

# GUERNSEY STATUTORY INSTRUMENT

ENTITLED

## **The Emergency Powers (Coronavirus) (General Provision) (Bailiwick of Guernsey) (No. 5) Regulations, 2020 \***

*[CONSOLIDATED TEXT]*

### **NOTE**

*This consolidated version of the enactment incorporates all amendments listed in the footnote below. It has been prepared for the Guernsey Law website and is believed to be accurate and up to date, but it is not authoritative and has no legal effect. No warranty is given that the text is free of errors and omissions, and no liability is accepted for any loss arising from its use. The authoritative text of the enactment and of the amending instruments may be obtained from Her Majesty's Greffier, Royal Court House, Guernsey, GY1 2PB.*

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\* G.S.I. No. 72 of 2020; as amended by the Emergency Powers (Coronavirus) (General Provision) (Bailiwick of Guernsey) (No. 5) (Amendment) Regulations, 2020 (G.S.I. No. 74 of 2020); the Emergency Powers (Coronavirus) (General Provision) (Bailiwick of Guernsey) (No. 5) (Amendment) (No. 2) Regulations, 2020 (G.S.I. No. 77 of 2020). See also the Deputy Bailiff (Guernsey) Law, 1969 (Ordres en Conseil Vol. XXII, p. 122); the Children (Consequential Amendments etc.) (Guernsey and Alderney) Ordinance, 2009 (No. VII of 2010).

# GUERNSEY STATUTORY INSTRUMENT

ENTITLED

## **The Emergency Powers (Coronavirus) (General Provision) (Bailiwick of Guernsey) (No. 5) Regulations, 2020**

### ARRANGEMENT OF REGULATIONS

#### PART I

##### SCREENING, ASSESSMENT, AND POWERS TO DETAIN ETC.

1. Decisions of MOH and the Authority to impose restrictions and requirements.
2. Detention of persons by the MOH.
3. Imposition of restrictions and requirements.
4. Screening requirements.
5. Imposition of further restrictions and requirements.
6. Isolation of persons suspected to be infected with coronavirus.
7. Detention or isolation: additional provisions.
8. Restrictions or requirements in respect of groups.
9. Variation and revocation of restrictions and requirements.
10. Initial detention of persons to enable screening and assessment.
11. Offences and enforcement.
- 11A. False or misleading information.
12. Interpretation of this Part.

#### PART II

##### MENTAL HEALTH AND HEALTH AND SAFETY

13. Modification of legislation relating to mental health.
14. Disapplication of requirement to thoroughly examine etc.
15. Interpretation of this Part.

#### PART III

##### MISCELLANEOUS AND FINAL

16. Court of Appeal.
17. Offences by legal persons and unincorporated bodies.
18. Revocation and savings.
19. Interpretation: general.
20. Citation.
21. Extent.

22. Commencement.

SCHEDULE 1	Modification of legislation relating to mental health.
SCHEDULE 2	Provisions of the Safety of Employees (Miscellaneous Provisions) Ordinance, 1952.

Explanatory Note.

REPEALED

*(Made on 6th August, 2020.)*

## **The Emergency Powers (Coronavirus) (General Provision) (Bailiwick of Guernsey) (No. 5) Regulations, 2020**

**WHEREAS** there are one or more persons within the Bailiwick who may be infected with Severe Acute Respiratory Syndrome Coronavirus 2, resulting in the occurrence of an emergency within the meaning of the Civil Contingencies (Bailiwick of Guernsey) Law, 2012<sup>a</sup>;

**AND WHEREAS** one or more persons within the Bailiwick have died after being infected with Severe Acute Respiratory Syndrome Coronavirus 2;

**AND WHEREAS THE** Civil Contingencies Authority ("**the Authority**") (having consulted the Medical Officer of Health in respect of the risk to public health created thereby and by the spread of Severe Acute Respiratory Syndrome Coronavirus 2, the virus causing the disease COVID-19, and in respect of the measures necessary to prevent or slow the spread of infection) is satisfied that the conditions set out in section 13 of the Law are satisfied, and that the following regulations contain only provisions which are appropriate for and proportionate to the purpose of preventing, controlling or mitigating the emergency referred to above;

**AND WHEREAS** the Authority is satisfied that the effect of the following regulations is in due proportion to that emergency, and that they are compatible with the Convention rights within the meaning of section 1 of the Human Rights (Bailiwick of Guernsey) Law, 2000<sup>b</sup>;

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<sup>a</sup> Order in Council No. XIV of 2012; amended by Ordinance No. IX of 2016; and No. II of 2017.

<sup>b</sup> Order in Council No. XIV of 2000; amended by No. I of 2005; Ordinance No. XXXVII of 2001; No. XXXIII of 2003; No. XX of 2015; No. IX of 2016; No. XXVI

**NOW THEREFORE THE AUTHORITY**, in exercise of the powers conferred upon it by sections 12(1), 14 and 19 of the Law, and of all other powers enabling them in that behalf, hereby makes the following regulations: –

PART I

SCREENING, ASSESSMENT, AND POWERS TO DETAIN ETC.

**Decisions of MOH and the Authority to impose restrictions and requirements.**

1. (1) Subject to paragraph (3), the Medical Officer of Health ("the MOH") may not impose a restriction or requirement under this Part unless the MOH has sought the advice of Her Majesty's Procureur in relation to the appropriateness and proportionality of the proposed requirement or restriction, and has taken account of that advice.

(2) Subject to paragraph (3), the Civil Contingencies Authority ("the Authority") may not impose a requirement under regulation 3(4) or vary a requirement under regulation 3(6) unless the Authority has sought the advice of the MOH in relation to the appropriateness of the proposed requirement or variation and has taken account of that advice.

(3) Neither the requirement in paragraph (1) nor the requirement in paragraph (2) applies where the MOH or the Authority (as the case may be) considers that, in all the circumstances, it would be impracticable to comply with it.

(4) Where the MOH imposes a restriction or requirement under these Regulations without seeking the advice of Her Majesty's Procureur, in reliance on paragraph (3), the MOH shall, as soon as reasonably practicable, give notice that he or she has done so to Her Majesty's Procureur.

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of 2018; and G.S.I. No. 27 of 2006.

