

## COVID-19 Jersey construction industry update: construction site permits

Service area / [Property Law](#)

Location / [Jersey](#)

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As the construction industry seeks to navigate the ever changing landscape resulting from the coronavirus (COVID-19) pandemic, the Government of Jersey has supplemented the legislative framework regulating the operation of construction sites in the Island.

The Covid-19 (Construction Work) (Jersey) Order 2020 (the "Order") was made on 22 April 2020, and came into force on 23 April 2020. It is another example of the swift legislative response to the developing challenges presented by COVID-19, and was made under the Covid-19 (Construction Work) (Jersey) Regulations 2020 (the "Construction Regulations").

In reviewing and interpreting the Order (and indeed the Construction Regulations), it is important to have regard to the Health & Safety (Management in Construction) (Jersey) Regulations 2016, from which many important definitions derive. This can add to the challenges in navigating the regulatory regime, and requires that a careful and considered approach is applied.

### What is new?

Construction work by its nature presents a higher risk of the spread of the virus, and is therefore subject to detailed statutory and policy framework. The Order builds on the legal framework established by the Construction Regulations for the operation of construction sites during the COVID-19 period, identifying exempt works (i.e. sites which may continue to operate without a permit) and establishing a permit system pursuant to which work may be undertaken at other, authorised, construction sites.

### What does the Order apply to?

The Order applies to "relevant construction work", which is essentially any construction work undertaken during the COVID-19 period which is neither work being undertaken by a single construction worker, nor work being undertaken by an owner-builder of a dwelling. It applies from 23 April 2020 and remains in force for the period of restricted movement declared by the Covid-19 (Restricted Movement) (Jersey) Order 2020.

To operate during the restricted period, construction sites will either need to fall within the specified exemptions, or be subject to a permit. Even if an exemption applies or a permit is obtained, work will nonetheless be prohibited if the person carrying out the work has been diagnosed as infected with Covid-19 (and not subsequently medically cleared), or otherwise exhibits symptoms of Covid-19.

### Exempt works

The Order identifies two principle categories of work which are exempt from the prohibition on carrying out construction work:

- Smaller construction sites
  - a. it is undertaken by two individuals at a construction site at which no other person is present; and
  - b. those two individuals maintain a distance of at least 2m between each other and comply with any other relevant guidance issued by the Medical Officer of Health.
- Emergency repairs and maintenance
  - a. it constitutes necessary emergency repair or maintenance;
  - b. it is undertaken by any number of individuals (being the

number essential to undertake the work in question), at a construction site at which no other person is present or the only other persons present reside at the site; and

- c. each individual undertaking the work maintains a distance of at least 2m between any other person on site, and complies with any other relevant guidance issued by the Medical Officer of Health.

## Construction permits

Work on other construction sites may only be undertaken if a permit has been granted in respect of the specific works being undertaken. The Order provides that work being undertaken under a permit is subject to three conditions:

- First condition: work must be undertaken in compliance with guidance published by the Minister for Health and Social Services and/or the Medical Officer of Health relevant to the work and intended to limit the risk of spreading Covid-19;
- Second condition: a permit must be in effect in relation to the work being undertaken and the site in question;
- Third condition: work undertaken must be in compliance with all conditions attaching to the permit pursuant to Art 7 of the Order.

The Minister may grant a permit for relevant construction work if satisfied that the work will be undertaken without any person committing an offence under the Construction Regulations. The application form is available on the Government of Jersey website [here](#).

There are three permit categories:

- Category A (critical national infrastructure and services);
- Category B (public service sites); and
- Category C (all other sites which can safely operate). Any application for a permit will be prioritised according to the applicable category.

When submitting an application for a permit, it will be necessary for the applicant to demonstrate that they have considered how the site in question can be operated so as to adhere to social distancing and hygiene requirements. A detailed analysis will need to be undertaken, with procedures and communication plans being provided for consideration. In addition, applicants will need to submit a site-specific risk assessment, site induction documents, a layout plan and site monitoring documentation.

## Conditions

A permit may be granted for a limited period of time, and it may be cancelled if conditions are breached or if the Minister reasonably suspects an offence under the Construction Regulations has occurred.

Specific conditions may be attached to a permit issued by the Minister (either at the time of granting the permit or subsequently) but all permits will be subject to the following core conditions:

- Notice: a notice in the approved form must be displayed on

the outside of the site, and must be clearly visible to persons outside the site.

- Entry: entry to the site must be granted to any person authorised by the Minister for the purpose of inspecting the site.

Further default conditions may be established (or revoked) in the future, and will attach to any issued permits once a relevant notice has been published. Contractors and employers are therefore encouraged to keep informed as to the current standard conditions, as non-compliance may result in the revocation of a permit.

## Failure to comply

The Construction Regulations also contain offence provisions for failure to comply. If you undertake, allow or fail to take reasonable steps to prevent restricted construction work then you can be liable to an unlimited fine. There are conditions around this liability accruing, but it is very clear that offences are intended to be taken very seriously. If you give false or misleading information as part of an application the penalty is more serious still and can also include imprisonment for a period of up to two years. Finally, the Regulations extend liability for these offences not only to the body corporate, or equivalent, but also to officers so that, for example, a director of a company can be liable in the same way that a company would be if it can be shown that the offence was committed with the connivance of that director or if the offence has been committed as a result of the neglect of that director. This is a complicated area where significant care must be taken.

## Conclusion

As the construction industry adapts to the new normal of social distancing and COVID-19 related hygiene conditions, it is important that contractors, employers and agents are familiar with the restrictions that apply to their projects. If work is exempt from requiring a permit, strict adherence to the site conditions referred to above is essential. For sites which require a permit, careful attention should be given to the application to ensure that all relevant information is provided, and once a permit is granted enhanced site regulation and reporting may be required to ensure continued compliance with the Order and Construction Regulations.

Carey Olsen's property and construction law team remains available to assist clients in navigating the regulations and guidance affecting construction works. We recognise the challenges facing the industry at the present time and understand that now more than ever there is a need to have a clear and straight-forward understanding of applicable regulations. If you have any questions about the guidance and how it may apply to you or your business, please get in touch.

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