

STATES OF JERSEY



DRAFT COVID-19 (CIVIL PARTNERSHIP AND MARRIAGE NO. 2) (JERSEY) REGULATIONS 202- (P.77/2020): COMMENTS

**Presented to the States on 12th June 2020
by the Children, Education and Home Affairs Scrutiny Panel.**

STATES GREFFE

COMMENTS

1. The [Draft Covid-19 \(Civil Partnerships and Marriage No.2\) \(Jersey\) Regulations 202-](#) (hereafter the “draft Regulations”) have been lodged by the Minister for Home Affairs in response to the ongoing Covid-19 outbreak. It is important to note that these draft Regulations form the second phase of the changes required to allow marriages and civil partnerships to be undertaken safely during the Covid-19 outbreak. These proposals cover the approvals related to, or those that govern the day of the marriage ceremonies or civil partnership celebrations.
2. In contrast, the first phase of the changes brought by the [Draft Covid-19 \(Civil Partnerships and Marriage\) \(Jersey\) Regulations 202-](#) lodged on 14th May 2020, covered the changes to the preliminary administrative processes necessary for the solemnisation of marriages and the registration of civil partnerships to be undertaken safely during the Covid-19 outbreak. Currently, marriage ceremonies and civil partnership celebrations are suspended until 1st July 2020.
3. The draft Regulations are intended to amend the procedures that govern the day of the marriage ceremonies or civil partnership celebrations to ensure that they are carried out in compliance with the issued health guidelines under the Covid-19 position, and thereby to reduce the potential health risk to those involved on the day of the ceremonies. Thus, it is proposed under the draft Regulations and temporary amendment of the [Civil Partnership \(Jersey\) Law 2012](#) and temporary amendment of the [Marriage and Civil Status \(Jersey\) Law 2001](#) that the following changes would take place:
 - **It would be required that ceremonies comply with the issued health guidance.** This amendment would ensure that the civil partnership registrar or marriage celebrant take the reasonable steps to ensure the health guidelines are being met on the day of the ceremonies to address the Covid-19 outbreak. Additionally, it would allow the civil partnership registrar or marriage celebrant to suspend a ceremony if concerned the guidance is not being adhered to, and to inform the Minister for the Environment of any circumstances that might constitute a statutory nuisance under Regulation 1A of the [Statutory Nuisances \(Jersey\) Regulations 2017](#).
 - **The public’s right to freely attend the ceremonies would be suspended.** This amendment would ensure that the ‘general’ public did not attend the ceremonies under the Covid-19 position so that attendee numbers could be controlled in accordance with the health guidelines. Nevertheless, the public’s right to legal objection of the union would be maintained through the requirement of the celebrant to display a notice containing the telephone number of the Superintendent Registrar outside of the premises at which the ceremony would be undertaken. Thereby the public could action their right of legal objection by telephoning the Superintendent Registrar to register a lawful objection if they so wish.

- **The period allowed in which a couple could change the location of the intended marriage ceremonies would be shortened.** At present, a 25-day clear period before the intended date of the ceremony is required for a couple to change the location of the intended ceremony. This amendment shortens the time to a 10-day clear period allowing the couple additional flexibility to change the location of their ceremony under the Covid-19 position. It's important to note that this change only applies to marriage ceremonies and not civil partnership celebrations.
 - **The Public's right to search the registers in person at the Office of the Superintendent Registrar would be suspended.** As the office of the Superintendent Registrar is not open to the public at present, the ability for the public to search the registers maintained at the Registrar Office cannot be complied with. This amendment would allow the Superintendent Registrar to undertake a search of the registers, for a £30 fee per search, on behalf of a member of the public when requested to do so.
 - **Changes would be made to the Approval Authority.** At present, the Approval Authority responsible for approving the premises of the ceremonies is the Connétable of the relevant Parish. This amendment would make the Superintendent Registrar the Approval Authority. Furthermore, it would allow the Superintendent Registrar to renew an existing approval or approve a new location that is a private dwelling (home or garden), for the location of the intended ceremony.
4. These proposed amendments would enable the ceremonies to be undertaken in compliance with the Covid-19 Public Health guidance issued by the Medical Officer of Health during the Covid-19 outbreak. It is important to note that these temporary amendments would expire on 30th September 2020.
 5. The Children, Education and Home Affairs Scrutiny Panel (hereafter the "Panel") was briefed on the proposed changes on Tuesday 26th May. The briefing took place prior to the lodging deadline. The Panel would like to place on record its thanks to the Officers from the Department for Strategic Policy, Planning and Performance and the Law Officers' Department for providing the briefing and the relevant information well in advance of the legislation being lodged.
 6. During the briefing, the Panel questioned the fee that the public would be charged to search the registers as it is currently the public's legal right to do so. It was explained that the self-service search, which would not normally incur a fee, was not possible due to the Office of the Superintendent Registrar being closed to the public due to the Covid-19 outbreak. The only search option currently available to the public was for the Superintendent Registrar to undertake the search on the public's behalf. It was noted that this option was also available to the public in normal time and would normally incur a fee. However, due to the absence of the self-service option this is the only means by which the public could access the search function. Given the impact of this on the operation of the Officer of the Superintendent Registrar it was deemed appropriate to retain the fee. The Panel was provided with assurances that this should not be cause for concern as no new searches had recently been requested.