(5) Where the Authority imposes a requirement under regulation 3(4) or varies a requirement under regulation 3(6) without seeking the advice of the MOH, in reliance on paragraph (3), the Authority shall, as soon as reasonably practicable, give notice that it has done so to the MOH.

**Detention of persons by the MOH.**

2. (1) This regulation applies where the MOH has reasonable grounds to believe that a person ("P") –

- (a) is, or may be, infected or contaminated with, or is suspected or confirmed to be suffering from, coronavirus, and there is a risk that P might infect or contaminate others, or
- (b) has arrived in the Bailiwick by air or sea and has left an infected area within the 14 day period immediately preceding the date of P's arrival in the Bailiwick.

(2) Where paragraph (1)(a) or (b) is met in relation to P, the MOH may, for the purposes of screening, assessment or the imposition of any restriction or requirement under regulation 3, impose on P a requirement to be detained until the later of –

- (a) the end of the period of 48 hours beginning with the time from which P's detention under this regulation begins,
- (b) such time as any screening requirements imposed on or in relation to P under regulation 3 have been complied with and the assessment referred to in that regulation carried out in relation to P.

**Imposition of restrictions and requirements.**

3. (1) Where regulation 2(1)(a) or (b) is met in relation to a person ("P"), the MOH may –

- (a) (orally or in writing) impose on or in relation to P one or more screening requirements to inform an assessment by the MOH of whether P presents, or could present, a risk of infecting or contaminating others,
- (b) carry out such an assessment in relation to P, and
- (c) following such an assessment, (orally or in writing) impose on or in relation to P any other restriction or requirement which the MOH considers necessary for the purposes of removing or reducing the risk referred to in subparagraph (a), including (without limitation) the restrictions or requirements set out in paragraph (2).

(2) The restrictions or requirements are –

- (a) that P submit to medical examination,
- (b) that P be removed to a hospital or other suitable establishment,
- (c) that P be detained in a hospital or other suitable establishment,
- (d) that P be kept in isolation,

- (e) that P be disinfected or decontaminated,
- (f) that P wear protective clothing,
- (g) that P provide information or answer questions about P's health or other circumstances,
- (h) that P's health be monitored and the results reported,
- (i) that P attend training or advice sessions on how to reduce the risk of infecting or contaminating others,
- (j) that P be subject to restrictions on where P goes or with whom P has contact,
- (k) that P abstain from working or trading.

(3) A person who has arrived in the Bailiwick by air or sea and who has left an infected area within the 14 day period immediately preceding the date of his or her arrival in the Bailiwick must self-isolate for 14 days.

[ (3A) On arrival in the Bailiwick from any place outside the Bailiwick, if required a person must –

- (a) answer any question put to him or her by a relevant officer relating to his or her travel during the 7 day period immediately preceding the date of his or her arrival in the Bailiwick,
- (b) provide any travel document specified by a relevant officer relating to that person, or a child travelling with

that person, for inspection, and

- (c) answer any question put to him or her by a relevant officer relating to that travel document.]

(4) The Authority may, by publication on the relevant States of Guernsey website, impose a requirement that any person who has arrived in one Island in the Bailiwick from another Island in the Bailiwick must self-isolate for 14 days.

(5) A restriction or requirement imposed under paragraph (1) may be varied by the MOH orally or in writing.

(6) The requirement to self-isolate under paragraph (3) and a requirement to self-isolate imposed under paragraph (4) may be varied –

- (a) by the MOH in relation to a particular case, orally or in writing,
- (b) by the Authority in relation to or to one or more categories of case, or in relation to all cases, by publication on the relevant States of Guernsey website.

(7) Where a restriction or requirement is imposed on or in relation to a child (including the requirement to self-isolate under paragraph (3)), a person who is a responsible adult in relation to the child must ensure that the child complies with the restriction or requirement, insofar as that person is reasonably able to do so.

(8) The powers of the MOH and the Authority under paragraph (6) to vary the requirement under paragraph (3) or a requirement imposed under paragraph (4) include (but are not limited to) powers to –

- (a) specify exceptions to the requirement to self-isolate, and
- (b) shorten the duration of the requirement to self-isolate, either unconditionally or on the MOH being satisfied that one or more specified conditions have been met,

and such powers may be exercised either in relation to a particular case (as regards the powers of the MOH), or one or more categories of case, or all cases (as regards the powers of the Authority).

[ (8A) Without prejudice to the generality of paragraphs (6) and (8), in any case where the Authority varies, under paragraph (6)(b), the requirement to self-isolate under paragraph (3), failure without reasonable excuse to comply with a condition or restriction set out in, and applicable to, that variation of the requirement is an offence if the condition in paragraph (8B) is met.]

[ (8ZA) For the avoidance of doubt, and without prejudice to the generality of paragraphs (6) and (8), in any case where the MOH or the Authority varies a requirement to self-isolate under paragraph (3) or imposed under paragraph (4), that variation may be amended in accordance with paragraph (8ZB) or (8ZC) (as the case may be), and if so amended shall be treated for all purposes as continuing to have effect in accordance with its terms.

(8ZB) In any case where the MOH has varied such a requirement to self-isolate, the MOH may amend that variation orally or in writing (in a case where the requirement was varied orally), and in writing (in a case where the requirement was varied in writing); and the amendment shall have effect from such time as the MOH may specify.

(8ZC) In any case where the Authority has varied such a requirement to self-isolate, the Authority may amend the variation by publication of the variation in amended form on the relevant States of Guernsey website; and the amendment shall have effect from such time as the Authority may specify on the face of the variation as so amended and published.]

[ (8B) The condition referred to in paragraph (8A) is that the variation of the relevant requirement as published on the relevant States of Guernsey website provides (however expressed) that failure without reasonable excuse to comply with the specified condition or restriction is an offence under this regulation.]

(9) Where a restriction or requirement is imposed orally on a person under this regulation, or a restriction or requirement is orally varied, the person (or, in the case of a child, a person who is a responsible adult in relation to the child) must be provided with a written notification of the restriction or requirement that has been imposed or varied as soon as reasonably practicable.

(10) Neither paragraph (1) nor paragraph (3) affects the exercise of any powers under regulation 6; and nothing in this regulation (or in any other provision in these Regulations) affects the MOH's powers under any other enactment.

(11) In this regulation, a power to vary a requirement or restriction includes a power to revoke it.

