

STATES OF JERSEY



DRAFT SHOPS (REGULATION OF OPENING) (AMENDMENT) (JERSEY) REGULATIONS 201- (P.76/2014): AMENDMENT

**Lodged au Greffe on 2nd June 2014
by the Comité des Connétables**

STATES GREFFE

DRAFT SHOPS (REGULATION OF OPENING) (AMENDMENT) (JERSEY)
REGULATIONS 201- (P.76/2014): AMENDMENT

PAGE 9, REGULATION 2 –

For Regulation 2 substitute the following Regulation –

“2 Regulation 8A inserted

After Regulation 8 there shall be inserted the following Regulation –

‘8A Trial of removal of requirement for plans

Paragraphs (6), (7) and (8) of Regulation 8 shall not have effect during the period commencing on the day the Shops (Regulation of Opening) (Amendment) (Jersey) Regulations 201- come into force and ending on 31st December 2015.’ ”.

COMITÉ DES CONNÉTABLES

REPORT

Amendment

The amendment to Regulation 2, if adopted, will limit the removal of the requirement for a surveyor's plan to the duration of the trial de-regulation.

The report accompanying the Shops (Regulation of Opening) (Jersey) Regulations 2011 (lodged as P.95/2011) explained clearly that a surveyor's plan is necessary, because under the new Law there is a commercial benefit to a business if it informs the Connétable that its retail sales area is less than the size specified, and therefore statements to this effect must be supported by evidence.

It should be noted that a business does not need to provide a surveyor's plan if it has previously applied for a Sunday trading licence and has not since altered the size and layout of its retail sales area; as then the Connétable may accept a statement from the business that the retail sales area has not changed since the last application was made.

The trial de-regulation, if approved, will in effect permit all shops to apply for a general permit. There is therefore no advantage to the retail sales area being below a certain size and, accordingly, it is appropriate to remove the requirement for a surveyor's plan for the duration of the trial.

However, the Connétables have not had an opportunity to consider the implications of making this a permanent change. There may be scope to vary the requirement for a surveyor's plan for smaller shops where it is obvious that the retail sales area is 700 square metres or less (the size limit under which a shop may be granted a general permit), but accurate determination of size is nevertheless required to ensure that the law is being correctly applied.

In proposing this amendment, the Comité des Connétables is not expressing support for the trial de-regulation, but is only seeking to ensure a practical and workable administrative process should the trial be agreed.

Comments on trial de-regulation

The Comité des Connétables submitted comments on the public consultation recently conducted by the Minister for Economic Development inviting Islanders to comment on allowing a trial period for the complete relaxation of Sunday trading laws.

The Comité did not express an opinion for or against a trial de-regulation, but rather commented that a number of issues did not seem to have been addressed in the White Paper. The Comité's submission is attached as an Appendix, but it is disappointing to note that a number of these issues have not been addressed by the Minister in the report accompanying the draft Regulations.

In particular –

1. The proposals for a trial de-regulation would not provide a “fair” test of the appetite for Sunday trading unless there is a level playing field on other days of the week including in relation to parking charges. There is currently no charge to park in public car parks on a Sunday, but there is a charge for parking on a Saturday.
2. If, as suggested by the CICRA Groceries Market Study (January 2014), “some smaller convenience grocery stores may be negatively impacted” and, as a result of the trial they do close, it is difficult to see how this will be reversed after the trial. So even though de-regulation is proposed for only a trial period, it could have a permanent effect on the retail sector.
3. The report points out that there is no specific allowance for employees not to be discriminated against should they decline to work on a Sunday, and neither is there time to put this protection in place before the start of the proposed trial.
4. On previous occasions, the States Assembly has determined that there should be limited trading on Liberation Day and 26th December (Boxing Day). The limitations have since been removed on Liberation Day, as even the larger shops may apply for a permit to open (using one of the 5 days permitted under a “single permit”). But 26th December remains a day for which a “single permit” may not be granted. Enabling all shops to be granted a “general permit” removes this limitation, but the report does not highlight this consequence.
5. Evidence received by the Economic Affairs Scrutiny Panel suggests that whilst the trial is temporary, inasmuch as it is time-limited in the proposed Regulations, it may be difficult to revert to the current restrictions. Evidence was also received that the result during the trial might be trading only at certain times of the year rather than on every Sunday, so the benefit to local consumers and visitors may be limited.

Finally, a majority of those responding to the consultation (54% of 151 responses) were NOT in favour of a trial de-regulation. This is consistent with previous surveys, where a majority of respondents supported some restriction on Sunday trading. The current restrictions will be removed totally during the trial de-regulation (other than for Christmas Day when no shops will open), but the report does not explain how “some form of restriction”, which is supported by the majority, will be imposed.

Financial and manpower implications

There are no financial or manpower implications for the States arising from this amendment unless, as a result of further consideration, is it later decided to make permanent the removal of the requirement for a surveyor’s plan, which will require further minor work for the Law Draftsman’s Office.



Scanned to Minister
 Chris Knight

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20 March 2014

Our ref: JLeSG/srdeg

Senator A Maclean
 Minister for Economic Development
 Sunday Trading – Economic Development Department
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DEPARTMENT OF
 ECONOMIC DEVELOPMENT
 24 MAR 2014

Dear Alan

Comments on Sunday trading trial de-regulation White Paper

The Comité has considered the White Paper issued by your Department outlining proposals for a trial de-regulation of Sunday trading and submits the following comments:

1. The trial is proposed as “one aspect of a broader package of initiatives which has been created as part of EDD’s retail development programme ...”. These other initiatives – listed as
 - an extension of the GST Visitor Refund scheme,
 - parking initiatives,
 - a programme of retail development workshops,
 - coordinated training and development for retailers by Jersey Business and
 - a partnership with the Chamber of Commerce to develop **Shop Jersey** online,
 should be undertaken prior to a trial de-regulation so that it is clear from the results that de-regulation, rather than these other initiatives, has achieved the stated aims (of giving consumers improved choice locally whilst offering more freedom to local businesses to compete effectively by removing regulatory barriers).

