

STATES OF JERSEY



SUNDAY TRADING LEGISLATION: ADDITIONAL CONSIDERATIONS FOR THE GRANTING OF A PERMIT (P.149/2011) – COMMENTS

**Presented to the States on 22nd September 2011
by the Minister for Economic Development**

STATES GREFFE

COMMENTS

The Deputy of St. Mary seeks to affect the decision of the States to modernise Jersey's Sunday trading legislation less than 2 months after the new Regulations have come into force.

He asks members to require Connétables to consider 4 additional factors when making the decision on any given general Sunday trading permit.

These factors relate to other retail enterprises which are 'likely competitors' (i.e. trade in the same type or types of goods) and are addressed individually below, numbered for clarity.

He seeks to amend the legislation so that in particular the Connétable will have regard to –

1. The effect on the overall efficiency and resilience of the enterprises seen as a group

This is not realistically achievable.

The Connétables could not realistically gather the necessary data or be expected to have a detailed understanding of each business. They would have to estimate not only the potential business that a given enterprise would attract on a Sunday, but also the effect that this would have on its competitors, the level of business that competitors would attract, the reduction in business to the shop and its competitors during the remainder of the week, the shift in the sectoral costs this would create, and the effect that all of these factors would have on revenues across the sector. This would require perfect information on the activities of numerous businesses, which could not be obtained.

It would also require information on the future intentions of businesses in the sector in respect of their actions regarding trading on Sundays, which may not be known to the businesses themselves, and which could change later in response to actions by competitors.

Accordingly, even if perfect information was obtainable (and it is not), Connétables would have to accurately estimate the inter-dependent actions of businesses across the Island before they themselves had made the relevant decisions.

2. The effect on prices

This is not realistically achievable.

The Connétables could not realistically gather the necessary data. Again, perfect information on the activities of numerous businesses is required, while in this case it would also be necessary to judge beforehand whether shops which may be affected would choose to increase prices and reduce turnover, or to maintain a pricing approach while reducing margins.

This cannot be achieved for the same reasons given in point 1 above – (unobtainable) perfect information is not sufficient – future actions of third parties would have to be accurately predicted. In addition, Connétables would have to be able to understand what the trends in prices would have been if the business did not open on a Sunday.

3. The effect on the freedom of workers not to work on Sunday if they do not wish to

This consideration would require the Connétable to identify the manner in which each business would employ staff at the time of its application. It would require all businesses to truthfully state their policy on Sunday working, at the time of application and during the one year permit period.

Connétables would have to impose conditions on all permits to allow them to intervene if workers were deemed to be working when ‘they did not wish to’, and would then, to ensure compliance, have to undertake some reporting or inspection regime which would allow them to judge, during the operation of the permits, whether this was in fact the case.

Parishes are not resourced or equipped to undertake such operations.

It should be noted that the rights of workers are regulated by dedicated legislation (the Employment (Jersey) Law 2005). This Law would be a much more appropriate tool to ensure the rights of workers on Sundays. Furthermore, it is not generally within the remit of the Economic Development Department to affect those rights.

Additionally, the Deputy does not even suggest that there would need to be a balanced assessment whereby this potential impact is balanced with whether other people might be provided with an opportunity to work that would otherwise not have been able to.

Finally, the proposal considers the freedom of workers not to work on a Sunday simply if they work in the retail sector. Why has the Deputy not considered why retail should be treated differently to all other sectors?

4. The effect on the demand for labour

This is not realistically achievable.

The Connétables could not realistically gather the necessary data. The Connétable would have to identify the effects, not only of any additional trade on Sundays, but also the consequences on staffing levels of businesses in the relevant sector.

This cannot be achieved for the same reasons as in point 1 above – (unobtainable) perfect information is not sufficient – future actions of third parties would have to be accurately predicted.

Again, the suggested approach lacks balance as there is no recognition that the impact on the supply of labour should also be considered.

In addition to the points above, the Shops (Regulation of Opening) (Jersey) Regulations 2011 as approved place the responsibility on Connétables simply to manage a permit scheme for trading on Sundays, and it would simply not be reasonable to expect Connétables and their associated Parish infrastructure to expand their responsibility into general competition and economic controls.

At a time when we are trying to reduce regulation and create economic growth, I urge the States to reject this unworkable and unnecessary proposition.