

STATES OF JERSEY

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DRAFT SHOPS (REGULATION OF OPENING AND DELIVERIES) (JERSEY) LAW 200-

**Lodged au Greffe on 19th April 2005
by the Legislation Committee**

STATES GREFFE



Jersey

DRAFT SHOPS (REGULATION OF OPENING AND DELIVERIES) (JERSEY) LAW 200-

European Convention on Human Rights

The President of the Legislation Committee has made the following statement –

In the view of the Legislation Committee the provisions of the Draft Shops (Regulation of Opening and Deliveries) (Jersey) Law 200- are compatible with the Convention Rights.

(Signed) **Connétable of St. Clement**

REPORT

New Law agreed by the States in 1999

On 9th November 1999 the States approved **Shops: Sunday Trading – P.137/99** and agreed to a new Law to replace the Shops (Sunday Trading) (Jersey) Law 1960. The 1960 Law provides that only certain items may be sold on a Sunday, Good Friday, Liberation Day and Christmas Day. The Law thus gives rise to many anomalies, e.g. flowers may be sold on the holding where grown but cut flowers may not be sold in other shops; the Law is difficult to police and needs to be updated.

Although the States took the decision in 1999, it was then necessary to make a bid for law drafting time and legal opinion has been required on the implications of the more recent Human Rights Law. However, a draft enabling Law is now available and the detail of the permit scheme, and which shops might be permitted to open, is to be included in subordinate legislation.

The Comité des Connétables had intended to bring before the States both the draft Law and subordinate Regulations, so that the overall scheme could be considered as a whole, but it is clear that views on Sunday trading may have changed since 1999 and the States should have the opportunity for a general debate on the issue of Sunday trading. The Connétables will shortly be bringing forward proposals to enable such a debate to take place.

Whatever the outcome with regard to opening, it is the Connétables' firm view that trading on Sundays, Good Friday, Liberation Day and Christmas Day should be authorised by permit issued by the Connétable of the Parish. This will enable the Connétable of the Parish to impose any conditions considered appropriate, including with regard to the timing and number of deliveries to the shop, and will thus enable activity which causes a disturbance to the neighbourhood to be limited.

Scope of the new Law

Sunday, Good Friday, Liberation Day and Christmas Day

The new Law limits the opening of a shop on specified days. These days are Sunday, Good Friday, Liberation Day and Christmas Day. Although 'Sunday trading' is used as a general term in discussion, it should be remembered that the current Law (Shops (Sunday Trading) (Jersey) Law 1960) also treats Good Friday, Liberation Day and Christmas Day as a Sunday and limits trading on these 3 days.

There has been a creeping commercialisation of public/bank holidays and most would recognise that the majority of St. Helier shops are now open for example on the May and August bank holidays and many Christmas sales now start on Boxing Day (this was not the case in Jersey in 2004 as most shops were unable to open as Boxing Day was on a Sunday and the shops would not have met the requirements for a Sunday trading permit). It was this creeping commercialisation that led to the States adding 'Liberation Day' to the Law in 1999 to ensure that this important day in the Island's calendar was observed as well as Good Friday and Christmas Day.

The pressure from some of the major retailers to permit shops generally to open on Christmas Day has resulted in the United Kingdom government passing a Bill making it illegal for shops over 3,000 square feet to trade on Christmas Day (this Bill received Royal Assent on 28th October 2004). Unless the nature of specific days is protected then it is likely that many who work in the wholesale and retail sectors will not have the opportunity, like the rest of the population, to enjoy these as a common day off.

All shops

The Connétables have received legal opinion with regard to services provided by shops such as hairdressers, barbers and tanning shops. It would seem that the provision of services does not constitute the retail sale of goods under the 1960 Law and therefore a number of businesses regarded as 'shops' have in the past been able to open without restriction. This has caused difficulties as the public perception is that such businesses are 'shops' and, as trading on a Sunday is limited, appears to be a further loophole.

To avoid ambiguity, the scope of the new Law has been widened to include all shops. A shop is defined as any premises, structure, vehicle or place used, whether permanently or temporarily, for any one or more commercial activities and will include events such as car boot sales. The Law is therefore framed in terms which are as wide as possible and exceptions can be made under Article 3 in subordinate Regulations to limit its application. It should be noted that commercial activity does not require an activity to be undertaken in the course of a business

and would also include charity shops.

