

# STATES OF JERSEY



Jersey

## **DRAFT COVID-19 (ENABLING PROVISIONS) (JERSEY) LAW 202-**

---

**Lodged au Greffe on 25th March 2020  
by the Minister for Health and Social Services**

---

**STATES GREFFE**





Jersey

## **DRAFT COVID-19 (ENABLING PROVISIONS) (JERSEY) LAW 202-**

### **European Convention on Human Rights**

In accordance with the provisions of Article 16 of the Human Rights (Jersey) Law 2000, the Minister for Health and Social Services has made the following statement –

In the view of the Minister for Health and Social Services, the provisions of the Draft Covid-19 (Enabling Provisions) (Jersey) Law 202- are compatible with the Convention Rights.

Signed: **Deputy R.J. Renouf of St. Ouen**  
*Minister for Health and Social Services*

Dated: 25th March 2020



---

## REPORT

---

### Introduction

1. The Draft Covid-19 (Enabling Provisions) (Jersey) Law 202- (“the draft Law”) would, if adopted, enable the States to introduce any emergency legislation that may be required to manage the effects and impact of Covid-19 in Jersey. The draft Law will, for a time-limited period, allow the States to make Regulations which may have the effect of primary Laws. This is important not only to ensure that emergency legislation can be enacted as quickly as possible, but also because the Privy Council may not meet for several months during the Covid-19 pandemic.
2. It must be emphasised that only emergency legislation which relates to Jersey’s response to, and management of, the Covid-19 pandemic will be eligible to proceed in accordance with this draft Law.

### Background

3. On 24th March 2020, the States Assembly considered a range of Covid-19-related emergency legislation to support the Government and a number of public authorities, to protect the Public, to facilitate the delivery of support to Islanders, and to mitigate risks to the delivery of public services.
4. It has been possible to deliver amendments to legislation in a wide range of areas, and to make additional supplementary provision, within existing secondary legislative powers (i.e. those to make Regulations, triennial Regulations and Orders). However, some amendments to legislation or new provisions can only, outside of a State of Emergency, be made through the enactment of primary legislation (i.e. by enacting a Law).
5. Unlike Regulations, before a draft Law can come into force it must receive the approval of the Privy Council and be registered by the Royal Court. This is a standard process during ordinary times which can take anything between a few weeks and a few months. The process does not, however, lend itself to the possible and likely need to pass key legislation on an expedited basis to deal with the extraordinary circumstances in which the Island currently finds itself. It is crucial to ensure that the States Assembly has the powers that it needs to be able to pass any legislation required to address additional challenges related to the Covid-19 pandemic, and that this can be implemented quickly.
6. Furthermore, and importantly, there is a risk to the timetabling of future Privy Council meetings. The next meeting will take place on 15th April 2020 (when, subject to Assembly approval and agreement with the Ministry of Justice, it is planned to present this legislation), but the dates of future meetings are currently unknown. It is important to avoid a scenario where key legislation and powers needed to protect our most vulnerable people cannot be enacted, or are significantly delayed, due to the temporary absence of Privy Council meetings.
7. This draft Law ensures that any potential difficulties in these respects are avoided and that the Assembly can meet the challenges of the immediate future that will be presented by the Covid-19 crisis.

### **Purpose of the draft Law**

8. There are a small number of risks and mitigations that have been identified so far that cannot presently be addressed other than through primary legislation. Further measures and requirements involving amendments to primary legislation are very likely to be necessary, depending on developments in the coming weeks and months. Therefore, the purpose of this draft Law is to provide Regulation-making powers to enable the Assembly to move rapidly to address these and any other legislative issues that may arise, without the timing of doing so being dependent on the Privy Council being convened.
9. If it were necessary to do so, then it may be possible to make changes to legislation, including primary legislation, using the Order-making powers of the Emergencies Council. However, such Order-making powers would only be available following the declaration of a State of Emergency pursuant to the [Emergency Powers and Planning \(Jersey\) Law 1990](#) (“the 1990 Law”), which is seen as a very last resort. While any Orders made by the Council could be annulled by the Assembly pursuant to the [Subordinate Legislation \(Jersey\) Law 1960](#), the draft Law would, if enacted, provide an alternative approach that maintains greater control for the Assembly over the legislative process.
10. In short, the introduction of the draft Law is a proportionate and responsible measure in these extraordinary times. It allows the Government of Jersey and States Assembly to act swiftly to protect the Island as best it can from the Covid-19 pandemic, whilst ensuring the States Assembly retains the necessary power to actively approve emergency legislation as and when it is required for the purpose of protecting public health.

