

# STATES OF JERSEY



## **DRAFT COVID-19 (RESTRICTED TRADING) (JERSEY) REGULATIONS 202- (P.48/2020): COMMENTS**

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**Presented to the States on 20th April 2020  
by the Health and Social Security Scrutiny Panel**

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**STATES GREFFE**

## COMMENTS

1. [P.48/2020](#) – Draft Covid-19 (Restricted Trading) (Jersey) Regulations 202- (the “draft Regulations”) was lodged by the Minister for Health and Social Services on 17th April 2020, and are proposed under the [Covid-19 \(Enabling Provisions\) \(Jersey\) Law 2020](#), in light of the ongoing Covid-19 pandemic.
2. The Health and Social Security Scrutiny Panel would like to thank the officers from the Health and Community Services Department and Law Officers for providing a briefing to the Panel on the draft Regulations on 14th April 2020. In order to avoid any duplication and promote cross-Panel working on matters that fall within multiple remits, it was agreed that the Education and Home Affairs Scrutiny Panel (“EHA Panel”) would submit its views on the draft Regulations to the Health and Social Security Scrutiny Panel for inclusion within its own comments. The EHA Panel received a briefing on the draft Regulations on Wednesday 8th April 2020, and further information was provided by Officers via e-mail on Thursday 16th April 2020.
3. As outlined in the report accompanying the draft Regulations, if adopted, P.48/2020 would make it an offence, punishable by an unlimited fine, to open a business in a manner prohibited by Order of the Minister for Health and Social Services. It enables the Minister to direct certain business premises to close or to open only for certain purposes, and to direct the occupier or operator of certain business premises not to carry out certain work or to only carry out certain work for a specified purpose. For example, a business could be required to stop selling food at tables, but be permitted to continue take-away provision. Alternatively, a business could remain open only if it made best efforts to enforce social distancing and implemented a rigorous cleaning regime. The Panel is satisfied that the Order triggering the Regulations and imposing the restrictions can only be made after consultation with the Minister for Economic Development, Tourism, Sport and Culture. It is further reassured to note that the Order is time-limited to 14 days. At the end of this time a new Order must be made, or the restrictions will be lifted. This provision is made to align with the movement restrictions in the [Covid-19 \(Screening, Assessment and Isolation\) \(Jersey\) Regulations 2020 \(as amended\)](#) and to reflect that these restrictions are a significant step beyond the normal powers of government, and as such they should require an active decision to keep them in place.
4. The Panel accepts that the intention of the draft Regulations is to limit the transmission of Covid-19 by reducing the number of locations where people can gather, and that they are necessary to protect members of staff and customers of businesses. It also accepts that the definition of ‘business’ is necessarily wide in order to capture any operation where the public engage directly with staff. It is reassured that, to take effect, the draft Regulations require the Minister for Health and Social Services to be advised by the Medical Officer of Health that the risk to public health from the Covid-19 pandemic is so severe that the controls are necessary and proportionate.
5. The Health and Social Security Scrutiny Panel queried why the draft Regulations stipulate that a fine for offences is unlimited. It heard that this is necessary because the defined levels of fine applicable in Jersey cannot exceed £10,000, and on a significant trading day a large business with no open

competition could exceed that level of profit, thereby making breaches of the law profitable. The Panel was content that it would be for the courts to determine whether a fine imposed was reasonable, based on evidence including how much profit was made from the business remaining open.

6. The EHA Panel is broadly supportive of the draft Regulations; however, it did raise a question in relation to Regulation 4(2) which states that –

(2) *A person who is the occupier or operator of business premises to which this Regulation applies must not allow members of the public to enter or remain in or on the business premises unless reasonable steps have been taken to ensure that –*

(a) *each person on the premises (other than any person employed to work on the premises) has sufficient space; and*

(b) *any other prescribed requirement is met.*

7. The EHA Panel questioned why an exemption was made in Regulation 4(2)(a) for employees to have sufficient space whilst working in a business to which an Order applied. The Officers explained that this had not been coded in to the draft Regulations, as from a practical standpoint it may not always be possible for staff to maintain social distancing practices when undertaking tasks (e.g. moving heavy items in a supermarket that may require two or more people). It was also noted that, in the case of essential businesses (such as supermarkets or other food shops), providing for this requirement in legislation would also mean a substantial number of businesses would effectively be in breach of the draft Regulations. It was explained during the briefing that in order to mitigate this issue, the Minister could, within the Order, place a requirement on a business to provide suitable Personal Protective Equipment to employees alongside other measures to ensure their safety and wellbeing.

8. However, upon further discussion with relevant parties, it was confirmed that introducing these measures within the Order would require significant alterations to the draft Regulations that would in turn impact a number of pieces of legislation governing employer and employee relations. The Officers confirmed by e-mail that the [Health and Safety at Work \(Jersey\) Law 1989](#) provided that all employers must take all ‘reasonably practical steps’ to maintain the health and safety of their employees and customers. This would apply equally in the context of Covid-19. It was further explained that different cases may require different arrangements (e.g. layout of premises, level of staffing, etc.); however, the expectations on businesses to comply with health and safety requirements in light of Covid-19 are incredibly high. The EHA Panel is satisfied that existing legislation provides this protection; however, it would suggest that the position is continually monitored as the Covid-19 outbreak progresses. The EHA Panel will also continue to examine the processes in place under the existing legislation to ensure it is being enforced appropriately during the Covid-19 outbreak.

9. The Health and Social Security Scrutiny Panel noted that the draft Regulations, if enacted, would come into force on the day after they are made, and will expire on 30th September 2020, just after the States are due to reconvene after the summer recess. It is understood that, if by September 2020, Jersey was still in

the throes of Covid-19, there would be an option to bring new Regulations which carried the same powers. The Panel is further reassured that proposed amendments would be subject to scrutiny, noting that, following the decision of the States Assembly to approve [P.29/2020](#) – Draft Covid-19 (Enabling Provisions) (Jersey) Law 202- (now published as enacted Law – *see* [L.2/2020](#)), any changes to emergency legislation by Regulations can now be enacted very quickly in order to respond to the current crisis.

10. The Health and Social Security Scrutiny Panel, together with the Education and Home Affairs Scrutiny Panel, supports the adoption of the draft Regulations in the context of the current pandemic, and would recommend that Members support the Proposition.