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## NOTES

*In regulation 3,*

*first, paragraph (3A) and, second, paragraph (8A) and paragraph (8B) were inserted by the Emergency Powers (Coronavirus) (General Provision) (Bailiwick of Guernsey) (No. 5) (Amendment) Regulations, 2020, respectively regulation 1(2) and regulation 1(3), with effect from 19th August, 2020;*

*paragraph (8ZA), paragraph (8ZB) and paragraph (8ZC) were inserted by the Emergency Powers (Coronavirus) (General Provision) (Bailiwick of Guernsey) (No. 5) (Amendment) (No. 2) Regulations, 2020, regulation 1(2), with effect from 27th August, 2020.*

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**Screening requirements.**

4. (1) For the purposes of these Regulations, the screening requirements in relation to a person ("P") are requirements to the effect that P must—

- (a) answer questions about P's health or other relevant circumstances (including travel history and information about other individuals with whom P may have had contact),
- (b) produce any documents which may assist the MOH in assessing P's health,
- (c) at such a time as the MOH may specify, allow a biological sample of P to be taken, including a biological sample of P's respiratory secretions or blood, by appropriate means including by swabbing P's nasopharyngeal cavity, or provide such a sample, and
- (d) provide sufficient information to enable P to be contacted immediately by the MOH during such period as the MOH may specify, where the MOH considers that such provision of information is necessary in order to reduce or remove the risk of P infecting or contaminating others.

(2) Where P is a child who is accompanied by a responsible adult, the responsible adult must —

- (a) ensure that P answers questions in accordance with paragraph (1)(a),
- (b) answer the questions if P is unable to do so or cannot reliably do so,
- (c) produce any documents, required under paragraph (1)(b), on P's behalf,
- (d) allow a biological sample of P to be taken, including a sample of P's respiratory secretions or blood, by appropriate means including by swabbing P's nasopharyngeal cavity, or provide such a sample, and
- (e) provide information where required by the MOH under paragraph (1)(d).

**Imposition of further restrictions and requirements.**

5. (1) Where regulation 2(1)(a) or (b) is met in relation to a person ("P") –

- (a) following an assessment by the MOH of the risk presented by P in accordance with regulation 3(1), or
- (b) following P's release from detention under regulation 2, or from isolation under regulation 6,

the MOH may (orally or in writing) impose on P any one or more of the requirements specified in paragraph (2) where the MOH considers that it is necessary to do so in order to reduce or remove the risk of P infecting or contaminating others.

(2) The requirements specified for the purposes of paragraph (1) are for P to –

- (a) provide P's contact details to the MOH,
- (b) supply information to the MOH which may assist in assessing P's health,
- (c) at such time as the MOH may specify, allow a biological sample of P to be taken, including a sample of P's respiratory secretions or blood, by appropriate means including by swabbing P's nasopharyngeal cavity, or provide such a sample,
- (d) comply with any other specified condition or to take any other specified measure.

(3) The conditions or measures which may be specified under paragraph (2)(d) include –

- (a) a restriction on P's travel,
- (b) a restriction on P's activities,
- (c) a restriction on P's contact with specified persons.

(4) The MOH may (orally or in writing) revoke or vary any requirement or restriction imposed under this regulation, including by imposition of a restriction specified in paragraph (3).

(5) Subject to paragraph (6), the period for which a restriction set out in paragraph (3) is imposed may not exceed 14 days beginning with the day on which the restriction is imposed.

(6) Where a restriction set out in paragraph (3) is imposed, or the period of a restriction is extended under this paragraph, the MOH may (orally or in writing) extend the period of the restriction for a further specified period not exceeding 14 days if the MOH considers that the restriction is still necessary and proportionate.

(7) Before imposing or varying a requirement or restriction under this regulation, the MOH must –

- (a) inform P (or, where P is a child, a person who is a responsible adult in relation to P) of the requirement or variation that the MOH is minded to impose or make, and
- (b) have regard to any relevant representations by P (or, where P is a child, a person who is a responsible adult in relation to P), as to its suitability.

(8) When imposing or varying a requirement or restriction under this regulation, the MOH must inform P that it is an offence to fail to comply with the requirement.

(9) Where a requirement or restriction under this regulation is imposed on or in relation to a child, or varied in relation to a child, a person who is a responsible adult in relation to the child must ensure that the child complies with the requirement or restriction, insofar as that person is reasonably able to do so.

(10) Where the MOH orally imposes a requirement or restriction on P under this regulation, or orally varies such a requirement or restriction, the MOH must provide P (or where P is a child, a person who is a responsible adult in relation to P) with a written notification of the requirement or restriction that has been imposed or varied.

(11) Paragraph (1) does not affect the exercise of any powers under regulation 3(1)(c).

**Isolation of persons suspected to be infected with coronavirus.**

6. (1) This regulation applies where regulation 2(1)(a) or (b) is met in relation to a person ("P").

(2) The MOH may decide to require P to be kept in isolation if the MOH –

(a) has reasonable grounds to believe that P is, or may be, infected or contaminated with coronavirus, and

(b) considers that it is necessary to do so in order to reduce or remove the risk of P infecting or contaminating others.

(3) Where the MOH has reasonable grounds to believe that P is, or may be, infected or contaminated with coronavirus, the MOH may detain P pending the decision of the MOH under paragraph (2).

(4) Where the MOH has detained P under paragraph (3) or has required P to be kept in isolation under paragraph (2), the MOH may impose on or in relation to P one or more screening requirements.

(5) Paragraph (1) does not affect the exercise of any powers under regulation 3(1)(c).

**Detention or isolation: additional provisions.**

7. (1) Where a person ("P") is required to be detained or kept in isolation under regulation 3 or 6 or subjected to restrictions or requirements under regulation 5, the MOH must have due regard to P's well-being.

(2) Where P is detained or kept in isolation under regulation 3 or 6 or subjected to restrictions or requirements under regulation 5 for a period exceeding 14 days, the MOH must review the continuation of P's detention by reference to the provisions of those regulations.

(3) After each subsequent interval of 24 hours during which P is detained or kept in isolation under regulation 3 or 6 or subjected to restrictions or requirements under regulation 5, the MOH must review the continuation of P's detention by reference to the provisions of those regulations.

