Regulations for the licensing production and export of Medicinal Cannabis in Jersey

Economic and International Affairs Scrutiny Panel

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1. Chair's Foreword

In April 2021, the Panel announced it was undertaking a review of the Regulations for the licensing, production and export of medicinal cannabis in Jersey. For the avoidance of doubt, the review does not cover the prescription or use of medical cannabis within Jersey which is beyond the Panel's remit.

As stated in the Introduction to this report, the Panel had major concerns as to what appeared to be the lack of regulations in place for this industry, particularly since two medicinal cannabis licences had already been granted. In general terms, the review carried out by the Panel (in conjunction with expert advisers) confirms that those concerns were justified as illustrated by the number of key findings and recommendations.

Jersey does not have its own set of regulations in place for the medicinal cannabis industry and is reliant on a Memorandum of Understanding (MoU) with the UK Home Office Drugs and Firearms Licencing Unit (DFLU). The establishment of the Jersey Cannabis Agency (JCA) was necessary in order for Jersey to enter into this MoU and allows the Island (through the JCA) to issue licences to cultivate, possess and supply cannabis-based products for medicinal use as a regulatory authority in its own right. The JCA is currently made up solely of the Minister for Health and Social Services and is administered by the Chief Pharmacist. There is no additional Ministerial input. Leading on from the above, the MoU is not itself a regulatory framework and there are no standalone regulations as such for the Panel to scrutinise. During the course of its review, the Panel has therefore sought to identify potential areas of concern under a number of broad headings and these are dealt with fully in the following pages of this report. However, one matter to which I here draw attention is the rationale behind our various recommendations being directed to the Council of Ministers (CoM) as a whole, as opposed to individual Ministers.

Prior to undertaking this review, the Panel had understood that the Minister for Economic Development, Tourism, Sport and Culture ("EDTSC") had overall responsibility for the medicinal cannabis industry; however, as the review progressed, it became apparent that no single Minister had responsibility for the industry in its entirety. It is the Minister for Health and Social Services (in his capacity as sole member of the JCA) who has responsibility for the issue of licences with the Minister for EDTSC being responsible for the overall economic development and rural economy; further, whilst the Minister for the Environment currently has little or no input in relation to the licence application process, or indeed some basic matters relating to the planning process (which are discussed in more detail within this report), we have recommended that officers of the Planning and Environment Department be responsible for the assessment and approval of any Environmental Impact Assessment submitted with the licence application. In short, the Panel consider that a more holistic approach be taken as to the future progress of this industry and, with further matters falling within the responsibility of other Ministers, so it was deemed appropriate that our recommendations be directed to CoM as a whole.

This general theme of the need for an inter-departmental approach to this new industry runs through this report and is supported by recommendations as to cross-departmental requirements and synergies being developed such as adequate representation on the Jersey Cannabis Agency (and other internal groups involved in the industry) of relevant Ministries and others.

Of the other important aspects covered in this report, I here highlight the economic impact this industry will have on the Island and mention the absence of detailed fiscal reporting to confirm the figures being proposed by Government. The Panel has previously undertaken work in the form of a comments paper on the recently approved amendment to the Public Finance Law which provides that all medicinal cannabis companies will be taxed at 20% on profits. It should be noted however that, based on the Panel's evidence gathering, the tax intake to the island in the first few years of a company's operation is likely to be minimal.

The ensuing report covers a wide range of matters both as to the requirements on the initial licence application and ongoing matters such as appropriate certification on export. As advised in the conclusion to its report, the Panel is excited at the potential for a new thriving sector to the Jersey economy. It is however concerned to ensure the cultivation of medicinal cannabis in Jersey operates within a strong regulatory framework and this report sets out to build on what is currently in place and to ensure that the international reputation of Jersey is not tarnished. It is to be hoped that CoM will consider, and accept, the Panel's various recommendations as a valuable contribution to those ends and with a view to seeing this new industry prosper in the future.

