

The Emergency Powers (Coronavirus) (Bailiwick of Guernsey) Regulations 2020

Service area / [Employment, Pensions and Incentives](#)

Location / [Guernsey](#)

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On 18 March 2020, the States of Guernsey (the **States**) took the significant step of enacting emergency legislation as part of the Bailiwick's response to the COVID-19 pandemic.

The *Emergency Powers (Coronavirus) (Bailiwick of Guernsey) Regulations, 2020* (the **Regulations**) afford officials dealing with the virus new powers over Guernsey's population, as well as creating new criminal offences in the case of non-compliance with measures taken in exercise of those powers.

The States has power to make emergency legislation (i.e. legislation which is not subject to the usual States legislative process before it is enacted) when an emergency has occurred, is occurring or is about to occur. An "emergency" is defined in the Civil Contingencies (Bailiwick of Guernsey) Law, 2012 and includes "an event or situation which threatens serious damage to human welfare or the environment in the Bailiwick".

The Regulations contain two key provisions which have the potential to affect local businesses. These are (i) the increased powers of the Medical Officer of Health (the **MOH**, the position held currently by Dr Nicola Brink) and (ii) increased police powers. As has been widely reported, Dr Brink has already exercised one of the powers vested in her under the Regulations, by imposing a requirement on all individuals arriving in to the Bailiwick from anywhere in the world to self-isolate for 14 days, regardless of any medical symptoms.

MOH powers

This is only one of many possible steps that may now be put in place by the MOH. The Regulations allow for a range of actions in relation to people (or groups of people) whom:

1. the MOH has "reasonable grounds to believe" may be infected or contaminated with Severe Acute Respiratory Syndrome Coronavirus 2 or suffering from the disease COVID-19 (**Coronavirus**); or
2. have arrived in the Bailiwick by air or sea, having left an infected area in the 14 days prior to arrival.

The MOH can require these individuals to be detained and screened for infection for up to 48 hours, or such further period as is required to carry out an assessment of their condition.

If, following an assessment, the MOH considers that there is risk of an individual or group infecting others, the MOH can impose any of the following (non-exhaustive) list of restrictions and requirements on them, namely that they:

- submit to medical examinations;
- are removed to a hospital or other suitable establishment;
- are detained in a hospital or other suitable establishment;
- are kept in isolation;
- are disinfected or decontaminated;
- wear protective clothing;
- provide information or answer questions about their health or other circumstances;
- undergo health monitoring and compulsory reporting of results;
- attend training or advice sessions on reducing the risk of infecting others;
- are subject to restrictions on where they go or who they have contact with; and/or
- abstain from working or trading.

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In addition to the above, such individuals must, if directed, submit to biological screening which may involve a nasal swab and blood test.

Following the expiry of a period of isolation or detention, the MOH has the power to place restrictions on a person's ability to travel and the personal contact that they are permitted to have for up to 14 days. The Regulations state that any period of detention or isolation must have regard to the individual's wellbeing. If such a period of detention or isolation exceeds 14 days, the need for it should be reviewed every 24 hours thereafter.

In relation to children under 18, the same powers are in place. It is the responsibility of a child's parent or guardian to ensure that a child complies with the requirements imposed on him or her, insofar as the parent or guardian is able to do so.

The Regulations contain a mechanism for an individual, or group, subject to a requirement or restriction under the Regulations, to make an application to the Royal Court for the restriction or requirement to be varied or revoked. This legal application can also be made by parents/guardians of those affected, as well as their spouse/civil partner or cohabitee.

Increased police powers

Under the Regulations, the police and custom officers have the power to direct or remove an individual to a hospital (or other suitable establishment) and detain them, if they have "*reasonable grounds to suspect*" the following:

1. that an individual is or may be infected or contaminated with Coronavirus;
2. there is a risk that individual might infect or contaminate others; and
3. to take such action is necessary for the protection of others and public safety.

A detention under this power is for an initial period of 24 hours and can be extended to 48 hours. The police are required to consult the MOH prior to taking such action, but only insofar as this is "*reasonably practicable*". The effect of this provision is that the police can (if absolutely necessary) take this action first and seek the views of the MOH after the event.

Criminal offences

The Regulations provide that, if an individual fails (without reasonable excuse) to comply with any restrictions/requirements placed on them by the MOH or the police, or obstructs a person carrying out a function under the Regulations, he or she commits a criminal offence which carries a fine of up to £2,000. This also applies to parents who fail (without reasonable excuse) to ensure their child's compliance under the Regulations.

Considerations for business

The scope and significance of the Regulations should be borne in mind by all Guernsey employers. Whilst it remains to be seen to what extent the powers will be invoked, businesses may well face a scenario in which their employees are placed under MOH restrictions/requirements, such as abstaining from working or being prohibited from contact with certain individuals.

Today the States are due to debate the measures that will be introduced to support Guernsey businesses through these exceptional times. These will include a financial hardship fund and measures to reduce the financial overheads for businesses. On any view, the current situation is clearly daunting and many businesses are concerned over the impact to their liquidity of their business being either partially or totally closed as a result of the containment measures. Nonetheless, it is important that businesses do not act precipitately but, to the extent possible in their individual circumstances, pause to review the situation.

The measures that Public Health are taking are intended to flatten the curve of the outbreak. If those measures succeed, it is hoped that Guernsey will begin to return to normal within a relatively short period. In the immediate short term, it is likely that employers should be cautious about taking precipitate action in relation to their staff, but instead keep the situation under review until things become clearer.

As we go forward, in the most extreme scenario employees may be detained under a MOH requirement or by virtue of the police powers. Employers will need to be alive to this risk and to give consideration to how they will treat such absences. Employers should be cautious of taking measures which penalise employees who are – without any fault on their part – affected by the disease through the application of Public Health measures. Equally, if an employee wilfully ignores public health measures, this should be a concern to employers because of the potential public health impact, quite apart from the potential for the infection to be spread through the remainder of the employer's workforce.

Employers have an important part to play in helping to contain the disease. We recommend that employers make employees aware of the Regulations and give notice that employees are required to follow Public Health advice. Employers should make it clear that failure to do so is likely to be regarded as a disciplinary offence and that action may be taken against employees who do not follow guidance. At a time of information overload it is critical to ensure that your employees are aware of the conduct expected of them and of the consequences should they fail to meet the required standards. In these exceptional times, it is critical that employers and employees take the necessary steps to protect themselves and others. #guernseytogether

Continued



FIND US

Carey Olsen (Guernsey) LLP
PO Box 98
Carey House
Les Banques
St Peter Port
Guernsey GY1 4BZ
Channel Islands

T +44 (0)1481 727272

E guernsey@careyolsen.com



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