(4) Where P is detained or kept in isolation under regulation 3 or 6 or subjected to restrictions or requirements under regulation 5, the MOH may require P to comply with screening requirements if the MOH considers that it is necessary and proportionate to do so in order to reduce or remove the risk of P infecting or contaminating others.

(5) Where P is detained under regulation 2, the MOH may require P to move to a suitable place.

(6) The MOH must notify P (or, where P is a child, a person who is a responsible adult in relation to P), as soon as P's detention under regulation 3 starts, or as soon as it is decided to keep P in isolation under regulation 6, of –

- (a) the fact of P's detention or isolation,
- (b) the powers under which P is detained or kept in isolation,
- (c) the reason for P's detention or isolation,
- (d) the next steps that may be taken and by whom,
- (e) the obligation to keep the need for P's detention or isolation under review,
- (f) the penalty for obstructing a person carrying out a function under these Regulations under regulation 11(2), and
- (g) the right to apply for revocation or variation under regulation 9, where applicable.

**Restrictions or requirements in respect of groups.**

8. (1) The powers in regulations 2, 3 and 6 include powers to impose a restriction or requirement in relation to a group of persons and, for this purpose, those regulations have effect as follows.

- (2) In regulation 2, the references to "**a person**" and to P –
  - (a) as they apply in paragraph (1)(a) are to each person in the group,
  - (b) as they apply in paragraph (1)(b) are to each person in the group who has arrived on the same aircraft or ship

and left the same area,

and the power to impose a requirement to be detained in paragraph (2) of regulation 2 is to be read as a power to impose that requirement on any one or more of the persons in the group in question.

(3) In regulation 3 –

- (a) in paragraph (1), the reference to "**a person**" is to be read in accordance with paragraph (2) of this regulation,
- (b) in the rest of that regulation, the references to P are to one or more persons in the group in question.

(4) In regulation 6 –

- (a) in paragraph (1), the reference to "**a person**" is to be read in accordance with paragraph (2) of this regulation,
- (b) in the rest of that regulation, references to P are to one or more of the persons in the group in question.

**Variation and revocation of restrictions and requirements.**

9. (1) A requirement or restriction imposed under this Part may be varied or revoked by the Royal Court on the application of an affected person.

(2) The following persons are affected persons –

- (a) P,

- (b) a person having parental responsibility (within the meaning of the Children (Guernsey and Alderney) Law, 2008<sup>c</sup>, the Children (Sark) Law, 2016<sup>d</sup>, or the Child Protection (Sark) Law, 2020<sup>e</sup>, (as the case may be) for P,
- (c) a person who has been appointed Guardian of P,
- (d) P's spouse or civil partner, and
- (e) a person living with P as P's spouse,

and for the purposes of this paragraph, P includes a person subject to the requirement under regulation 3(3) or to a requirement imposed under regulation 3(4).

(3) For the avoidance of doubt, an application under this regulation may be made in such manner as the court thinks fit.

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**NOTE**

*In accordance with the provisions of the Children (Consequential Amendments etc.) (Guernsey and Alderney) Ordinance, 2009, section 2, with effect from 4th January, 2010, and having regard to the reference in this regulation to "guardian", a guardian or person referred to as such has parental responsibility in respect of a child if the conditions in subsection (1) or subsection (2) of that section are satisfied.*

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<sup>c</sup> Order in Council No. XIV of 2009; amended by No. IV of 2018; Ordinance Nos. XI and XLVIII of 2009; Nos. IX and XX of 2016; and No. VI of 2017.

<sup>d</sup> Order in Council No. VIII of 2016; amended by Ordinance No. IX of 2016; and Sark Ordinance No. I of 2017.

<sup>e</sup> Approved by the Chief Pleas of Sark on 22nd January, 2020 and received Royal Sanction on the 3<sup>rd</sup> April, 2020.

**Initial detention of persons to enable screening and assessment.**

10. (1) This regulation applies if a police officer has reasonable grounds to suspect that –

- (a) a person ("P") is, or may be, infected or contaminated with coronavirus,
- (b) there is a risk that P might infect or contaminate others, and
- (c) it is necessary to direct, remove or detain P in the interests of P, for the protection of other persons or for the maintenance of public safety.

(2) This regulation also applies if a police officer has reasonable grounds to suspect that P is in breach of the requirement to self-isolate under regulation 3(3) or a requirement to self-isolate imposed under regulation 3(4).

(3) A police officer may –

- (a) direct P to go immediately to a hospital or other suitable place for the purposes of the imposition of any restrictions or requirements under regulation 3,
- (b) remove P to a hospital or other suitable place for the purposes of the imposition of any restrictions or requirements under regulation 3, or
- (c) if P is already at a hospital or other suitable place, keep

P at that place or remove P to another hospital or other suitable place for the purpose of the imposition of any restrictions or requirements under regulation 3.

(4) The power in paragraph (3) may be exercised when P is at any place.

(5) For the purpose of exercising the power in paragraph (3), a police officer may enter any place.

(6) Before exercising the power in paragraph (3), the police officer must –

(a) so far as is reasonably practicable, consult the MOH and have due regard to the views of the MOH and any information provided by the MOH in relation to P,

(b) have due regard to any guidance issued by the MOH and the Chief Officer of the Island Police Force,

(c) where consultation has not been carried out under subparagraph (a) –

(i) consult the MOH as soon as reasonably practicable after the power in paragraph (3) has been exercised, and

(ii) have due regard to the views of the MOH and information provided by the MOH in relation to P.

(7) A person removed to or kept in a hospital or other suitable place under this regulation may be detained there for a period not exceeding the permitted period of detention.

(8) A police officer or the MOH, or a person authorised by either of them for the purposes of this paragraph, may, before the end of the permitted period of detention, take a person detained in a hospital or other suitable place to one or more other hospitals or other suitable places.

(9) A person taken to a hospital or other suitable place under paragraph (8) may be detained there for a period ending no later than the permitted period of detention.

(10) A police officer may use reasonable force, if necessary, in the exercise of a power under this regulation.

(11) The MOH may, at any time before the expiry of the initial period, authorise the detention of a person for a further period not exceeding 24 hours (beginning immediately at the end of the initial period).

(12) An authorisation under paragraph (11) may be given only if the MOH considers that the authorisation is necessary because it is not reasonably practicable for the imposition of any restrictions or requirements under regulation 3 to be completed before the end of the initial period.