Finally, I acknowledge that this review has taken considerably longer to complete than was first anticipated, this being due to a number of factors including additional information coming to light and the need to pursue other avenues. However, I now take the opportunity of thanking the various Ministers, their officers and the Chief Pharmacist for their co-operation throughout the period. Similarly, I also thank our expert advisers, Grant Thornton, Malta for all their help in producing their own report which is attached.

Finally, I express my gratitude both to my Panel colleagues for their support throughout the period and, not least, to our Scrutiny officer for all her work including that of compiling this comprehensive report.

Dated this 6th day of January 2022

Deputy David Johnson
Chair

Definition of Medicinal Cannabis

Throughout this report, the Panel refers to the term 'medicinal cannabis'. It should be noted that the term "medicinal cannabis" means a number of things to different people and we set out below the phraseology provided by the Chief Pharmacist which we hope will give some clarity:

> *Medicinal cannabis would be the finished medicinal products that can be prescribed and given to patients. Everything leading up to that are ingredient precursors, but it is that final product. I think as long as we clear that when we say medicinal cannabis we are talking about what we can give to patients then I think we will be fine.*
>
> *I think the general terminology that is used, because cannabis-based medicines can be the flower, they can be oils, they can be capsules, they can be a range of different formulations, in general terms the use of the cannabis-based product for medicinal use, or C.B.P.M. (cannabis-based product for medicinal use) for short, so that would be a good phrase to use when we are talking about medicinal products.*[1]

As the majority of its report refers to the finished product, the Panel has continued to use the phrase 'medicinal cannabis' as meaning the cannabis-based product for medicinal use throughout except only where the term 'cannabis' is deemed appropriate.

[1] Public Hearing with Minister for Health and Social Services – 19.11.21

2. Executive Summary

In April 2021, following correspondence received by the Panel and other States Members from concerned members of the public regarding the medicinal cannabis industry, the Panel decided to undertake a review as to the impact of this industry on Jersey. The Panel agreed it would look at the regulatory aspect of medicinal cannabis licensing together with the economic impact and possible reputational risk to the Island. The Panel was mindful that the review could touch on environmental and planning issues and, with this in mind, agreed to make reference to these issues and liaise where necessary with the Environment Housing and Infrastructure Scrutiny Panel.

The Regulations

Jersey does not have its own set of regulations in place for the medicinal cannabis industry and is reliant on a Memorandum of Understanding (MoU) with the UK Home Office Drugs and Firearms Licencing Unit (DFLU). The MoU is between the UK Home Office and the Minister for Health and Social Services (Minister for HSS) acting on behalf of the Government of Jersey. The MoU makes reference to the Jersey Cannabis Agency (JCA) which is the body authorised by the UK Home Office to grant licences for medicinal cannabis under Article 10 of the Misuse of Drugs (General Provisions) (Jersey) Order 2009. The JCA is the Minister for HSS currently designated as the authorised sole member and is administered by the Chief pharmacist. Whilst the MoU authorises Jersey to grant licences, the Panel has recommended in this report that Jersey establishes its own set of regulations for this fledgling industry, to bring the Island into alignment with other jurisdictions.

Licence Application and Process

At the time of drafting this report, two licences have been granted for the cultivation, processing and export of medicinal cannabis in Jersey. The Panel has raised concerns around the level of the medicinal cannabis licence fee which is low in comparison with some other jurisdictions, and in addition, the Panel believes the licence application process in general needs to be reviewed and considerably strengthened.

Security

The Panel and its advisers have recommended that clear plans are submitted at the licence application stage to demonstrate the exact security measures that will be put in place including security equipment, personnel and provision of relevant training to staff working in this specialised industry. The Panel has also recommended that the disposal of the medicinal cannabis crop, once harvested, should be carried out by personnel who are experienced in the disposal of hazardous waste.