Human Rights issues

In preparing the draft Law the Connétables have received advice from the Law Officers with regard to compliance with the European Convention on Human Rights. In particular the Connétables considered whether the Law would be Human Rights compliant if it did not make special provision for Jewish-owned premises, and persons of other faiths for whom days other than Sunday, Good Friday and Christmas Day are holy days on which they are required not to work, by virtue of an 'alternative day' provision.

In proposing new legislation providing for only limited trading under P.137/99, the Connétables had sought to balance the needs of residents and tourists to be able to purchase essential items against the disruption and inconvenience which might be caused to residents if shops in the area traded; the availability of other smaller shops open on those days; and the likelihood of the tranquillity of Sunday being disrupted by the trading. The Law should also be simple to apply and easy to police.

The rationale for the Law was therefore one of protecting the quality of life of Islanders as a whole by allowing for one day to be generally quieter and more relaxed, with better opportunities for family bonding. Whilst it would be possible to consider allowing persons of other faiths to open a shop on a Sunday, provided they closed the shop on the relevant equivalent holy day under their faith, the question then arises as to whether or not such persons should be permitted to apply for a permit to open on the alternative day when they would be shut. The Connétables took the view that the purpose of the Law is to provide a weekly quiet day for the benefit of persons living near shops and not specifically to ensure religious adherence. To allow a shop which would otherwise be limited to trading on 6 days a week to open on 7 days because of the faith of the owner would seem to discriminate against the remainder of shops where the owner would be unable to choose, on religious grounds, an option of opening on a Sunday.

The Connétables have received confirmation from the Law Officers that there is persuasive authority that the absence of an 'alternative day' provision is justifiable and within the margin of appreciation of the legislature. Accordingly, no special provision has been made for people of other faiths.

Deliveries

Of all the complaints received by Connétables, it is the noise and disturbance caused by deliveries that feature most often. This is particularly so in respect of early morning deliveries on days regarded as a day off, i.e. Sundays and public holidays. Whilst it would be possible for a Connétable to place conditions on deliveries to a shop granted a permit to open on such days, there would be no regulation of deliveries to shops that were not open to the public. The Connétables considered this to be an anomalous situation and therefore the draft Law provides for the States to introduce a scheme for the regulation of wholesale deliveries to shops on the days specified in the Law. It is to be hoped that it will not be necessary to introduce further restrictions but it is nevertheless prudent to ensure that action may be taken if required.

The draft Law

The Law is relatively straightforward, with Article 1 providing the interpretation of various terms whilst Article 2 prohibits the opening of shops on specified days, namely Sunday, Good Friday, Liberation Day and Christmas Day. Article 3 provides that the Law does not apply to hawkers and allows the States by Regulations to make other exemptions from the Law.

Article 4 permits the States by Regulations to set up the permit scheme for shops wishing to open on the specified days. The Connétables are aware that views on Sunday trading may have altered since the decision in 1999 and agree that the States should have the opportunity for a general debate on the issue of Sunday trading. This will be afforded by the Draft Shops (Sunday Trading) (Trial Arrangements) (Jersey) Regulations 200-, which, if approved, will permit a trial period during which shops may sell any item. Should the States decide to continue to limit Sunday trading the scheme approved under P.137/99 would provide that if a shop was permitted to open it would be allowed to sell any items it usually stocked, and the decision as to whether or not a shop might be granted a permit to open would be based on the size (those over a specified size would not be permitted to open) and the 'predominant use' or 'special purposes' test to be defined in the legislation.

Article 5 provides for a scheme to regulate wholesale deliveries and Articles 6–9 deal with offences. Article 10 enables the States to make Regulations to cover transitional arrangements – during the States debate in 1999 the view was strongly expressed that the new Law should not be applied retrospectively and so provision can be made to provide that a shop permitted to trade under the 1960 Law should continue to enjoy that benefit until such time

as the ownership or business changes. Article 11 specifies consequential amendments to and repeals of legislation – the consequential amendments relate to 2 Laws to ensure that the special status of Liberation Day is consistent between the various pieces of legislation. Article 12 provides for the Law to come into force on a day or days appointed by the States.