(13) In this regulation –

**"authorised extended period"** means such further period as is specified in an authorisation under paragraph (11),

**"initial period"** means the period of 24 hours beginning with –

- (a) in a case where the person is removed to a hospital or other suitable place, the time when the person arrives at that place, or
- (b) in a case where the person is kept at a hospital or other suitable place, the time when the police officer decides to keep the person at that place, and

**"permitted period of detention"** means the initial period of detention and the authorised extended period.

**Offences and enforcement.**

**11.** (1) A person commits an offence if the person –

- (a) fails, without reasonable excuse, to comply with a restriction[, condition] or requirement imposed under regulation 2(2), 3(1), [3(3A), 3(8A),] 5(1) or 7(4) or (5), or a direction under regulation 10(3)(a),
- (b) fails, without reasonable excuse, to comply with a requirement that the person be detained under regulation 10(7), 10(9) or 10(11).

(2) A person (D), and subject to paragraph (3), any person who is D's employer, commits an offence if D fails, without reasonable excuse, to comply with the requirement to self-isolate under regulation 3(3) or a requirement imposed under regulation 3(4) [(including, for the avoidance of doubt, a requirement to self-isolate for any specified period of less than 14 days, or until a specified event occurs, imposed by a variation of the requirement under regulation 3(3), or of a requirement under 3(4) –

- (a) by the MOH in relation to a particular case, or
- (b) by the Authority in relation to one or more categories of case, or in relation to all cases)].

(3) It is a defence for an employer charged with an offence under paragraph (2) to prove that he or she has taken all reasonable precautions to avoid the commission of an offence.

(4) An offence under paragraph (2) is an arrestable offence for the purposes of the Police Powers and Criminal Evidence (Bailiwick of Guernsey) Law, 2003<sup>f</sup> ("PPACE"), and consequently the powers of summary arrest conferred by subsections (3) to (6) of section 28 of that Law apply to such an offence.

(5) A person who obstructs, without reasonable excuse, any person carrying out a function under these Regulations commits an offence.

(6) A responsible adult who fails without reasonable excuse to comply with regulation 3(7), 4(2) or 5(9) commits an offence.

(7) A person guilty of an offence under paragraph (1), (5) or (6) is liable on conviction to a fine not exceeding level 3 on the uniform scale.

(8) A person guilty of an offence under paragraph (2) is liable on conviction to a fine not exceeding level 5 on the uniform scale.

(9) The investigation of an offence under this Part shall be treated

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<sup>f</sup> Order in Council No. XIV of 2009; amended by Order in Council No. XVI of 2009; No. XV of 2011; Ordinance No. XXXIII of 2003; No. XXIX of 2011; No. XXXIX of 2015; No. IX of 2016; and No. XXVI of 2018.

as an assigned matter within the meaning of section 1 of the Customs and Excise (General Provisions) (Bailiwick of Guernsey) Law, 1972<sup>g</sup> (including, for the avoidance of doubt, for the purposes of paragraph 1(a) of Schedule 5 to PPACE, and consequently the provisions of PPACE which relate to the investigation of offences conducted by police officers apply to the investigation of offences under this Part conducted by customs officers).

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**NOTE**

*In regulation 11, first, the words in the first and second pairs of square brackets in paragraph (1)(a) and, second, the words in square brackets in paragraph (2) were inserted by the Emergency Powers (Coronavirus) (General Provision) (Bailiwick of Guernsey) (No. 5) (Amendment) Regulations, 2020, respectively regulation 1(4)(a) and regulation 1(4)(b), with effect from 19th August, 2020.*

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**[False or misleading information.]**

- 11A.** (1) If a person to whom paragraph (2) applies –
- (a) makes a statement which he or she knows or has reasonable cause to believe to be false, deceptive or misleading in a material particular,
  - (b) recklessly makes a statement, dishonestly or otherwise, which is false, deceptive or misleading in a material particular,

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<sup>g</sup> Ordres en Conseil Vol. XXIII, p. 573; amended by Ordres en Conseil Vol. XXIV, p. 87; Vol. XXXI, p. 278; Vol. XXXIII, p. 217; Order in Council No. X of 2004; No. II of 2010; No. XIV of 2007; No. XV of 2012; No. VI of 2019; Ordinance No. XXXIII of 2003; No. XXIX of 2004; Nos. XLVIII and XXXV of 2007; No. VII of 2008; No. XLIII of 2013; No. XL of 2014; and No. IX of 2016.

- (c) produces or furnishes, or causes or permits to be produced or furnished, any information or document which he or she knows or has reasonable cause to believe to be false, deceptive or misleading in a material particular, or
- (d) recklessly produces or furnishes or recklessly causes or permits to be produced or furnished, dishonestly or otherwise, any information or document which is false, deceptive or misleading in a material particular,

he or she is guilty of an offence.

- (2) This paragraph applies to a person who –
  - (a) makes any statement or provides any information or document to a relevant officer, when acting in the exercise of his or her functions under this Part, or
  - (b) otherwise than as mentioned in paragraph (a) makes any statement or provides any information or document to a relevant officer in circumstances in which he or she knows or could reasonably be expected to know that the statement, information or document would or might be used by a relevant officer for the purpose of exercising his or her functions under this Part.

(3) A person guilty of an offence under this regulation is liable on conviction to a fine not exceeding level 3 on the uniform scale.]