Planning and Environment

The Panel has highlighted two incidents in Jersey that have been brought to its attention where unauthorised planning works have taken place on medicinal cannabis cultivation sites with the subsequent plans submitted retrospectively being described as ‘piecemeal’. The Panel is strongly of the view that the requirements of the Planning process are aligned with the licence application process to ensure consistency, transparency and fairness.

EU/GMP Certification

Currently medicinal cannabis can be exported with or without a European Union Good Manufacturing Practice (EU/GMP) certification. EU/GMP certification is the highest recognition available to pharmaceutical companies and involves rigorous testing to ensure the product and the company is compliant with strict EU regulations. Obtaining EU/GMP accreditation shows that the

company has been scrutinised and approved by the EU/GMP licensing authority, that the company meets the required standards and that the product is of a high quality. There are currently no requirements in Jersey for (medicinal cannabis) licence holders or applicants to obtain EU/GMP accreditation and the Panel is concerned this could result in lower grade medicinal cannabis being exported from the Island, resulting in damage to the Island's highly regarded international reputation. The Panel has made the recommendation that all medicinal cannabis licence applicants should be required to apply for EU/GMP accreditation prior to receiving a medicinal cannabis licence, with key milestones in place to ensure the process is being followed and the licence holder is taking the relevant steps to achieve this.

Ministerial Responsibility

The Panel found Ministerial responsibility and accountability to be lacking throughout the course of its review. Prior to undertaking its review, the Panel believed that responsibility for the fledgling Jersey medicinal cannabis industry lay with the Minister for Economic Development, Tourism, Sport and Culture (EDTSC), however, it soon became apparent this was not the case. It is in fact the Minister for Health and Social Services (HSS) who holds responsibility for the issuance of licences, the Minister for EDTSC being responsible for agricultural and economic related matters. It is unclear what, if any, specific responsibility the Minister for the Environment holds in the medicinal cannabis industry and one fundamental element of this report is the extent of his involvement, or otherwise, with the licence application process.

The Panel found a lack of collaborative working between Government Departments, and this is strongly emphasised within this report with recommendations for improvement. This lack of Ministerial accountability is the reason the Panel has made all of its recommendations to the Council of Ministers, as it believes stronger and more coherent cross Departmental working needs to be developed with the Council of Ministers having more input with clearly defined lines of Ministerial accountability for this industry.

Economic Impact

The economic impact of the medicinal cannabis industry on the Island was examined by the Panel's advisers, and they concluded that whilst there was an opportunity for the industry to be financially successful, it was still very much in its infancy and the forecasted revenues could be considered speculative.

Tax Implications

It has been proposed by the Government that tax of 20% be implemented on the profits of the medicinal cannabis industry with the Panel being informed by the Group Director of the Economy that the tax intake to the Island would likely commence in 2024, with an estimated £4million in tax receipts. The Panel and its advisers consider this figure to be extremely speculative considering the industry is relatively new with any forecasts at this stage would be hard to predict. The Panel was informed by its advisers that the industry requires companies to invest heavily in the early years of the business and, with the ability to set off this initial expenditure against gross income, the profitable tax intake may be minimal for the first few years. In addition, employment, corporate and indirect taxation were looked at by the Panel's advisers with their conclusion that very little additional new taxation would arise in the short to medium term.

Reputational Risk

Jersey rightly prides itself on its respected international reputation in all spheres. The importance of the potential damage to such reputation, should the medicinal cannabis industry not be sufficiently

regulated, should not be underestimated. The Panel has already identified the importance of medicinal licence holders obtaining EU/GMP accreditation and strongly recommends that no cannabis be exported without this certification. Cannabis has long been perceived in some quarters as being an illicit drug, and the acceptability of medicinal cannabis use is a relatively new concept. Public engagement and education in relation to the difference between medicinal cannabis and recreational cannabis therefore needs to be given further consideration by the Council of Ministers.

