

# STATES OF JERSEY



## **DRAFT COVID-19 (SAFE DISTANCING) (JERSEY) REGULATIONS 202- (P.66/2020): COMMENTS**

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**Presented to the States on 26th May 2020  
by the Health and Social Security Scrutiny Panel**

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**STATES GREFFE**

## COMMENTS

### Introduction

The Draft Covid-19 (Safe Distancing) (Jersey) Regulations 202- ([P.66/2020](#)) (the “draft Regulations”) were lodged by the Minister for Health and Social Services on 20th May 2020 in response to the Covid-19 crisis. The draft Regulations would be made under the [Covid-19 \(Enabling Provisions\) \(Jersey\) Law 2020](#).

The draft Regulations would make it an offence, punishable by a fine, to wilfully fail to comply with the direction of a police officer to cease to gather at less than 2 metres with someone who is from another household. Given that the draft Regulations introduce unprecedented measures across society to control proximity within social gatherings, the Scrutiny Liaison Committee agreed that it would ask to be invited to attend any briefings held by the Health and Social Security Scrutiny Panel (“the Panel”) to help ensure the context of all Panel remits were able to be given due consideration.

In that regard, the Panel, together with the Scrutiny Liaison Committee (“the Committee”), received a briefing from the Minister for Health and Social Services and Government Officials on 21st May 2020.

### Purpose of the draft Regulations

The draft Regulations are intended to help control the transmission of Covid-19 following advice from the Medical Officer of Health.

If adopted by the States Assembly, the Regulations would make it an offence, punishable by a fine of up to £1,000, to wilfully fail to comply after being directed by a police officer to remain more than 2 metres apart from someone who is from another household. The intention is for a police officer (including honorary police officers) to issue the direction in order to ensure that people cannot be criminalised for any breaches without due warning. There are a number of exemptions to the offence, which include –

- When people gather in a home (including another person’s home)
- Workplaces (including construction sites)
- When people are required to breach social distancing due to legal obligations (i.e. if a fire officer directed a group of people to safety), in an emergency or to provide medical attention.

During the briefing, Regulations 1–3 were discussed in particular, a summary of which is provided below –

- Regulation 1 contains a number of definitions, including “home” and “household”. “Home” is defined as a residential unit in which a person resides including a garden or other area. “Household” (for the purposes of the offence) is defined as one or more persons who do not reside in the same home.
- Regulation 2 explains what amounts to breaching safe distancing rules. As explained above, if a police officer directs people, who are not from the same household, to stay 2 metres apart from one another and they do not comply, and no exception applies, they will be liable to a fine.

- Regulation 3 makes it an offence if an individual, who has responsibility for a child, wilfully fails to comply with the direction of a police officer to take reasonable steps to secure that child to socially distance. This would not apply to an individual's own home or workplace, such as school or nursery.

## **Panel concerns**

### Timing

The Panel is concerned with the length of time afforded to Scrutiny to review such important pieces of legislation, particularly when they have a significant impact on people's lives. Whilst making this point, the Panel acknowledges the urgent nature of the current Covid-19 pandemic and the requirement for emergency legislation. However, the current timescales do not allow Scrutiny enough time to consult on these types of high-impact proposals. In that regard, the Panel asked what level of consultation had taken place with stakeholders during the drafting stage of the Regulations. Government Officials confirmed that the following stakeholders had been contacted –

- States of Jersey Police
- Children, Young People, Education and Skills Department
- Comité des Chefs de Police
- Children's Commissioner.

The Panel and members of Scrutiny Liaison Committee also raise a number of concerns about the practicalities of the legislation.

### Social distancing measures

During the briefing the Panel noted that the main purpose of the draft Regulations was to provide controls on people in outdoor areas, as opposed to inside their own homes. Under the Regulations, people would be able to gather socially in their own homes, such as having BBQs in their gardens and inviting guests who were not part of the same household. This would breach social distancing measures in a way that would be unacceptable if it was in a public space.

Government Officials confirmed that gardens were exempt from the offences and that nothing in current legislation could stop BBQs, or other social gatherings, taking place in people's own homes. This reflects the difficult balance between civil rights and controls. The Government Officials advised that the measures provided in the draft Regulations are based on the balance of risk arising from Medical Officer of Health advice.

The Minister added that, during the drafting of the Regulations, discussions had taken place as to whether to include a person's own home under the offence. It was felt, however, that including this measure would be disproportionate and difficult to enforce. The Panel makes the point that social gatherings in houses and gardens could become more prevalent if people know that they are liable to a fine if they were to gather in close proximity outside of their homes. This is particularly important because research suggests that people are more likely contract Covid-19 indoors than they are outdoors.