**NOTE**

*Regulation 11A was inserted by the Emergency Powers (Coronavirus) (General Provision) (Bailiwick of Guernsey) (No. 5) (Amendment) Regulations, 2020, regulation 1(5), with effect from 19th August, 2020.*

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**Interpretation of this Part.**

**12.** (1) In this Part, unless the context otherwise requires –

**"child"** means a person under the age of 18 years,

**"customs officers"** has the meaning given by section 89(6) of PPACE, and **"customs officer"** shall be construed accordingly,

the **"employer"** of a person (A) includes (but is not limited to) a person who has engaged the services of A by way of a contract or other arrangement entered into with a third party (and for the avoidance of doubt, that third party may be resident or established outside Guernsey),

**"hospital"** means –

(a) any hospital regulated or operated by the States Committee for Health & Social Care (including, for the avoidance of doubt, Le Mignot Memorial Hospital in Alderney), or

(b) the Sark Medical Centre,

**"infected area"** means an area specified [by the MOH] as an infected area for the purposes of these Regulations on the States of Guernsey website, or otherwise reasonably considered by the MOH to be an area where there is sustained human-to-human transmission of coronavirus, or from which there

is a high risk of importation of infection or contamination (with coronavirus) via travel from that area to the Bailiwick or any part thereof,

**"isolation"** in relation to a person means the separation of that person from any other person in such a manner as to prevent infection or contamination, and "self-isolate" means to remain in isolation from others,

**"police officer"** includes a customs officer,

**"PPACE"**: see regulation 11(4),

[ **"relevant officer"** means a police officer, the MOH, and any other person or category of person authorised by the Chief Officer of Customs and Excise to exercise functions under regulation 3(3A),]

**"responsible adult"** means, in relation to a child, a person with parental responsibility for the child, within the meaning of the Children (Guernsey and Alderney) Law, 2008, the Children (Sark) Law, 2016, or the Child Protection (Sark) Law, 2020 as the case may be, or a person who has the care or charge of the child for the time being,

**"requirement"** means a requirement imposed under this Part (including the requirement to self-isolate under regulation 3(3)),

**"restriction"** means a restriction imposed under this Part,

**"Royal Court"** means the Royal Court sitting as an Ordinary Court, which shall be constituted by the Bailiff sitting alone, and

**"screening requirements"** means the requirements set out in regulation 4(1),

[ **"travel document"** means anything that is or appears to be –

- (a) a passport,
- (b) an identity card, or
- (c) a ticket or other document that permits a person to make a journey, including such a ticket or document that is in wholly electronic form.]

(2) In this Part, a reference to infection or contamination, however expressed, is a reference to infection or contamination with coronavirus, and related expressions are to be construed accordingly.

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#### NOTES

*In regulation 12, first, the words in square brackets in the definition of the expression "infected area" in paragraph (1) and, second, the definitions of the expressions "relevant officer" and "travel document" therein were inserted by the Emergency Powers (Coronavirus) (General Provision) (Bailiwick of Guernsey) (No. 5) (Amendment) Regulations, 2020, regulation 1(6), with effect from 19th August, 2020.*

*In accordance with the provisions of the Deputy Bailiff (Guernsey) Law, 1969, section 5(4), with effect from 9th September, 1969, in the event of the Deputy Bailiff discharging any functions or exercising any powers appertaining to the office of Bailiff which he is authorised to discharge or exercise under or by virtue of the 1969 Law, the provisions contained herein relating to the discharge of such functions or the exercise of such powers shall have effect as if the reference herein to the Bailiff included a reference to the Deputy Bailiff.*

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## PART II

### MENTAL HEALTH AND HEALTH AND SAFETY

**Modification of legislation relating to mental health.**

13. Schedule 1 modifies –

- (a) the Mental Health (Bailiwick of Guernsey) Law, 2010<sup>h</sup>,  
and
- (b) the Mental Health Review Tribunal Procedure Rules,  
2012<sup>i</sup>,

which modifications shall have effect for the period of validity of these Regulations.

**Disapplication of requirement to thoroughly examine etc.**

14. (1) Where a provision of the Safety of Employees (Miscellaneous Provisions) Ordinance, 1952<sup>j</sup> set out in Schedule 2 to these Regulations requires any type of equipment to be –

- (a) thoroughly examined at least once in a specified period,
- (b) tested and examined in a specified manner before being taken into use,
- (c) inspected at least once in a specified period, within a specified period of use or in specified conditions,

(as the case may be) a person who owns or operates such equipment may apply to the Chief Officer to disapply the requirement in relation to that equipment.

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<sup>h</sup> Order in Council No. XV of 2011; amended by Ordinance No. IX of 2016; and No. I of 2017.

<sup>i</sup> O.R.C. No. I of 2012; as amended by O.R.C. No. III of 2018.

<sup>j</sup> Recueil d'Ordonnances Tome X, p. 194.

(2) Where section 18(1) of the Safety of Employees (Electricity) Ordinance, 1956<sup>k</sup> requires an occupier's installation to be tested at least once in every period of 12 months, the occupier, or a person who owns, controls or operates such an installation, may apply to the Chief Officer to disapply the requirement in relation to that installation.

(3) An application under paragraph (1) or (2) may be made in writing and, for the avoidance of doubt, this includes by electronic means.

(4) On an application made under paragraph (1) or (2), the Chief Officer may disapply that requirement by granting a certificate to that person, where the Chief Officer is of the opinion that the disapplication will not prejudice the safety of –

(a) any person operating the equipment or occupier's installation (as the case may be), and

(b) any other person likely to be affected by the operation of the equipment or occupier's installation (as the case may be).

(5) A certificate granted under paragraph (5) shall be in writing and –

(a) may only disapply the requirement for a period stated in the certificate which may not exceed 30 days, and

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<sup>k</sup> Recueil d'Ordonnances Tome XI, p. 201; as amended by Ordres en Conseil Vol. XXXI, p. 278; Order in Council No. XIII of 2001; Recueil d'Ordonnances Tome XXIV, p. 162; Tome XXV, p. 328; Tome XXVII, p. 139; Ordinance No. XXXIII of 2003; and No. IX of 2016.

- (b) may be revoked by the Chief Officer prior to the expiry of the certificate where that Officer is satisfied that it is no longer necessary.

(6) For the avoidance of doubt, where a certificate has been granted under paragraph (5), no criminal or civil proceedings may be instituted for contravention of any requirement set out in or under any enactment set out in paragraph (1) or paragraph (2) against any person in relation to the equipment or occupier's installation (as the case may be) subject to the certificate.

(7) Nothing in this regulation exempts the person subject to any requirement set out in or under any enactment set out in paragraph (1) or paragraph (2) from any other health and safety requirement, and especially (but not limited to) the requirement to keep the equipment or occupier's installation (as the case may be) in a safe condition and good working order.

**Interpretation of this Part.**

**15. In this Part, "the Chief Officer" –**

- (a) means the inspector appointed under section 15 of the Health and Safety at Work (General) (Guernsey) Ordinance, 1987<sup>1</sup> for the time being holding the title "the Chief Health and Safety Officer", and
- (b) includes any inspector acting by or under the authority of the inspector mentioned in subparagraph (a).