Intellectual Property

The Panel's advisers were keen to point out the benefits of protecting Intellectual Property (IP) rights within this industry and consequently the Panel has recommended this area be explored in more detail. One such area was around research and development, with the advisers stating that Jersey could develop cultivation activities and be encouraged to seek research partners such as hospitals, universities and clinical research organisations. They also informed the Panel that medicinal cannabis for veterinary medicine is a new niche area and that, whilst in the last five years the market for medical cannabis for human consumption has seen huge strides forward, the application of cannabis-based products to animals is practically unexplored. The Panel view this as a largely undeveloped area and would be keen to see what further opportunities exist and how this could benefit the medicinal cannabis IP industry in Jersey.

Conclusion

The Panel is excited at the potential for a new thriving sector to the Jersey economy. The Panel is however concerned to ensure the cultivation of medicinal cannabis in Jersey operates within a strong regulatory framework, that promotes the production of cannabis and cannabis products for medicinal purposes only. This report sets out to build on what is already in place and to ensure that the reputation of Jersey is not tarnished. Our Island must continue to be viewed as a stable jurisdiction with robust levels of regulations in place that encourage, rather than stifle, investment. The Panel also considers that, if Jersey is to be the home of a successful medical cannabis industry, it is important that Islanders are given the opportunity to comment on developments within the industry, with full transparency and collaborative working with Government, which is not the case at present.

Key Findings

Key Finding 1

The Jersey Cannabis Agency (JCA) has responsibility for the issuance of licences and is the named body in the Memorandum of Understanding (MoU) with the UK Home Office. The JCA is currently made up solely of the Minister for Health and Social Services and is administered by the Chief Pharmacist.

Key Finding 2

The Bailiwick of Guernsey Cannabis Agency (BGCA) is made up of representatives of Environmental Health and Pollution Regulation, the Chief Pharmacist and business support from the Committee for Economic Development, with close support and consultation with Bailiwick Law Enforcement officers. This is in contrast to the Jersey Cannabis Agency with the Minister for Health and Social Services as the sole designated member.

Key Finding 3

The Memorandum of Understanding (MoU) is between the UK Home Office Drugs and Firearms Licencing Unit (DFLU) and the Minister for Health and Social Services as representative of the Government of Jersey. In the absence of standalone regulations, the MoU allows the Minister to issue licences in Jersey for the cultivation, processing and export of medicinal cannabis. The MoU was prepared by the UK Home Office with very little or no input from the Government of Jersey.

Key Finding 4

Jersey does not have its own specific regulations to control the Island's medicinal cannabis industry.

Key Finding 5

There is no requirement for the Chief Pharmacist to inform the Jersey Financial Services Commission (JFSC) of any change proposed change of ownership of the licencee whether approved or non approved.

Key Finding 6

The Jersey licence application fee for the cultivation, processing and export of medicinal cannabis is low in comparison with some EU jurisdictions and may not be economically viable in the future.

Key Finding 7

The Minister for the Infrastructure, Housing and Environment informed the Panel that he had little involvement in the development of the medicinal cannabis industry, despite the Department being responsible for Island planning and environmental policy issues.

Key Finding 8

The current application procedure for a medicinal cannabis licence requires the submission of an "Economic Impact Assessment" (EIA). However, unlike the form of EIA submitted with a planning application, the EIA accompanying an application for a medical cannabis licence is not available to the public and there is no procedure for the public to then make representations relating to a licence application.

Key Finding 9

The Department for Infrastructure, Housing and Environment, with responsibility for Environmental Impact Assessments (EIA's) under the planning application process, have not had sight of either of the EIA's submitted with the licence applications that have since been granted by the Minister for Health and Social Services.

Key Finding 10

Although the security framework is included in the initial licence application, there is no requirement for this to be approved by Planning prior to the licence being granted. Security requirements for each medicinal cannabis cultivation site must be stated at medicinal cannabis licence application stage however, the security does not need to be actually in place before the licence is issued.

Key Finding 11

The States of Jersey Police have informed the Panel they will not be directly involved in the policing of the medicinal cannabis industry in Jersey and their sole responsibility will be to respond to any crime occurring which requires a police presence or investigation.