Conclusion

Sunday trading is a complex issue and the Connétables have given considerable thought to all the issues involved during the drafting of this Law and have also consulted widely on the subject. Whilst the Law is only an enabling Law, and therefore cannot outline the intended scheme, it is hoped that it will meet with the approval of the States as, without such a framework, it will be impossible to progress a new scheme, in whatever form that is approved, and there will continue to be considerable dissatisfaction with the current Law.

The States will have the opportunity to debate the principle of Sunday trading during the debate on the trial deregulation and the Connétables hope that the issue of trading on Sunday, Good Friday, Liberation Day and Christmas Day may be resolved at an early opportunity.

Financial implications

There are no additional direct costs to the States associated with adopting this Law, however the partial or total deregulation of Sunday trading approved under subordinate legislation may result in additional costs depending upon the extent of that scheme.

Manpower implications

There are no additional manpower implications for the States associated with adopting this Law.

European Convention on Human Rights

Article 16 of the Human Rights (Jersey) Law 2000 will, when brought into force by Act of the States, require the Committee in charge of a Projet de Loi to make a statement about the compatibility of the provisions of the Projet with the Convention rights (as defined by Article 1 of the Law). Although the Human Rights (Jersey) Law 2000 is not yet in force, on 8th April 2005 the Legislation Committee made the following statement before Second Reading of this projet in the States Assembly –

In the view of the Legislation Committee the provisions of the Draft Shops (Regulation of Opening and Deliveries) (Jersey) Law 200- are compatible with the Convention Rights.

Explanatory Note

Article 1 is the interpretation provision.

What is a shop?

Paragraphs (1) and (2) describe what constitutes a shop for the purposes of the draft Law. A shop is any premises (the ordinary meaning of which is ‘land and buildings’), any structure (such as a stall or tent), any vehicle or any place (such as a field) used for the retail sale or hire of goods (including their display and delivery), the provision of services (such as hairdressers, clothes repairers, beauty salons), or the provision of goods for use at the shop (such as tanning shops where tanning beds are used by customers).

Who is the occupier of a shop?

Paragraphs (3) and (4) describe who is the occupier of a shop. The occupier is the person carrying on the retail sale or hire of goods or the provision of goods or services. But, in the case of a market, fair, fête or similar event (such as a car boot sale), the organizer is the occupier for the purposes of the draft Law.

When is a shop open?

Paragraph (5) states that, for the purposes of the draft Law, a shop is open at any time when members of the public (or certain members of the public, such as club members) have access to the shop in order to view displayed goods or buy or hire goods or in order to use services provided, or goods provided for use, at the shop.

Article 2 makes it an offence, liable to an unlimited fine, to open a shop on Sundays, Good Friday, Christmas Day or Liberation Day unless the shop is exempt from the Law or a permit has been granted authorizing its opening. The occupier is always liable for the offence. *Paragraph (3)* extends liability to the shop manager and any other agent or servant of the occupier who opens the shop in contravention of the draft Law. *Paragraphs (4) and (5)* extend liability to a stallholder at a market, fair, fête or similar event, and to the stallholder’s manager or other agent or servant, if the person has sold goods or provided services in contravention of the draft Law.

Article 3 makes it clear that the Law does not apply to a person carrying on business as a licensed hawkker. It also enables the States to make Regulations exempting shops from the prohibition on opening. Any exemption may be made subject to restrictions and conditions and, by virtue of *Article 15(4)* of the Interpretation (Jersey) Law 1954, different exemptions, restrictions and conditions can be imposed in different cases.

Article 4 enables the States to make Regulations empowering a Connétable, in his or her parish, to grant a permit authorizing the opening of a shop on the days prohibited by *Article 2*. The Regulations would specify any limitation on the shops for which a permit could be granted, the matters that a Connétable must take into consideration in granting a permit and the conditions that must or may be imposed when a permit is granted. The Regulations would also specify how the scheme for the grant of permits is to be administered.

Article 5 enables the States to make Regulations prohibiting, restricting or regulating the making of wholesale deliveries to shops on Sundays, Good Friday, Christmas Day and Liberation Day. The Regulations could apply to all shops, not only to shops for which a permit is required to open on those days.

