

STATES OF JERSEY



SUNDAY TRADING LEGISLATION: ADDITIONAL CONSIDERATIONS FOR THE GRANTING OF A PERMIT

Lodged au Greffe on 25th August 2011
by the Deputy of St. Mary

STATES GREFFE

PROPOSITION

THE STATES are asked to decide whether they are of opinion –

to refer to their Act dated 21st July 2011 in which they adopted the Shops (Regulation of Opening) (Jersey) Regulations 2011 and –

- (a) to agree that the Regulations should be amended to provide that, in addition to the existing matters that must be considered by a Connétable before granting a general permit, the following considerations should also be added –

the Connétable shall have regard, when considering a request by a retail enterprise for a general permit, to other retail enterprises which are likely competitors (i.e. trade in the same type or types of goods) and in particular the Connétable will have regard to –

- the effect on the overall efficiency and resilience of the enterprises seen as a group;
- the effect on prices;
- the effect on the freedom of workers not to work on Sunday if they do not wish to;
- and the effect on the demand for labour;

and the Connétable shall also have regard to these effects as they relate to the individual enterprise requesting the permit;

- (b) to request the Minister for Economic Development to bring forward for approval the necessary amendments to the Regulations to give effect to the decision.

DEPUTY OF ST. MARY

REPORT

Regulation 10 of the recently approved Shops (Regulation of Opening) (Jersey) Regulations 2011 currently reads as follows –

10 Considerations in granting permits

- (1) In determining whether or not to grant a permit, a Connétable shall have regard to the peace and tranquillity of a neighbourhood, and the avoidance of nuisance to residents, on the days and times of opening of a shop under the permit.
- (2) In particular, the Connétable shall have regard to the kind and size of a shop to which the permit will apply, and to any noise, traffic and litter that are likely to result from its opening under the permit.
- (3) Paragraph (2) does not limit paragraph (1).

1. In the Sunday Trading debate on 21st July 2011, States members were sold a pup. Or that's what it now feels like to me. This proposition proposes that the Regulations be altered so that the wider public interest is protected by adding the sensible considerations around granting permits which were missing.

2. During the debate, the Assistant Minister for Economic Development, the Connétable of St. Clement, said in his summing-up –

“There is no intention of increasing the incidence of Sunday trading and there should be no assumption that the law and these regulations will increase Sunday trading.”,

and

“I repeat, this is not about encouraging additional commercial activity on a Sunday, but rather, controlling it and keeping it sensible.”

3. And yet the Jersey Evening Post [JEP] headlined the outcome next day: “NEW LAW MEANS SHOPS CAN OPEN ON SUNDAY”, with the sub-heading: “ONLY LARGER STORES FACE RESTRICTIONS AS STATES REJECT PLEAS TO “KEEP JERSEY SPECIAL”.

4. JEP headlines can be a law unto themselves and be only very loosely based on the story, but on this occasion the story did follow the headline –

“THE most far-reaching reforms of Sunday trading laws for 50 years were agreed yesterday and could soon mean all but the Island's biggest 36 stores being allowed to open.

The States approved the changes despite fears that they would destroy what was still special about the Jersey weekend and that shop workers would be forced to work rather than be able to spend time with their families.

In just 14 days' time, when the new regulations come into force, the owners of any shop under 700m² in floor area will be eligible to apply to the relevant parish Constable for a permit to open.

That would leave just three dozen stores – including garden centres, and supermarkets, department stores and DIY stores – being barred from opening on 90 per cent of Sundays and many bank holidays throughout the year.”.

5. And then former States member Gerald Voisin's letter of 26th July showed us what we had missed –

“The decision taken last week is completely contrary to the previously stated position to allow only small shops to open. It is a total betrayal of the 8,000 workers in the retail and supply industry (16 per cent of the Island's workforce), it is contrary to States economic policy to encourage industries to be more efficient, and it is totally at odds with States policy to discourage excessive immigration by regulating job creation

“At no time was there ever a view expressed during consultation that the Island should move to allow general trading on a Sunday. Indeed, public consultation revealed the opposite. But general Sunday trading for shops is precisely what the regulations adopted last week will achieve.”.