Key Finding 12

The involvement of private security firms to undertake the monitoring and implementation of security for medicinal cannabis sites would eliminate pressure on the States of Jersey Police and other public services.

Key Finding 13

Every licence application must designate a specific Controlled Person as the person responsible for the regulatory affairs of the medicinal cannabis business. Apart from passing due diligence and enhanced DBS checks, there are no specific qualifications necessary for the role.

Key Finding 14

In relation to the disposal of the harvested cannabis crop, it is not clear what procedures the Responsible Person would follow. It is also unclear what experience the Responsible Person will need to deal with its destruction within the methods set out and endorsed by the UK Home Office.

Key Finding 15

European Union Good Manufacturing Practice (EU/GMP) certification is the highest recognition available by companies in the pharmaceutical sector. It involves rigorous testing of the product to ensure that, not only the product, but the company, is compliant with strict EU regulations. Obtaining EU/GMP accreditation shows the company has been scrutinised and approved by the EU/GMP licensing authority, it meets the required standards and the product is of a high quality (products that comply to GMP standards in relation to the production of Active Pharmaceutical Ingredient (APIs) or Cannabis Based Products for Medicinal Use (CBPMs). There is currently no requirement for those granted licences for cultivation, production and export of medicinal cannabis in Jersey to obtain EU/GMP accreditation.

Key Finding 16

As previously mentioned, the Minister for HSS is authorised to issue licences under the terms of the MoU however, these are purely for cultivation production, possession and supply. In order to process and manufacture and export the finished processed product, the licence applicant would need to have EU/GMP accreditation which requires separate assessment.

Key Finding 17

Without the licence holder obtaining EU/GMP accreditation, the risk is increased that lower grade crops could be exported from the Island resulting in damage to the Island's reputation.

Key Finding 18

There is little evidence to show that checks and balances are in place to ensure the processing of the medicinal cannabis crop is done on an appropriate processing site. There is also little evidence in place to ensure secure monitoring so that the existing cultivation sites do not become 'industrialised'. Without these checks and balances there is a risk that existing cultivation sites could become sites for processing, which requires a more commercial approach and a relevant planning application.

Key Finding 19

The medicinal cannabis industry cuts across a number of political responsibilities, and the Council of Ministers has not appropriately established an holistic Government approach to the matter which has in turn blurred lines of accountability. It is therefore difficult to see where the Ministerial responsibility lies.

Key Finding 20

The Jersey Cannabis Agency does not have clearly defined Terms of Reference and is reliant solely on the Memorandum of Understanding (MoU) currently in place with the Government of Jersey (with the Minister for Health and Social Services as the sole representative of the GoJ) and the UK Home Office.

Key Finding 21

The Panel appreciates the need for a Cannabis co-ordination group of civil servants but is concerned that, with no Minister being involved in this group, it might lead to key decisions being taken without considered input from Ministers.

Key Finding 22

The medicinal cannabis industry in Jersey has the potential to employ between 40-50 people in the immediate term, 160–180 in the medium term and 330-360 in the long term.

Key Finding 23

It has been agreed that a tax rate of 20% will be applied to this industry on all profits.

Key Finding 24

Now that Jersey has opted for a 20% rate on companies' taxable profits, tax revenues from such activity may be minimal for several years from the date of licence registration.

Key Finding 25

The medicinal cannabis industry's contribution to the Jersey economy is not expected to exceed wage estimates in the early years.

Key Finding 26

The business model of medicinal cannabis companies generally requires that they invest heavily in the early years of the business. Profits therefore from the industry may be minimal for several years from the date of licence registration.

Key Finding 27

Based on the information provided, the Panel's advisers have concluded that to date, very little additional "new" taxation would arise in the short to medium term. This includes personal tax, corporate tax and indirect taxation such as GST.

Key Finding 28

The Minister for Treasury and Resources has informed the Panel that it is not yet possible to forecast how much tax will be raised from the taxation of the cannabis industry in Jersey due to the industry being in its very early stages and forecasts would be speculative.

