

STATES OF JERSEY



DRAFT COVID-19 (CONSTRUCTION WORK) (JERSEY) REGULATIONS 202- (P.49/2020): COMMENTS

**Presented to the States on 20th April 2020
by the Economic and International Affairs Scrutiny Panel**

STATES GREFFE

COMMENTS

Introduction

[P.49/2020](#) – Draft Covid-19 (Construction Work) (Jersey) Regulations 202- (the “draft Regulations”) were lodged by the Minister for Health and Social Services on 17th April 2020 in response to the Covid-19 crisis.

The draft Regulations relate to the construction industry, which would normally be the remit of the Minister for Economic Development, Tourism, Sport and Culture. In this instance, however, the draft Regulations are a public health control measure, and have therefore been lodged by the Minister for Health and Social Services. Given the crossover of ministerial remits, the Economic and International Affairs Scrutiny Panel has taken responsibility for scrutinising the legislation, in agreement with the Health and Social Security Scrutiny Panel.

The Economic and International Affairs Scrutiny Panel, along with members of the Health and Social Security Scrutiny Panel¹, received a briefing on the draft Regulations from Government of Jersey Officials on 17th April.

Purpose of the draft Regulations

If approved by the States Assembly, the draft Regulations would make it an offence, punishable by a fine, to undertake restricted construction work. The draft Regulations also make it an offence, punishable by a fine and/or up to two years’ imprisonment, to knowingly give false or misleading information about a site.

Restricted construction work is defined in the draft Regulations as work that is undertaken in contravention of a restriction Order. The main purpose of the draft Regulations is to limit the transmission of Covid-19 by restricting some forms of construction and the interaction of people that comes with such activity.

A restriction Order is made by the Minister for Health and Social Services to restrict or prohibit construction sites from operating. An Order may only be made if the Minister is advised by the Medical Officer of Health that the risk to public health from Covid-19 is such that it is necessary and proportionate to do so. It is worth noting that the Order cannot apply to individuals undertaking DIY work at home, or single contractors undertaking construction work in unoccupied sites (because these activities do not generate a Covid-19 risk).

In terms of a restriction Order, the draft Regulations state that, before making an Order, the Minister for Health and Social Services must consult with the Minister for Economic Development, Tourism, Sport and Culture (given that the construction industry is overseen by the Minister).

If approved, the draft Regulations will expire on 30th September 2020, unless extended by the States Assembly.

¹ Members in attendance included the Chair of the Health and Social Security Scrutiny Panel, Deputy M.R. Le Hegarat of St. Helier, and Deputy C.S. Alves of St. Helier.

Permit scheme

The draft Regulations set out the types of construction work that a restriction Order may apply to. This could include any type of construction or some types of construction except where certain conditions are met. The draft Regulations list a number of conditions, one of which is that construction sites may be authorised to operate under a permit scheme.

The Panel notes that on 10th April (before the draft Regulations were lodged) a [news release](#) was issued about construction permits. The news release explained that construction activity which involves more than two people must remain closed, and that a permit system will be introduced to enable individual construction sites to restart (once the Medical Officer for Health is satisfied that it could be done without the risk of the spread of Covid-19). It explains that sites will be categorised, and the granting of permits would be prioritised A, B and C –

- Category A: sites which provide critical national infrastructure and services which keep the Island's residents and environment safe and secure.
- Category B: sites and services which provide services to the public which can operate safely in accordance with the site operating procedures.
- Category C: all other sites and services which are currently operating and can operate safely in accordance with the site operating procedures.

According to the news release, permits had already been granted to 30 sites considered essential (Category A). Therefore, the permit scheme was introduced before the draft Regulations had been lodged and debated by the States Assembly, meaning that the permit scheme had no legal foundation.

During the briefing, the Panel questioned Government Officials on the timing of the permit scheme. It was acknowledged that a number of permits had been issued before there was a legislative basis for the issuing of permits. The Government Officials explained that these permits had only been issued to construction sites which were considered essential ("Category A") so that they could continue operating. However, it is clear that they could have continued operating even without these permits, as the Government has been relying on the goodwill of the industry.