### **Implications of the draft Law**

11. The draft Law will allow the States to make Regulations on any matters which, it appears to them, are necessary and expedient to respond to Covid-19 and its impact on Jersey. This will allow the States to make Regulations to –
  - amend any Law or other enactment or provision that may be amended by a Law;
  - confer a power or impose a duty on a Minister to make, by Order, any provision that may be made by the Regulations;
  - establish bodies corporate, corporations sole or other entities;
  - impose duties, or confer powers, on any person, including other entities;
  - create offences, or amend provisions creating offences;
  - make transitional, transitory, saving, supplementary, incidental or consequential provision.
12. The fact that is difficult to state with certainty how these powers will be used by the Assembly over the coming months indicates that it is important to ensure that these powers are available when necessary. Changes to primary legislation will almost certainly be required to manage the outbreak of Covid-19 in the coming months, and there is a substantial risk that the Privy Council would not be available to approve it in a sufficiently timely manner. While no definite decisions have been made as to how these powers might be used, 2 examples are provided of uses that might be made of the power for illustrative purposes.

**Example – Mental Health**

13. There are statutory requirements under the [Mental Health \(Jersey\) Law 2016](#) for 2 doctors to give an opinion supporting the compulsory detention of a person on grounds of their mental health. This requirement is being relaxed in the UK. At present, it is not deemed necessary to relax the legislation in the same way, but the position is being kept under review, and if a change were required to permit detention on the basis of a single medical opinion, then this can be achieved using the powers to make Regulations provided by the draft Law.

**Example – Continued functioning of the Courts**

14. The Courts perform a vital function in enabling action to be taken for a range of purposes, including safeguarding people from harm and ensuring that criminal offences are swiftly and appropriately dealt with. In both civil and criminal proceedings, the Royal Court will often sit as the Inferior Number, composed of the Bailiff (or the Deputy Bailiff or a Commissioner) and 2 Jurats. As a number of the Jurats are in “at risk” categories in relation to Covid-19, as well as taking steps to enable proceedings to be dealt with remotely, provision may also be required to ensure that court decisions can continue to be made if we need to mitigate risks to the health of the Jurats.
15. To this end, it is expected that it may be necessary for some proceedings and decisions to be dealt with by the Bailiff sitting alone. To facilitate this, it is anticipated that it will be necessary to amend the circumstances where the Bailiff can sit alone to determine questions of fact and law pursuant to the [Royal Court \(Jersey\) Law 1948](#). These Regulations may also make provision for a judge to be able to sit alone to determine bail applications or make other interlocutory decisions in criminal proceedings.

**Safeguards in the draft Law**

16. The powers sought are in some respects similar to those sought pursuant to the [European Union \(Repeal and Amendment\) \(Jersey\) Law 2018](#), which enabled Jersey to be able to react quickly to and prepare for changes in the relationship between the UK and Crown Dependencies, and the EU, but are focussed on the present situation and limited to address the immediate challenges it presents. While unprecedented circumstances have necessitated unprecedented measures in the short term, safeguards will be put in place to ensure that the powers will cease to be available when the effects of the pandemic have subsided, and can only be used for particular purposes.
17. The provision described above is limited so that it can only be relied upon by the States Assembly to enact legislation which is necessary or expedient as a result of the Covid-19 outbreak or its aftermath. Further, the power to make Regulations (and any power to make Orders conferred by Regulations) contains a series of some specific limits and safeguards so that it cannot 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](#).
18. If the States decides to introduce primary legislation which does not relate to Covid-19, such enactments would still require the approval of the Privy Council as per the established process.