Article 6 makes it an offence to provide false information for the purpose of obtaining a permit or to fail, when required to do so by the conditions imposed on a permit, to comply with any requirement of the permit regarding the provision of information.

Article 7 empowers the Connétable or a Centenier to deal with an offence under the draft Law at the parish hall and to impose a fine not exceeding level 1 on the standard scale.

Article 8 makes the standard provision for the liability of officers or partners where an offence is committed by a body corporate or partnership.

Article 9 has the effect that any provision of a shop lease that would require the occupier to open in contravention of the draft Law is void.

Article 10 enables the States to make Regulations containing arrangements for the transition from the Shops (Sunday Trading) (Jersey) Law 1960 to this draft Law and the Regulations made under it.

Article 11 gives effect to the *Schedule*, which repeals the Shops (Sunday Trading) (Jersey) Law 1960 and makes consequential amendments to other enactments. The Hawkers and Non-resident Traders (Jersey) Law 1956 is

amended with the effect that a licensed hawker may not carry on the business of hawking on Liberation Day (hawking on Sundays, Good Friday and Christmas Day is already prohibited, save that milk and ice-cream may be hawked on Sundays). The Licensing (Jersey) Law 1974 is amended with the effect that an off-licence may only open on Liberation Day if a permit has been granted under this draft Law (opening on Sundays, Good Friday and Christmas Day without a permit is already prohibited).

Article 12 cites the short title of the draft Law and provides for it to come into force on a day appointed by Act of the States.

Under the Criminal Justice (Standard Scale of Fines) (Jersey) Law 1993, level 1 is £50, level 2 is £500, level 3 is £2,000 and level 4 is £5,000.



Jersey

DRAFT SHOPS (REGULATION OF OPENING AND DELIVERIES) (JERSEY) LAW 200-

Arrangement

Article

<u>1</u>	<u>Interpretation</u>
<u>2</u>	<u>Opening on specified days prohibited</u>
<u>3</u>	<u>Application of Law and exemptions</u>
<u>4</u>	<u>Permits</u>
<u>5</u>	<u>Deliveries</u>
<u>6</u>	<u>Offences relating to information</u>
<u>7</u>	<u>Power of Connétable to impose penalty</u>
<u>8</u>	<u>Offences by bodies corporate</u>
<u>9</u>	<u>Requirement to contravene Law to be void</u>
<u>10</u>	<u>Transitional arrangements and savings</u>
<u>11</u>	<u>Consequential amendments and repeals</u>
<u>12</u>	<u>Citation and commencement</u>

SCHEDULE 1

CONSEQUENTIAL AMENDMENTS AND REPEALS

PART 1

CONSEQUENTIAL AMENDMENTS

<u>1</u>	<u>Hawkers and Non-resident Traders (Jersey) Law 1965 amended</u>
<u>2</u>	<u>Licensing (Jersey) Law 1974 amended</u>

PART 2

REPEALS



Jersey

DRAFT SHOPS (REGULATION OF OPENING AND DELIVERIES) (JERSEY) LAW 200-

A LAW to regulate, on certain days, the sale or hire of goods, the provision of services and the provision of goods for use, and the making of wholesale deliveries.

Adopted by the States [date to be inserted]

Sanctioned by Order of Her Majesty in Council [date to be inserted]

Registered by the Royal Court [date to be inserted]

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

1 Interpretation

- (1) In this Law, unless the context otherwise requires –
 - “sale” includes sale by auction;
 - “shop” means any premises, structure, vehicle or place used, whether permanently or temporarily, for any one or more commercial activities.
- (2) For the purposes of this Law, any reference to a commercial activity means –
 - (a) the retail sale or hire of goods, including –
 - (i) the offer, exposure and display of goods for such sale or hire, and
 - (ii) the despatch of goods from any premises, structure, vehicle or place and the delivery of the goods so despatched as if those goods had been sold at or hired from those premises or that structure, vehicle or place at the time of the despatch or delivery;
 - (b) the provision, in the course of a trade or business, of services at premises or a structure, vehicle or place; or
 - (c) the provision, in the course of a trade or business, of goods for use at premises or a structure, vehicle or place.
- (3) Subject to paragraph (4), for the purposes of this Law in its application to a shop which is a place, a reference to the occupier of the shop shall be construed as a reference to the person carrying on the commercial activity.
- (4) For the purposes of this Law in its application to a shop which is premises that are, or a structure or place that is, used temporarily for the holding of a market, fair or fête or like event at which vehicles or stalls or other temporary structures, or any part of the premises or structure or place, are used for one or more commercial activities, a reference to the occupier of the shop shall be construed as a reference to the organizer of the market, fair or fête or like event.
- (5) For the purposes of this Law a shop is open at any time when members of the public, or any class of