It is the Panel's view that permits should have only been issued once the scheme had been implemented through the approval of the draft Regulations.

The Panel notes that on the gov.je website, a list is provided of Category A sites issued with a permit. In the interests of openness and transparency, the Panel believes that, once the permit scheme has been formally introduced, all sites issued with a permit, including those under Categories B and C, should be published on the website.

The Panel asked whether the issuing of permits would give sites a reason to ignore the current health advice, such as social distancing, as some Members had been contacted by a number of concerned construction workers. The Panel was advised by Government Officials that it would not, and that all sites permitted to remain operating should adhere to Government advice.

The Panel was advised that the States of Jersey Police would be the frontline of policing for the permit scheme. If they identified a site that was operating without a permit, or in breach of a permit's conditions, they would be supported by Building Control Officers to provide the technical advice on whether a site should continue to operate.

The Panel remains unconvinced that this is a workable solution for the policing of all permitted construction sites.

Closure of construction sites

Following the “Stay at Home Instruction”, a [Public Health Policy](#) was issued by the Government of Jersey which provided guidance on the ‘stay at home’ measures. This includes a list of businesses and premises that must remain closed during the lockdown. In terms of the construction industry, the policy stated that construction sites could remain open and continue to operate until Friday 3rd April 2020 (whilst adhering to social distancing measures).

The policy then states that from 4th April, all construction sites and services must remain closed. Exceptions include only Category A construction sites that have received a new licence (i.e. permit) to continue to operate.

The Panel notes that the policy instructed all construction sites to close by 4th April, but there was no legal basis to enforce sites to close. The only way a construction site could be forced to close is following States Assembly approval of these draft Regulations. The Panel raised this issue during the briefing, and Government Officials accepted that until the draft Regulations were approved, there was no legal requirement for sites to close, or remain closed. However, Government Officials advised that, at any point, this could have been introduced via a tightening of Order made under Regulation 5 of the [Covid-19 \(Screening, Assessment and Isolation\) \(Jersey\) Regulations 2020 \(as amended\)](#).

The Officials explained that, given the unprecedented times with the Covid-19 crisis, and the associated urgency to minimise the spread of the virus, construction sites had been [instructed](#) to close by 4th April in the interests of health and safety, despite no legal basis being introduced at that time.

Employee welfare

During the briefing, the Panel explained that some construction workers had contacted Members individually to raise concerns over the nature of working on a construction site, and the necessity for working in close proximity that often arises.

The Panel asked about support that would be provided to workers who felt exposed to risk on those construction sites continuing to operate. Government Officials advised that –

- it would be a condition of any permit issued that the contractor must display posters providing employees and others with information about who to contact if they have concerns about the operation of the site
- they would investigate if a specific requirement could be included within the Order/permit that seeks to ensure that an employer could not force an employee

to work on site. It was agreed that this would be discussed with the Minister for Health and Social Services. The Panel looks forward to receiving the outcome of the discussions with the Minister, as well as a copy of the Order, once finalised.

Conclusion

The Panel is concerned that construction sites were instructed to close, and a permit scheme was introduced without any legal basis. Although these are unprecedented and difficult times, it is the Panel's view that the Government of Jersey must ensure that legal requirements are in place before introducing measures that restrict Islanders' freedoms.

Given the absence of evidence, the Panel is concerned about the Minister for Health and Social Services' ability to effectively manage and police the permit scheme. The Panel is not convinced that he can do so within existing resources. It is also important that construction workers are able to safely blow the whistle on any sites where the appropriate guidelines are not being followed.

Notwithstanding these concerns, the Panel supports the overall purpose of the draft Regulations and believes it is important that the existing informal site closure and re-opening arrangements are given a firm legal footing.

The Panel also believes that where it is safe to do so, Islanders should be given the opportunity to work, and these draft Regulations will enable certain members of the construction industry to do just that, thus supporting the Government's aim of protecting livelihoods during this crisis.