It was explained that the searches that were typically undertaken involved family history searches which would not be deemed urgent at this time and could be postponed until the Covid-19 outbreak had passed.

7. The Panel understands the rationale for suspending the public's right to freely attend the ceremonies under the Covid-19 position. It was reassured, therefore, by the proposed process to maintain the public's right to lawfully object to the marriage via the alternative means of contacting the Superintendent Registrar using the telephone number contained on the notice displayed outside of the premises on the day of the ceremony.
8. The Panel raised a point of concern in relation to the compatibility of the draft Regulations with the [Draft Covid-19 \(Safe Distancing\) \(Jersey\) Regulations 202-](#) (hereafter the "Safe Distancing Regulations"). It was highlighted by the Panel that the draft Regulations would require physical distancing to be observed during the ceremonies. However, under the Safe Distancing Regulations, it is not possible to enforce physical distancing within the primary residence (home or garden) of the couple once the ceremony had concluded and the celebrant had left. The Panel found this concerning since, after the ceremony, a reception constituting a large gathering could commence at a primary residence of the couple without the same enforceable health and safety measures applying.
9. The Panel understands that the draft regulations apply explicitly to the ceremonies and not to receptions that might commence after. Moreover, it recognises it is the intention of the draft regulations to ensure the Covid-19 related health risks are managed during the ceremonies to protect those involved. It is also intended to give celebrants the legal powers necessary to request attendees to physically distance and maintain compliance with the issued health advice. However, the Panel would stress that, collectively, the draft Regulations, as well as the Safe Distancing Regulations, would send a contradictory message to the public with regards to large gatherings and physical distancing during this time.
10. The Panel questioned the complexity of the various components of the draft Regulations and guidance involved, as well as how this would be effectively communicated. It was explained that the Superintendent Registrar would provide clear guidance specific to couples seeking to marry and enter into a civil partnership. As couples would have to engage in the process via the Superintendent Registrar, it was not anticipated that there would be difficulty in relaying the necessary information to those concerned. Furthermore, the proposed amendment to allow the Superintendent Registrar to be the Approval Authority, until 30th September, ensured that the Superintendent Registrar would be involved in all aspects of the day of the ceremonies. The Panel was satisfied that by temporarily shifting the responsibility of the Approval Authority from the Connétables to the Superintendent Registrar, the process would be centralised and, hence, would function efficiently under the circumstances.
11. Having received the briefing, and upon examining the proposals further, the Panel understands the logical approach taken to protect all parties on the day of the ceremonies, to allow the celebrants the necessary powers to ensure the

ceremonies comply with the issued health guidance and to afford couples the flexibility required under the Covid-19 circumstances.

12. The Panel, however, would like to emphasise the importance of transparent and clear messaging to the public during this time. As is demonstrated here by the draft regulations and the Safe Distancing Regulations, regulations imposed during the Covid-19 position could convey contradictory messages when viewed collectively rather than in isolation.
13. On 5th June, the Panel was notified of 2 additional changes that had been made to the draft Regulations. The first being in relation to an approved location where a ceremony could be undertaken. This additional change would enable a location provided by the States of Jersey for the use by the Superintendent Registrar to constitute an approved location. A further change that was made to the draft Regulations would attribute the draft Regulations to the broader faith groups. In doing so, marriage celebrants across all faith groups would have a duty under the draft Regulations to adhere to the health guidance issued when ceremonies are undertaken at this time. It was noted that prior to this change being made that all faith groups had been consulted and had welcomed this change to the draft Regulations. Due to the nature of the additional changes, the Panel had no concerns with regards to them and did not require a further briefing on the additional changes that had been made.
14. Subject to its concerns highlighted above, the Panel is satisfied with the purpose and rationale of the draft Regulations to allow marriages and civil partnerships to be undertaken safely during the Covid-19 outbreak. It will, therefore, be supporting the draft Regulations. Moreover, the Panel understands and appreciates that the celebrants have been consulted and welcome the temporary amendments.