members of the public, have access to it for the purposes of one or more commercial activities.

2 Opening on specified days prohibited

- (1) A shop shall not be open on any Sunday, Good Friday, Christmas Day or Liberation Day except in accordance with and pursuant to –
 - (a) an exemption under Article 3(2);
 - (b) a permit granted under Article 4.
- (2) Where a shop is open in contravention of paragraph (1) the occupier of the shop shall be guilty of an offence and liable to a fine.
- (3) Where an offence for which the occupier is liable under paragraph (2) has in fact been committed by the manager of the shop or any other agent or servant of the occupier of the shop, the manager or other agent or servant, as well as the occupier, shall be guilty of the offence.
- (4) Where a person is the occupier of a shop by virtue of Article 1(4) and liable under paragraph (2) of this Article for an act which has in fact been done by a person carrying on a commercial activity at the market, fair or fête or like event, that person, as well as the occupier, shall be guilty of the offence.
- (5) Where a person is the occupier of a shop by virtue of Article 1(4) and liable under paragraph (2) of this Article for an act which has in fact been done by a manager, agent or servant of a person carrying on any commercial activity at the market, fair or fête or like event, the manager, agent or servant, as well as the occupier, shall be guilty of the offence.

3 Application of Law and exemptions

- (1) This Law shall not apply to a person carrying on business as a hawker pursuant to a hawker's licence granted under the Hawkers and Non-Resident Traders (Jersey) Law 1965.^[1]
- (2) The States may by Regulations exempt from Article 2(1) shops of a specified description, either with or without restrictions and conditions.

4 Permits

- (1) The States may by Regulations establish a scheme for the grant by a Connétable of a permit authorizing the opening of a shop in his or her parish on any Sunday, Good Friday, Christmas Day or Liberation Day, either with or without restrictions and conditions.
- (2) Regulations made under paragraph (1) may include provision –
 - (a) for the descriptions of shops in respect of which permits may be granted;
 - (b) for the procedure to be followed in relation to applications for permits;
 - (c) for the matters to be taken into consideration by a Connétable in determining whether to grant permits;
 - (d) for the day or days on which shops are authorized to open pursuant to permits;
 - (e) for the duration of permits;
 - (f) for the conditions that shall or may be imposed on the grant of permits including, but not by way of limitation, conditions restricting the times at which shops may open and regulating wholesale deliveries to shops, on the days on which they are authorized to open pursuant to permits;
 - (g) for the determination and charging of fees in respect of applications for and the grant of permits;
 - (h) for the circumstances in which permits shall or may be revoked;

- (i) for the review of any decision to refuse to grant a permit, or to impose restrictions or conditions on the grant of a permit;
- (j) for an appeal to the Royal Court in respect of any review of a decision;
- (k) authorizing the Connétables of the parishes to –
 - (i) approve, for use in all the parishes, forms of application for permits and the form of permits, and
 - (ii) issue, in all the parishes, guidance regarding the scheme for the grant of permits.

5 Deliveries

- (1) The States may by Regulations prohibit or restrict, or establish a scheme for the regulation of, the making of wholesale deliveries to shops on any Sunday, Good Friday, Christmas Day or Liberation Day.
- (2) Regulations made under paragraph (1) may make it an offence to contravene any provision of the Regulations and impose a penalty not exceeding level 4 on the standard scale for any such offence.

6 Offences relating to information

A person who –

- (a) for the purpose of obtaining a permit under Article 4, knowingly gives any information that is false in a material particular; or
- (b) when required under Article 4 to notify a person of any matter, fails without reasonable excuse to do so,

shall be guilty of an offence and liable to imprisonment for a term of 12 months and a fine.