6. For the full text of his letter, which expands on the summary in the paragraph above, see Appendix 1.
7. How will the new Regulations, as we agreed them in July, work? Any shop under 700 square metres can apply to their Connétable for a general permit. The ONLY things he or she must take into account when considering the application are “the peace and tranquillity of the neighbourhood,” and the avoidance of nuisance to residents.” The text of the present Regulation 10 is shown at the beginning of this Report.
8. Therefore, in situations where there are few or no neighbouring residents, it will be next to impossible for a Connétable to resist an application. If he or she does, the store will most likely win any appeal.
9. The individual shop appears to gain, its would-be Sunday customers appear to gain, and even its workers appear to gain.
10. But in fact the opposite is true. The shop loses, as they have to spread 6 days' trading over 7 days. They may gain “first-mover advantage”, but only for a short while, until other shops in their sector open too, for fear of losing market share. So what happens in the end is that all the shops competing in the same area of retail are open.

11. The customers lose, when the prices rise, as they must, to cover the increased cost of opening for 7 days for the same volume of trade (approximately) as they previously had in 6 days.¹
12. And the workers lose as they come under insidious pressure to work on Sunday, whether they want to or not. Working on a Sunday moves from being an acceptable option for those choosing to do so to a more or less forced choice for those who do NOT want to do so. Their ability or willingness to work Sundays becomes explicitly or implicitly a factor in promotion prospects or even in keeping their job.
13. This is in fact a situation similar to the “Tragedy of the Commons”. Each individual action is reasonable for the individual involved, but the sum of them is harmful to the whole system.² In such situations it falls to the authorities, that is, to the States, to hold the ring and to act to protect the wider shared interests which are at stake.
14. In the debate, the Minister for Economic Development, Senator A.J.H. Maclean, said: “I think this really comes to the heart of the whole issue about Sunday, and that is that more retailers will not necessarily open, as is the case now, if they decide or feel it is not going to be commercially viable for them so to do. Why would they incur the additional costs of opening on a Sunday if they could not make a profit out of it? Some will choose to. Many others will choose not to, purely on commercial grounds.”
15. And the Assistant Minister said: “There is no intention of increasing the incidence of Sunday trading and there should be no assumption that the Law and these Regulations will increase Sunday trading, because my experience of preparing this legislation, **there is no appetite, there is no appetite from the retailers and there is no appetite from the Jersey public for increased Sunday trading** (*my emphasis*).”
16. Paragraph 14 above shows the flaw in this type of thinking. It only has in view the individual decision, it ignores the effect on the system as a whole. The unintended consequence of allowing SOME to open (which they may decide is in their own interest) is that OTHERS will feel forced to open, creating all the SYSTEMIC disadvantages I have referred to: greater inefficiency, higher costs, higher prices and pressure on retail workers.

¹ In fact it is worse than that – due to the increased costs and the ensuing price rises, some shops may even become unviable, especially as these increased costs will reduce further competitiveness with the Internet (see Appendix 2).

² “As in this explanation: “A commons is defined as a place open for everyone to use. The tragedy of the commons happens because everyone seeks to maximize their own gain in the commons. The tragedy of the commons is illustrated by the example of a herdsman who shares a common grazing ground with other herdsman adding more animals to his herd because it benefits him. However, as it benefits him, the overgrazing of his extra herd is affecting the rest of the herdsman sharing the land. The problem is exacerbated by the fact that all of the herdsman who occupy the commons want to maximize their own gain by adding to their herds. So, the population of animals using the land is steadily increasing on land that is finite.” (from **Hardin’s The Tragedy of the Commons Summary by Valerie Tucker** at : <http://www.wordsthatkill.net/viewpage.php?page=tos>)

17. The amendment puts the wider public interest back into the Regulations. It adds to the list of things the Connétable must have regard to when considering an application for a general permit.

18. He has to answer for him- or herself the following questions –

How will the proposed permit affect overall efficiency and even survivability of other shops who may have to follow suit and open?

How will the proposed permit, with its knock-on effects if any, affect the freedom of workers not to work on a Sunday if they do not wish to?

How will the proposed permit, with its knock-on effects if any, affect the amount of labour needed by the sector, and hence labour efficiency about which the Minister for Economic Development is constantly reminding us?