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<sup>1</sup> Recueil d'Ordonnances Tome XXIV, p. 162; as amended by Recueil d'Ordonnances Tome XXV, p. 328; Tome XXVII, p. 139; Ordinance No. XXXIII of 2003; No. LII of 2012; and No. IX of 2016.

PART III  
MISCELLANEOUS AND FINAL

**Court of Appeal.**

16. (1) Section 7 (Venue) of the Court of Appeal Law is disapplied.
- (2) The Court of Appeal may sit for the hearing of appeals in or outside the Bailiwick.
- (3) For the avoidance of doubt, the Bailiff or presiding judge may give directions as to how the proceedings of the Court of Appeal shall be conducted, including (but not limited to) a direction that the proceedings, or part thereof, shall be conducted by way of telephone, live television link or any other means of telecommunications or electronic communications.

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**NOTE**

*In accordance with the provisions of the Deputy Bailiff (Guernsey) Law, 1969, section 5(4), with effect from 9th September, 1969, in the event of the Deputy Bailiff discharging any functions or exercising any powers appertaining to the office of Bailiff which he is authorised to discharge or exercise under or by virtue of the 1969 Law, the provisions contained herein relating to the discharge of such functions or the exercise of such powers shall have effect as if the reference herein to the Bailiff included a reference to the Deputy Bailiff.*

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**Offences by legal persons and unincorporated bodies.**

17. (1) Where a legal person is guilty of an offence under these Regulations, and the offence is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of –
- (a) any director, manager, secretary or other similar officer, or any foundation official, of the legal person, or

- (b) any person purporting to act in any such capacity,

he or she as well as the legal person is guilty of the offence and may be proceeded against and punished accordingly.

(2) Where the affairs of a legal person are managed by its members, subsection (1) applies in relation to the acts and defaults of a member in connection with his or her functions of management as if he or she were a director.

(3) Where an offence under these Regulations is committed by an unincorporated body and is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of –

- (a) in the case of a partnership, any partner,
- (b) in the case of any other unincorporated body, any officer of that body who is bound to fulfil any duty whereof the offence is a breach or, if there is no such officer, any member of the committee or other similar governing body, or
- (c) any person purporting to act in any capacity described in paragraph (a) or (b),

that person as well as the unincorporated body is guilty of the offence and may be proceeded against and punished accordingly.

(4) Where an offence under these Regulations is alleged to have been committed by an unincorporated body, proceedings for the offence must be brought in the name of that body and not in the name of any of its members.

(5) A fine imposed on an unincorporated body on its conviction of an offence under these Regulations must be paid from the funds of that body.

**Revocation and savings.**

18. (1) The Emergency Powers (Coronavirus) (General Provision) (Bailiwick of Guernsey) (No. 4) Regulations, 2020<sup>m</sup> and the Emergency Powers (Coronavirus) (General Provision) (Bailiwick of Guernsey) (No. 4) (Amendment) Regulations, 2020<sup>n</sup> are revoked.

(2) Anything done under or for the purposes of regulations revoked under paragraph (1) ("**the revoked regulations**") before the commencement of these Regulations shall, to the extent that the same is required or authorised to be done under or for the purposes of these Regulations, have effect as if done under or for the purposes of the equivalent provision of these Regulations; and for the avoidance of doubt, the revocation of the revoked regulations does not affect any restriction, requirement, condition, prohibition, or penalty, imposed thereunder.

(3) Anything in the process of being done under or for the purposes of the revoked regulations before the commencement of these Regulations may, to the extent that the same is required or authorised to be done under or for the purposes of these Regulations, be continued to be done under or for the purposes of the equivalent provision of these Regulations; and for the avoidance of doubt, the revocation of the revoked regulations does not affect any variation of the requirement to self-isolate under regulation 3(3) of the revoked regulations -

(a) by the MOH, in relation to a particular case, under regulation 3(6)(a) of those regulations, and

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<sup>m</sup> G.S.I. No. 64 of 2020.

<sup>n</sup> G.S.I. No. 66 of 2020.

(b) by the Authority, in relation to one or more categories of case, under regulation 3(6)(b) of those regulations.

(4) Any reference howsoever expressed in any enactment or subordinate legislation to a revoked regulation which is re-enacted (with or without modification) by or under these Regulations shall (unless the contrary intention appears) be construed as a reference to the provision as re-enacted.

(5) In so far as any subordinate legislation made or other thing done (or having effect as if made or done) under or for the purposes of a revoked regulation could be made or done under or for the purposes of these Regulations, it shall (unless the contrary intention appears) have effect as if made or done under or for the purposes of these Regulations.

**Interpretation: general.**

19. (1) In these Regulations, unless the context requires otherwise –

**"the Authority"**: see regulation 1(2),

**"coronavirus"** means Severe Acute Respiratory Syndrome Coronavirus 2 and/or COVID-19,

**"Medical Officer of Health"** means the Medical Officer of Health appointed by the States of Guernsey Policy & Resources Committee and includes the Deputy or Acting Medical Officer of Health for the time being, and any officer authorised by the Medical Officer of Health to exercise the Medical Officer of Health's functions under these Regulations, and

**"the MOH"**: see regulation 1(1),

(2) Other terms used in these Regulations in provisions modifying an enactment have the same meaning as in that enactment.

(3) For the avoidance of doubt, the powers of police officers under these Regulations are exercisable in addition to all other powers which police officers may exercise.

**Citation.**

20. These Regulations may be cited as the Emergency Powers (Coronavirus) (General Provision) (Bailiwick of Guernsey) (No. 5) Regulations, 2020.

**Extent.**

21. (1) Subject to paragraph (2), these Regulations shall have effect throughout the Bailiwick.

(2) Regulation 14 shall have effect in Guernsey only.

**Commencement.**

22. These Regulations shall come into force on 7<sup>th</sup> August, 2020.

MODIFICATION OF LEGISLATION RELATING TO MENTAL HEALTH

**Interpretation.**

1. References in this Schedule to –
  - (a) sections are to sections of the Mental Health (Bailiwick of Guernsey) Law, 2010 ("**the 2010 Law**"), and
  - (b) rules are to rules of the Mental Health Review Tribunal Procedure Rules, 2012 ("**the 2012 Rules**").
  