7 Power of Connétable to impose penalty

- (1) Where a person charged with an offence under this Law accepts the decision of the Connétable or a centenier of the parish in which the offence was committed, the Connétable or centenier may impose a fine of level 1 on the standard scale.
- (2) A fine imposed under paragraph (1) shall be paid to the annual income of the parish in which the offence was committed.

8 Offences by bodies corporate

- (1) Where an offence under this Law committed by a limited liability partnership or body corporate is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of –
 - (a) a person who is a partner of the partnership, or director, manager, secretary or other similar officer of the body corporate; or
 - (b) any person purporting to act in any such capacity,the person shall also be guilty of the offence and liable in the same manner as the partnership or body corporate to the penalty provided for that offence.
- (2) Where the affairs of a body corporate are managed by its members, paragraph (1) shall apply in relation to acts and defaults of a member in connection with that member's functions of management as if that member were a director of the body corporate.

9 Requirement to contravene Law to be void

A lease of a shop shall be void to the extent that it requires the shop to be open in contravention of this Law.

10 Transitional arrangements and savings

The States may by Regulations make such transitional arrangements and savings as they think fit regarding the repeal of the Shops (Sunday Trading) (Jersey) Law 1960^[2] and its replacement by this Law.

11 Consequential amendments and repeals

- (1) Part 1 of the Schedule shall have effect to amend other enactments.
- (2) Part 2 of the Schedule shall have effect to repeal the enactments listed in the first column of it to the extent specified in the second column.

12 Citation and commencement

This Law may be cited as the Shops (Regulation of Opening and Deliveries) (Jersey) Law 200- and shall come into force on such day or days as the States by Act appoint.

SCHEDULE 1

(Article 11)

CONSEQUENTIAL AMENDMENTS AND REPEALS

PART 1

(Article 11(1))

CONSEQUENTIAL AMENDMENTS

1 Hawkers and Non-resident Traders (Jersey) Law 1965 amended

The Hawkers and Non-resident Traders (Jersey) Law 1965 shall be amended in Article 6(1)(a)^[3] by inserting after the words “Christmas Day” the words “or Liberation Day in any year,”.

2 Licensing (Jersey) Law 1974 amended

The Licensing (Jersey) Law 1974 shall be amended in Article 67(b)(ii)^[4] –

- (a) by substituting for the words “or Christmas Day,” the words “, Christmas Day or Liberation Day,”; and
- (b) by substituting for the words “Shops (Sunday Trading) (Jersey) Law 1960’ the words “Shops (Regulation of Opening and Deliveries) (Jersey) Law 200-”.

PART 2

(Article 11(2))

REPEALS

<i>Enactment</i>	<i>Extent of repeal</i>
Shops (Sunday Trading) (Jersey) Law 1960 ^[5]	The whole Law.
Shops (Sunday Trading) (Amendment) (Jersey) Law 1968 ^[6]	The whole Law.
Shops (Sunday Trading) (Amendment No. 2) (Jersey) Law 1985 ^[7]	The whole Law.
Shops (Sunday Trading) (Amendment No. 3) (Jersey) Law 2000 ^[8]	The whole Law.
Shops (Sunday Trading) (Amendment No. 4) (Jersey) Law 2001 ^[9]	The whole Law.
Public Holidays and Bank Holidays (Amendment No. 2) (Jersey) Law 2003 ^[10]	Article 4.

[1] *Volume 1963-1965, page 425, Volume 1986-1987, page 77 and Nos. 6356, 6652, 7351 and 8452.*

[2] *Tome VIII, page 835, Volume 1984-1985, page 199, Volume 2000, page 65, Volume 2001, page 151, Volume 2003, page 125 and R&Os 7288, 7331, 7610, 7611 and 45/2004.*

[3] *Volume 1963-1965, page 432.*

[4] *Volume 1973-1974, page 308 and Nos. 8358 and 8984.*

[5] *Tome VIII, page 835.*

[6] *Volume 1968-1969, page 41.*

[7] *Volume 1984-1985, page 199.*

[8] *Volume 2000, page 65.*

[9] *Volume 2001, page 151.*

[10] *Volume 2003, page 125.*