19. The legislation is also time-limited. The power to make Regulations will expire on 31st December 2020. We have not taken a power to extend this period. If that were necessary, then the Assembly could seek to bring forward a further piece of primary legislation for this purpose. As the draft Law only has utility if there is an ongoing outbreak of Covid-19 in Jersey, there would be no point in extending these provisions in any other circumstances.
20. Finally, the States Assembly is required to approve all legislation which is introduced under the powers provided under the draft Law. The draft Law provides an alternative mechanism to the 1990 Law, which would also allow emergency legislation to be introduced at speed. However, Orders made under the 1990 Law are subject to a more limited approval mechanism in the States Assembly. The draft Law retains and, if anything, promotes the role of the Assembly in approving and overseeing the introduction of legislation during the Covid-19 pandemic.

### **Conclusion**

21. Members are asked to support this draft Law to allow the Government, and the Assembly, to be able to respond quickly and effectively to changing circumstances during an unprecedented period of uncertainty and threat to public health. The draft Law is narrow in its purpose, ensures that democratic oversight of legislative changes is maintained during this public health crisis, and does not have a long-term impact on the established processes that are in place for the approval of primary legislation in Jersey.

### **Human Rights**

The notes on the human rights aspects of the draft Law in the **Appendix** have been prepared by the Law Officers' Department and are included for the information of States Members. They are not, and should not be taken as, legal advice.



**APPENDIX TO REPORT****Human Rights Notes on the  
Draft Covid-19 (Enabling Provisions) (Jersey) Law 202-**

These Notes have been prepared in respect of the Draft Covid-19 (Enabling Provisions) (Jersey) Law 202- (the “**draft Law**”) by the Law Officers’ Department. They summarise the principal human rights issues arising from the contents of the draft Law and explain why, in the Law Officers’ opinion, the draft Law is compatible with the European Convention on Human Rights (“**ECHR**”).

**These notes are included for the information of States Members. They are not, and should not be taken as, legal advice.**

Article 2(1) of the draft Law will enable the States Assembly, by Regulations, to make any provision that may be necessary or expedient as a direct or indirect result of the outbreak of Covid-19 in Jersey or the aftermath of that outbreak.

Taking this power will not itself have any effect on ECHR rights, as the rights and obligations of Islanders will only be affected to the extent that this is provided for in Regulations. While the exercise of the power in Article 2(1) may engage ECHR rights, as might other Regulation-making powers, issues of ECHR compatibility can be considered in the usual way, as the Regulations are developed.

It will continue to be the case that, when exercising the Regulation-making power, the States Assembly will be bound by Article 7(4)(a) of the [Human Rights \(Jersey\) Law 2000](#), which makes it unlawful for the Assembly to exercise a power to make Regulations in a manner that is incompatible with a Convention right. Therefore, careful consideration must continue to be given to the human rights implications of particular courses of action.

Further, while the power to make Regulations in Article 2(1) of the draft Law includes the power to make provision amending any enactment, this power may not be used to amend, repeal or revoke the Human Rights (Jersey) Law 2000.

Accordingly, the draft Law is compatible with the ECHR.



---

## EXPLANATORY NOTE

---

This Law if passed will enable the States to make Regulations containing any provision necessary or expedient as a direct or indirect result of the outbreak of Covid-19 in Jersey or its aftermath.

The Law uses “Covid-19” to mean both the relevant coronavirus and the disease COVID-19 caused by it (and any other disease directly or indirectly caused by it). The Regulations to be made under the Law can make any provision that can be made by a Law, which includes provision amending other Laws (but not this Law or the Human Rights (Jersey) Law 2000). That means in particular that the Regulations can also confer powers on a Minister to make Orders, including power to make any provision that the Regulations could make. The Regulations can, among other things, establish bodies, impose duties, create offences and make transitional or consequential provision. The Regulations (and the Orders under them) cannot impose taxes, create offences carrying over 4 years of imprisonment (or 1 year, in an Order), or have retrospective effect. The Orders cannot amend the Regulations or make any provision that is inconsistent with them. Powers to make rules for courts or tribunals are to be read as covering rules related to the Regulations.