Recommendations

Recommendation 1

The Council of Ministers should ensure that there is adequate representation on the JCA of the range of relevant Ministries, including the Minister for Economic Development and the Minister for the Infrastructure, Housing and Environment so that that matters related to all sectors impacted by the medicinal cannabis industry are fully considered. This should be carried out with immediate effect.

Recommendation 2

The Council of Ministers should implement Jersey's own detailed and specific regulations for the medicinal cannabis industry. This work should be carried out immediately with a clear timeline set in place with the Legislative Drafting Office.

Recommendation 3

The Council of Ministers should ensure that the medicinal licence application process includes a full business case setting out the reasoning behind the project, the project and operational costs and timescales and clearly define all benefits both financial and non-financial to Jersey. A business case template should be developed with immediate effect.

Recommendation 4

The Council of Ministers should ensure the Chief Pharmacist informs the Jersey Financial Services Commission (JFSC) of any proposed change of ownership of the licensee whether approved or non approved. This would allow the JFSC to check the change against its existing register. Any changes of ownership should be accompanied by a copy of the approval from the Chief Pharmacist. This should be implemented with immediate effect.

Recommendation 5

The Council of Ministers should ensure that clearly defined building and development plans are put in place at licence application stage for the use of utilities such as water and electricity with standalone structures (such as substations, pump houses etc) if required. This should be overseen by the Planning Department and put in place with immediate effect.

Recommendation 6

The Council of Ministers should ensure the licence fee for the cultivation, production and export of medicinal cannabis is reviewed immediately and benchmarked against the minimum required resource to regulate this industry in Jersey. This should be carried out with immediate effect.

Recommendation 7

The Council of Ministers should ensure that all Environmental Impact Assessments submitted as part of a medicinal cannabis licence application are made public and, a process introduced that

allows both the public and key stakeholders to comment on any such EIA prior to the approval of any licence with immediate effect.

Recommendation 8

The Council of Ministers should ensure that officers of the Planning and Environment Department are solely responsible for the assessment and approval of any EIA submitted with a medicinal cannabis licence application prior to the Jersey Cannabis Agency (JCA) determining the application with immediate effect.

Recommendation 9

The Council of Ministers should ensure that prior to a medicinal cannabis licence being issued, a detailed plan for site security should be set out within any licence application. No cultivation of cannabis should begin on site until all the approved security measures are implemented and signed off by the JCA and penalties put in place to ensure compliance.

Recommendation 10

The Council of Ministers should ensure that a specialised training programme is delivered to Customs and Immigration officers in relation to handling the import and export of medicinal cannabis products. A training plan should be developed within 6 months of the presentation date of this report.

Recommendation 11

The Council of Ministers should ensure the Responsible Person who is nominated by the licence applicant at application stage should hold the relevant qualifications to undertake this role. This should include relevant experience in both the science and biological industry and in the disposal of hazardous waste materials. This should be made part of the licence application process and carried out with immediate effect.

Recommendation 12

To protect the quality and reputation of produce grown in Jersey, the Council of Ministers should ensure there is a requirement to apply for EU/GMP accreditation prior to receiving a medicinal cannabis licence to cultivate, process or export cannabis products. This should be monitored by a designated body (JCA) with key milestones in place to ensure the process is being followed and the licence holder is taking the relevant steps to achieve this. This should form part of the licence application process criteria and should be carried out with immediate effect.

Recommendation 13

The Minister for Planning and Environment must ensure that any sites to be used for the cultivation of medicinal cannabis remain solely for that use. Should a licence holder require a site for processing of the medicinal cannabis crop once harvested, a separate planning application for this industrial activity should be submitted for these purposes in a suitably zoned area. This should be carried out with immediate effect.