2. The current permit scheme must remain during any trial de-regulation. The permit scheme requires the Connétable, when determining an application to trade, to have regard to:
 - the peace and tranquillity of a neighbourhood, and
 - the avoidance of nuisance to residents including to any noise, traffic and litter on the days and times of opening of a shop under the permit. Further the Connétable may also impose conditions on the opening of a shop including in relation to:
 - (a) the hours of opening of the shop;
 - (b) restricting the number and timing of wholesale and retail deliveries; and
 - (c) specifying arrangements to be made for parking by customers and staff.

3. The Economic Development Department must advise, where trading conditions differ, what 'weight' it will apply when evaluating the success of the trial. For example, a charge is made to park in public car parks on a Saturday but not on a Sunday and this in itself might influence a consumer's decision on which day to shop.
4. There is concern that the opening of the largest supermarkets will impact on the smaller food shops and the convenience stores which are the local communities in parishes and this must be taken into account. Food sales are unlikely to increase but would be spread over 7 days rather than 6 days whilst at the same time increasing a store's variable costs. The CICRA Groceries Market Study (January 2014) concluded, in section 7.4, the following (emphasis added):

If Sunday trading rules restricting trading by larger grocery stores were to be relaxed, it seems likely that there would be some consumer benefits in terms of convenience. In addition, there may be some cost savings to large grocery retailers, which may be competed away to the benefit of consumers – although this is not certain, and depends on competitive conditions, which may vary over time. Equally, it is possible that some smaller convenience grocery stores may be negatively impacted. Consumers, as citizens, often regret the closing of smaller shops, even though they value the often cheaper prices and greater convenience of online and larger stores.

5. There is concern for employees as there is no protection for those not wishing to work. Further de-regulation is particularly likely to affect single parents employed in the retail sector and those with children for whom family time, or access to children, will be very limited.
6. No mention is made in the Consultation paper of the island's tourist sector although it is proposed to measure the trial by reference to the impact of de-regulation on out-of-town attractions. No comparison is made of the Sunday trading regimes in other European countries, many of which have no or only limited Sunday trading, and whether those visiting Jersey, from the UK or elsewhere, do so because they appreciate the 'difference' of shops not being open on a Sunday.
7. The general permit enables a shop to open on any day except Christmas Day. By granting a general permit to the largest shops they will then be permitted to open on 26 December which was specifically excluded from the current legislation by a proposition brought by Deputy Green in 2009 (P.111 Amd.(3)/2009). If, as the White Paper suggests, it is the lure of the 'flagship' larger shops to customers which make it worthwhile for smaller shops to open then the extension of a general permit to the largest shops will lead to the result set out in Deputy Green's report (see below). No rationale is put forward in the White Paper to explain why deregulation should apply to 26th December.

Recently the Assembly voted to move the public holiday Boxing Day to the 28th December 2009. This now means that the real Boxing Day 26th December becomes for many a normal working day, for example post will be delivered and shops will open. I believe that this was not understood by many members!

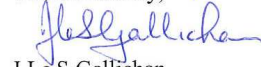
..... those who work any 5 days from 7 including weekends, for example shop workers and postal workers and many service industry providers, will have to work the real Boxing Day. The problem with this is that more families than necessary will be forced to spend the real Boxing Day apart; this is in my view totally unacceptable and will lead to further deterioration of family life.

..... in order to prevent a similar situation recurring in the future, I suggest that the Assembly should agree to designate the 26th December as a limited trading day which will allow limited shop opening, but does not allow the Minister for Economic Development to designate the 26th of December a special day under the law, thus preventing the general opening of shops on the 26th December when the Boxing Day holiday is designated to an alternative day.

8. The largest shops may currently open on Liberation Day if they use one of the 5 days for which they might have a single permit. The extension of the general permit to these shops is likely to result in more shops opening, particularly the national multiple retail outlets for whom Liberation Day does not appear to have the same meaning as it does to the local population. It was for this reason that Liberation Day was afforded some protection from 2000 until the law changed in 2012; and it currently has limited protection from the large stores opening as this would use 1 of the 5 trading opportunities under a single permit. Should Liberation Day continue to be preserved as a general holiday for islanders? No rationale is put forward in the White Paper to explain why deregulation should apply to Liberation Day or to the other specified days i.e. Good Friday or 26th December, as well as to Sundays.
9. The demand for a trial de-regulation was also questioned. The White Paper mentions the call of the Jersey Consumer Council for a relaxation but also points out that the Jersey Annual Social Survey 2006 results showed “83% of respondents were in favour of Sunday trading although 53% supported some form of restriction” and the EDD Public Consultation (2007) showed that “57% favoured Sunday trading, again with the majority supporting some form of restriction”. In a trial de-regulation the restrictions will be removed totally (other than for Christmas Day when no shops will open) so how will “some form of restriction” which is supported by the majority be imposed?
10. The Comité agreed with the Connétable of St Helier that the cost of street cleaning and parking control is likely to increase if more shops open on a Sunday and that consideration should be given to the permit fee being increased, and perhaps based on the retail sales area, to cover these additional costs.

In addition to these general comments of the Comité, some Connétables have made individual responses taking into account the issues relevant to their parish.

Yours sincerely,



J Le S Gallichan,
Chairman