The Law would come into force on the day after its registration by the Royal Court. The Law does not expire, but no further Regulations or Orders can be made under it after the end of 2020 (which does not affect the continued force of the Regulations and Orders already made at that point).





Jersey

## **DRAFT COVID-19 (ENABLING PROVISIONS) (JERSEY) LAW 202-**

### **Contents**

---

#### **Article**

1	Interpretation.....	15
2	Power to make Regulations .....	15
3	Citation, commencement and cessation of powers .....	16

#### **ENDNOTES**

**17**

---

Table of Endnote References.....	17
----------------------------------	----





Jersey

## **DRAFT COVID-19 (ENABLING PROVISIONS) (JERSEY) LAW 202-**

**A LAW** to enable the States, by Regulations, to make any provision necessary or expedient as a direct or indirect result of the outbreak of Covid-19 in Jersey or its aftermath.

---

<i>Adopted by the States</i>	<i>[date to be inserted]</i>
<i>Sanctioned by Order of Her Majesty in Council</i>	<i>[date to be inserted]</i>
<i>Registered by the Royal Court</i>	<i>[date to be inserted]</i>
<i>Coming into force</i>	<i>[date to be inserted]</i>

**THE STATES**, subject to the sanction of Her Most Excellent Majesty in Council, have adopted the following Law –

---

### **1 Interpretation**

In this Law “Covid-19” means –

- (a) severe acute respiratory syndrome coronavirus 2 (SARS-CoV-2); and
- (b) any disease that is directly or indirectly caused by that virus, including the disease known as COVID-19.

### **2 Power to make Regulations**

- (1) The States may by Regulations make such provision as appears to them to be necessary or expedient as a direct or indirect result –
  - (a) of the outbreak of Covid-19 in Jersey; or
  - (b) of the aftermath of that outbreak.
- (2) Subject to paragraphs (5) and (6), the provision that may be made under paragraph (1) includes any such provision (of any such extent) as might be made by a Law passed by the States.
- (3) Paragraph (4) does not limit paragraph (1) or (2).
- (4) Regulations under paragraph (1) may –
  - (a) amend any Law or other enactment or provision that may be amended by a Law;

- (b) confer a power or impose a duty on a Minister to make, by Order, any provision that may be made by the Regulations;
  - (c) establish bodies corporate, corporations sole or other entities;
  - (d) confer powers, or impose duties, on any person, including an entity established as mentioned in sub-paragraph (c) or otherwise;
  - (e) create offences, or amend provisions creating offences;
  - (f) make transitional, transitory, saving, supplementary, incidental or consequential provision.
- (5) The provision that may be made by Regulations under paragraph (1) does not include provision –
- (a) imposing or increasing taxation;
  - (b) imposing a penalty of imprisonment for more than 4 years for a criminal offence;
  - (c) taking effect from a date earlier than that of the making of the Regulations containing the provision; or
  - (d) amending this Law or the Human Rights (Jersey) Law 2000<sup>1</sup>.
- (6) The provision that may be made by Order under Regulations made under paragraph (1) does not include provision –
- (a) imposing or increasing taxation;
  - (b) imposing a penalty of imprisonment for more than 12 months for a criminal offence;
  - (c) taking effect from a date earlier than that of the making of the Order containing the provision;
  - (d) amending this Law or the Human Rights (Jersey) Law 2000; or
  - (e) amending Regulations made under paragraph (1), or making any provision inconsistent with any such Regulations.
- (7) The power to make rules of court under the Royal Court (Jersey) Law 1948<sup>2</sup> includes the power to make rules of court for the purpose of Regulations under this Law, and any other power to make rules for a court or tribunal is to be read as including power to make rules for that purpose.

### **3 Citation, commencement and cessation of powers**

- (1) This Law may be cited as the Covid-19 (Enabling Provisions) (Jersey) Law 202-.
- (2) This Law comes into force on the day after it is registered.
- (3) No Regulations under this Law, and no Order under any such Regulations, may be made on or after 1st January 2021.



## ENDNOTES

### Table of Endnote References

---

<i>1</i>	<i>chapter 15.350</i>
<i>2</i>	<i>chapter 07.770</i>