And how will the proposed permit, with its knock-on effects if any, affect prices?

Financial and manpower implications

There are no financial or manpower implications for the States arising from this proposition.

Letter from Gerald Voisin to the JEP, 26th July 2011

THE recent decision by the States to allow all shops over 700 square metres to open on a Sunday is the greatest attack on this Island's way of life and culture that I have ever witnessed.

The decision taken last week is completely contrary to the previously stated position to allow only small shops to open. It is a total betrayal of the 8,000 workers in the retail and supply industry (16 per cent of the Island's workforce), it is contrary to States economic policy to encourage industries to be more efficient, and it is totally at odds with States policy to discourage excessive immigration by regulating job creation.

For those who are not familiar with areas, 700 square metres (or 7,535 square feet) is a large shop, especially by Jersey standards, and covers the vast majority of Island shops. For example, in King Street only five (possibly six) shops exceed this size.

I have absolutely no doubt that the UK chains will already be working on their applications for a Sunday trading permit, and the Constable will almost certainly be obliged to grant them all – he can only refuse such an application if he is satisfied that the shop will cause unacceptable disturbance to the residents in the area.

As more shops open, those less inclined to trade will be forced to open to retain their market share.

At a stroke, the States have created a potential demand for many thousands of hours of additional labour. Where will these workers come from? Or will the existing workforce be expected to work longer hours?

I thought we wanted to adopt policies that did not stimulate population growth.

Senator Norman is reported to have claimed in the debate that some retailers who currently open on a Sunday had a waiting list of people wishing to work. That may be so now because only a few food and convenience shops are allowed to open, but as more shops open and the demand for Sunday labour grows, this small band of volunteers will soon be exhausted, and as demand for labour outstrips supply, wage inflation will return, leading to a subsequent increase in Island inflation – something that we have been fighting for years.

But the States Assembly conveniently forgot about that last week.

Another policy they simply ignored, or forgot about, is the economic growth policy to encourage industries to be more efficient. Moving to seven-day trading simply spreads business over seven days instead of six days, as at present. (This was one of the findings after ten years of deregulation in the UK.)

It is a waste of the Island's valuable resources to take an extra day to generate the same business, and Island retailers need to be competitive more than ever because customers simply shop online if they can't find the right product at the right price in Jersey.

I do not understand why members of Economic Development and the Treasury did not speak forcefully against the amendment to increase the size of shops allowed to open, let alone actually vote for it.

States policy has always been to restrict trading on a Sunday to maintain it as a special day when families could do things together if they chose.

The States undertook consultation on Sunday trading in 2006 and 2007, which showed that while people saw the value of allowing some shops to open, the consensus was that Sunday trading should be restricted to small shops opening restricted hours.

All the consultation from the Economic Development department was on the basis of keeping Sunday special, with limited opening of small shops, and the law approved in 2009 and the regulations approved last week work on the assumption that all shops would close on a Sunday.

It is, therefore, illogical to establish the principle in the law that all shops will remain closed on a Sunday, only for the regulations to allow all shops over 7,535 square feet to be granted a license to trade, when that covers the vast majority of shops.

At no time was there ever a view expressed during consultation that the Island should move to allow general trading on a Sunday. Indeed, public consultation revealed the opposite. But general Sunday trading for shops is precisely what the regulations adopted last week will achieve.

Finally, I thought it was despicable that Members could not be bothered to stay in the Chamber for the debate, which had to be stopped twice because the Assembly was inquorate. That is a disgraceful way to treat the 8,000 people whose lives will be affected by the outcome of the debate.

This is a dreadful decision and must be reversed before it is too late.

APPENDIX 2

Comment from a local shopkeeper on JEP article re Sunday trading

From thisisjersey website

“Opening 7 days a week means more costs for the retailer without any increase in turnover, just a quieter Monday to Saturday trade. Therefore prices will rise and more businesses will become unprofitable and close. Then the people will start complaining about lack of choice and how there are no local shops left. Let us hope that the States offices, solicitors, doctors, Parish Halls and schools will also open as we need these on our day off as well.”

<http://www.thisisjersey.com/2011/07/22/sunday-trading-reforms-approved/>