations and Orders can be made after the deadline is purely to repeal other Regulations and Orders made under the Enabling Law before the deadline (not to make any other amendments or any fresh provision).

*Article 3* gives the citation for the Law and brings it into force on the day after its registration by the Royal Court.





Jersey

## **DRAFT COVID-19 (ENABLING PROVISIONS) (AMENDMENT) (JERSEY) LAW 202-**

**A LAW** to amend the Covid-19 (Enabling Provisions) (Jersey) Law 2020.

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<i>Adopted by the States</i>	<i>[date to be inserted]</i>
<i>Sanctioned by Order of Her Majesty in Council</i>	<i>[date to be inserted]</i>
<i>Registered by the Royal Court</i>	<i>[date to be inserted]</i>
<i>Coming into force</i>	<i>[date to be inserted]</i>

**THE STATES**, subject to the sanction of Her Most Excellent Majesty in Council, have adopted the following Law –

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### **1 Amendment of Article 2 (power to make Regulations)**

In Article 2 of the Covid-19 (Enabling Provisions) (Jersey) Law 2020<sup>1</sup>, at the end of paragraph (1) there is inserted –

“(c) of the need to prepare for the possibility of one or more subsequent outbreaks of Covid-19 in Jersey, and for the aftermaths of those outbreaks.”.

### **2 Amendment of Article 3 (citation, commencement and cessation of powers)**

In Article 3(3) of the Covid-19 (Enabling Provisions) (Jersey) Law 2020<sup>2</sup>, for “on or after 1st January 2021” there is substituted “on or after 1st August 2021, other than to repeal such Regulations, or such an Order, made before that date”.

### **3 Citation and commencement**

This Law may be cited as the Covid-19 (Enabling Provisions) (Amendment) (Jersey) Law 202- and comes into force on the day after it is registered.

**ENDNOTES**

**Table of Endnote References**

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<a href="#">1</a>	<i>L.2/2020</i>
<a href="#">2</a>	<i>L.2/2020</i>