2. Expressions in this Schedule and in the 2010 Law or the 2012 Rules shall have the same meaning as in that Law or those Rules (as the case may be).

**Forms.**

3. Where any form prescribed in the Mental Health (Treatment and Forms) Regulations, 2013 or under the 2012 Rules is inconsistent with a modification made by these Regulations, the form –
  - (a) may, in connection with that modification, be used with appropriate amendments, and
  - (b) is otherwise, for use in that connection, to be read with such amendments as are necessary to reflect that modification.

**Modification of the 2010 Law.**

4. Where section 56(1)(b) applies (administration of medicine for more than three months), an approved medical practitioner (other than the responsible medical officer of the patient) may give a certificate under section 56(3)(b)

(appropriateness of treatment without understanding or consent) if the responsible medical officer is of the opinion that complying with the requirement under that provision for the certificate to be given by a second opinion approved doctor is not reasonably practicable or would involve unreasonable delay.

**Modification of the 2012 Rules.**

5. For the purposes of any hearing subject to the 2012 Rules –
- (a) the Tribunal is deemed to be properly constituted by the members of the Tribunal sitting within or without the Bailiwick, or a combination thereof,
  - (b) where the legally qualified member is of the opinion that it is not reasonably practicable or would involve unreasonable delay for one, or both, of the other members of the Tribunal to participate in the hearing, the Tribunal is deemed to be properly constituted by the legally qualified member –
    - (i) sitting with the other member able to participate, or
    - (ii) sitting alone,(as the case may be),
  - (c) notwithstanding subparagraph (b), where, after hearing from the patient's legal representative or the patient (if unrepresented), the legally qualified member is of the opinion that it is in the patient's interests that the hearing takes place before a single member of the Tribunal (including, but not limited to, where the patient's mental disorder might be adversely affected by the participation of multiple members of

the Tribunal by telephone), the Tribunal is deemed to be properly constituted by the legally qualified member sitting alone, and that member may consult with the other members of the Tribunal where it is in the interests of justice to do so, and

- (d) for the avoidance of doubt, the Tribunal may exercise any or all of its powers under the 2010 Law where it is constituted in accordance with this paragraph.

6. Any hearing which takes place in accordance with paragraph 5 shall be deemed for all purposes (including that of determining the *lex fori*) to have taken place in Guernsey and the courts of Guernsey accordingly have jurisdiction in accordance with Part VI of the Law, and sections 46 and 47 have effect accordingly.

REPEALED

PROVISIONS OF THE SAFETY OF EMPLOYEES (MISCELLANEOUS  
PROVISIONS) ORDINANCE, 1952

1. Section 8(2).
2. Section 15(6).
3. Section 16(4).
4. Section 17(4).
5. Section 19(2).
6. Section 24(2)(a).
7. Section 24(2)(b).

REPEALED

## EXPLANATORY NOTE

*(This note is not part of the Regulations)\*\**

These Regulations are emergency regulations made by the Civil Contingencies Authority under Part 3 of the Civil Contingencies (Bailiwick of Guernsey) Law, 2012 ("the Law"). They are made on the occurrence of an emergency, within the meaning of the Law, in the Bailiwick, arising from the urgent need to prevent, control or mitigate the spread of the virus Severe Acute Respiratory Syndrome Coronavirus 2 and the disease caused thereby, COVID-19 (referred to together in these regulations as coronavirus). They are prefaced with a statement by the Civil Contingencies Authority, as required by section 12(2) of the Law. COVID-19 was made a notifiable disease for the purposes of the Public Health Ordinance, 1936 on 10th February 2020.

These Regulations revoke and re-enact (with minor modifications) regulations previously made by the Civil Contingencies Authority in respect of the coronavirus pandemic.

These Regulations will come into force on the 7th August, 2020 and shall have temporary effect only in accordance with the provisions of section 16 (duration and scrutiny of emergency regulations) of the Law.

### *Part I - screening, assessment and powers to detain etc.*

This Part places a requirement to self-isolate on persons arriving in the Bailiwick, enables the Medical Officer of Health to place restrictions and requirements on other persons who are or who may be infected with coronavirus, and makes provision in respect of related matters, including powers for the Medical Officer of Health to impose screening requirements, to detain people and to keep people in isolation. The provisions also create criminal offences and confer powers of enforcement on police officers, and provide for applications to vary or revoke requirements or restrictions imposed under this part to be made to the Royal Court.

### *Part II – mental health and health and safety*

Schedule 1 to these Regulations sets out the modifications to be made to mental health legislation having effect in the Bailiwick.

Paragraphs 4 to 6 modify the Mental Health (Bailiwick of Guernsey) Law, 2010 ("the Law") to permit an approved medical practitioner (rather than only a second opinion

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\*\* The text of this Explanatory Note is as it was when the Statutory Instrument was first made – that is to say that the Explanatory Note has not been updated to take account of any changes made by subsequent amending Statutory Instruments with their own Explanatory Notes.

approved doctor) to provide a certificate for the purposes of section 56 and, in doing so, that practitioner will only be required to consult with one person, where the practitioner is of the opinion that is not reasonably practicable or would involve unreasonable delay to comply with the unmodified requirements.

Paragraphs 7 to 8 modify the Mental Health Review Tribunal Procedure Rules, 2012 to provide that the Mental Health Review Tribunal ("the Tribunal") may properly be constituted according to specified criteria.

Regulation 14 allows the Chief Health and Safety Officer ("the Chief Officer") to grant a certificate disapplying the requirements for examination, testing and inspection set out in regulation 14 and Schedule 2 in respect of equipment, occupier's installation or gas appliance and flue (as the case may be) specified in an application. A certificate may only be given where the Chief Officer is of the opinion that the disapplication will not prejudice the safety of any person operating the equipment etc. or any other person likely to be affected by its operation. The certificate may only disapply the relevant requirement for a period of up to 30 days, and may not disapply any other health and safety requirement (and, in particular, the requirement to keep the equipment etc. in a safe condition and good working order).

*Part III – miscellaneous and final*

Regulation 16 enables the Court of Appeal to conduct its proceedings remotely, and enable a Judge of Appeal to be sworn into office by the Royal Court constituted by the Bailiff sitting alone.