

STATES OF JERSEY



DRAFT COVID-19 (ENABLING PROVISIONS) (JERSEY) LAW 202- (P.29/2020): COMMENTS

**Presented to the States on 27th March 2020
by the Health and Social Security Scrutiny Panel**

STATES GREFFE

COMMENTS

1. P.29/2020 – Draft Covid-19 (Enabling Provisions) (Jersey) Law 202- was lodged by the Minister for Health and Social Services on 25th March 2020, in light of the ongoing Covid-19 pandemic.
2. The Panel would like to thank the Department of Health and Community Services for sharing the draft Law with it prior to formal lodging. It would also like to thank Law Officers and Legislative Drafters for making themselves available to the Panel to answer any queries we had in respect of the draft Law. In addition, we would like to thank the Minister for Health and Social Services and his Officers for briefing the Panel on the draft Law on 26th March 2020.
3. As outlined in the Report accompanying P.29/2020, if adopted, the draft Law would enable the States Assembly to introduce any emergency legislation by Regulations to manage the effects and impact of Covid-19. It would also give the Assembly the ability to confer Order-making powers on Ministers to make further specific provision to address the effects of Covid-19. The purpose of the draft Law is to ensure that emergency legislation can be enacted as quickly as possible and without the approval of the Privy Council. The Panel was advised that, at the end of February, the Privy Council announced that, as a result of the impact of Coronavirus, it may have difficulty in convening future meetings (following the meeting in April).
4. The Panel was advised that, whilst a number of changes can be made under existing legislation, the powers currently in place do not allow for primary legislation to be amended, unless a declaration of a state emergency is made. For instance, the Emergency Powers and Planning (Jersey) Law 1990 would allow the Emergencies Council to bring changes to legislation, including primary legislation, following a declaration of a state of emergency. The Panel was advised that any Orders made by the Council could be annulled by the Assembly under the Subordinate Legislation (Jersey) Law 1960. However, this would remove the power of the States Assembly to consider any draft legislation before it was enacted. The Report to the Proposition explains that, if approved, the draft Law would provide an alternative approach that would maintain greater control for the States Assembly over the legislative process. During its briefing, the Panel queried whether, in the case where a state of emergency was declared, the Emergency Powers and Planning (Jersey) Law 1990 would supersede the draft Law. It was advised that the draft Law would not be superseded, but it was possible that the two Laws could operate at the same time in the case of an emergency. It was noted that a state of emergency would be declared by the Lieutenant Governor, who would have to inform the Bailiff of any decisions made by the Emergencies Council. It was further advised that the objective of the draft Law was not to have to rely on a state of emergency before making important decisions for the health of the Islanders.
5. Article 3 of the draft Law states that, if enacted, the power to make Orders and Regulations under the Law would expire on 31st December 2020. The Panel queried the expiry date of the draft Law and whether its powers could be extended if necessary. It was advised that it was decided that it would be best for the ability to bring forward Regulations under the draft Law to be time-

limited, given the extraordinary circumstances. If it was decided before the expiry date that the powers needed to be extended, then a further draft Law would be brought to the States Assembly for approval. It was further advised that an expiry date forces a decision point and allows the States Assembly to put the measures in place and to review them when the time is right.

6. The Panel was advised that safeguards had been put in place within the draft Law to ensure that it could not be used to –
 - impose or increase taxation;
 - impose a penalty of imprisonment for more than 4 years for a criminal offence;
 - introduce retrospective legislation; or
 - amend the draft Law or the Human Rights (Jersey) Law 2000.
7. During the briefing the Panel queried whether the safeguards around taxation included GST (Goods and Services Tax) and Income Tax. It was advised that a distinction would be drawn between GST and Income Tax, but the intention was not to use the powers under the draft Law to amend either of the taxes. It was further advised that the draft Law has been proposed as a result of a public health concern and not a matter of taxation.
8. The Panel has reviewed the draft Law, albeit briefly given the current circumstances, and understands the rationale for its introduction at this stage. The Panel supports the enactment of the draft Law in the context of the current pandemic and would recommend that Members support the Proposition.