## Fine

During the briefing, the Panel noted that the draft Regulations do not make provision for a fine to be issued by a Centenier should an offence under the Regulations come to a Parish Hall Enquiry. The Panel asked the Minister to explore whether an amendment needed to be made to the draft Regulations to provide Centeniers with a way to deal with cases where they considered that some financial sanction was necessary, without passing the matter to the courts. The Minister accepted the Panel's point on this issue, and asked Government Officials to explore the matter further.

As a result of these discussions, the Minister lodged an [amendment](#) on 22nd May to reflect the Panel's suggestion.

## Children and young people

Under draft Regulation 3, an individual, who has responsibility for a child, is liable to a fine if they wilfully fail to comply with a direction from a police officer to take reasonably practicable steps to secure that child to socially distance. For the purposes of the Regulation, "child" means a person under the age of 18.

In relation to 16/17-year-olds, Government Officials confirmed that an offence on the parents only arises where "the individual has custody or charge of the child for the time being". For example, if a 16-year-old was shopping with their parent and they wilfully failed to comply with safe distancing measures after being directed by a police officer, their parent would be liable to a fine. The Panel is concerned about this measure because, in theory, a parent could be liable for the misbehaviour of an unco-operative teenager unless it is argued that such parent would not be regarded as 'wilfully failing to comply' if he/she used best endeavours to get said child to observe the police officer's direction.

The Children's Commissioner raised similar concerns in her submission to the Department –

### **Children's Commissioner for Jersey:**

*"It is important that parents and carers are clear about what their responsibilities are and how for example they could prove that they have taken "reasonably practicable steps" or what a "reasonable excuse" could be." In Scotland for example this is provided for via Scottish Statutory Instrument<sup>1</sup>, which also provides that enforcement measures can only be taken where it is necessary and proportionate to do so. I would highlight concern that parents and carers being subject to fines at a time of increasing financial concern for many in Jersey could have unintended consequences, particularly on those living in poverty.*

*Importantly, I would seek reassurances that the police will be continuing to utilise the engage, explain, encourage and enforce strategy which focusses on building understanding and de-escalating situations, with enforcement as a last resort only when absolutely necessary. This is particularly important given the fast-paced nature of changes and reports in the UK of mistakes being made, resulting in wrongful criminal charges."*

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<sup>1</sup> See Part 4, the Health Protection (Coronavirus) (Restrictions) (Scotland) [Regulations](#) 2020

During the briefing, the Minister advised that the police were still implementing their [approach](#) to the Stay at Home measures – Engage, Explain, Encourage, Enforce – and that enforcement could take many forms and different degrees of approach.

**States of Jersey Police: Approach to Stay at Home measures:**

- **Engage** with those we suspect to be in breach of the Stay Home Instruction.
- **Explain** why these measures are so important in slowing the spread of the virus and saving lives.
- **Encourage** people to comply.
- **Enforce** only where absolutely necessary, using all available powers.

Communication to the Public

The Panel believes that, if the draft Regulations are approved, there will need to be a communications plan to ensure the Public, and in particular individuals responsible for children, are fully aware of the new measures and how they will be enforced. As raised by the Children’s Commissioner, parents and carers will need clear guidance on what is considered “reasonably practicable steps” for them to take to ensure the children in their care remain socially distanced.

The Panel also questioned how policeable the Regulations will be if the Public know that the police (and honorary police) are solely responsible for enforcing the measures and have the power to issue fines. It is the Panel’s view that this might cause an influx in calls to the police from concerned members of the Public about people not adhering to the social distancing measures.

The Minister acknowledged that this might be the case; however, part of the reason for introducing legislative measures and a fine was to raise expectation amongst the Public that they should comply with social distancing rules, otherwise, enforcement of the measures would be necessary. Furthermore, the Minister explained that the purpose of the legislation is not to stop social gatherings *per se*, it is intended to stop close proximity when gatherings occur.

**Conclusion**

The Panel would like to thank the Minister for Health and Social Services for sharing the draft Regulations with it prior to formal lodging. It would also like to thank the Minister and Government Officials for the briefing on 21st May.

The Panel acknowledges the purpose of the draft Regulations, but believes their implementation could result in a number of unintended consequences –

- Increased prevalence of social gatherings in people’s own homes.
- Confusion over what is meant by “reasonable practicable steps” for those responsible for children.
- Influx in the number of calls to the police.

The Panel believes that the way in which the new measures are publicised, if approved, should be carefully considered to try to mitigate the risks identified above.