Recommendation 14

The Council of Ministers must recognise cross departmental requirements and ensure synergies are developed especially between the Minister for Health and Social Services, the Minister for Economic Development, Tourism, Sport and Culture, and the Minister for the Environment. This should be carried out with immediate effect.

Recommendation 15

The Council of Ministers should ensure the Jersey Cannabis Agency has representatives of other Departments as members. At a minimum, this should include Department of Infrastructure, Housing and Environment, Economic Development, and the Chief Pharmacist and with further support from Law enforcement officers. This group should also be responsible for undertaking due diligence on new licence applications. This should be carried out with immediate effect.

Recommendation 16

The Council of Ministers should ensure the remit of the Jersey Cannabis Agency is expanded to include both the monitoring function of the medicinal cannabis industry, and compliance with security, quality of production, clear moral conduct of people working in the industry and issuance of trade licences. The monitoring function would also include ensuring Customs and Excise and the States of Jersey Police are well informed about the process of the medicinal cannabis industry and are trained to be attentive to illicit drug importation and possession. This should be carried out with immediate effect.

Recommendation 17

The Council of Ministers should ensure the Cannabis Co-ordination Group is more transparent and publishes its minutes on the Government of Jersey website. Furthermore, it should carry out a wider communications strategy to help the public gain a better understanding of the potential benefits of the medicinal cannabis industry in Jersey. The Council of Ministers should also carry out a communication strategy with members of the public which may help the public gain a clearer understanding of what the future holds for the medicinal cannabis industry in Jersey.

This should be carried out within 6 months of presentation of this report.

Recommendation 18

The Council of Ministers should ensure a clearly defined structure chart is in place showing the layout and responsibility for each of the supporting groups for the medicinal cannabis industry. This should show defined reporting lines from each of these groups to the relevant Minister with Terms of Reference setting out clear objectives. This should be carried out with immediate effect.

Recommendation 19

The Council of Ministers should consider alternative tax bases for the medicinal cannabis industry in Jersey as the indicative taxable profits for the industry may be minimal for several years from the date of licence registration. This should be carried out with immediate effect.

Recommendation 20

The Council of Ministers should undertake a reputational risk assessment to determine the impact of the medicinal cannabis industry on Jersey's existing core industries. This should include the mitigation of such risks and cover financial, operational, competitive, security, privacy and compliance. This should be carried out with immediate effect.

Recommendation 21

To improve social awareness and reduce risk of misuse, a public engagement process should be carried out to educate members of the public on the differences of recreational and medicinal cannabis and also highlight the potential benefits of medicinal cannabis. A plan of communication should be compiled with immediate effect.

Recommendation 22

The Council of Ministers should consider a range of possible incentives for on-Island medicinal cannabis growers, to apply for patent and Intellectual Property (IP) protection. This should include research and development and intellectual property, which hold potential benefits. This should be discussed with external stakeholders within 6 months of presentation of this report.

Recommendation 23

The Council of Ministers should consider encouraging the promotion of medicinal cannabis for the use in veterinary medicine which is a new niche area. This should be carried out with immediate effect.

Recommendation 24

The Council of Ministers should ensure all existing medicinal cannabis licence holders implement any changes to their current medicinal cannabis business following any recommendations agreed by the Council of Ministers as a result of this report. These should be carried out within the timeframe stipulated, currently one year from the implementation of the recommendation.

3. Introduction

The Panel's Review

In April 2021, the Panel announced it was undertaking a review of the Regulations for the licensing, production and export of Medicinal Cannabis in Jersey. This followed correspondence received by the Panel and other States Members from concerned members of the public regarding the medicinal cannabis industry and its impact on Jersey. The medicinal cannabis industry is relatively new and the Panel believed it was an area that should be looked at more closely. The Panel understood the global medicinal cannabis industry to be vast and approached the review with a cautious outlook agreeing to focus on the regulations of licences regarding the cultivation, processing, export and import of medicinal cannabis together with the economic impact and possible reputational risk to the Island. The Panel had major concerns around what seemed to be the lack of regulations in place for this industry, particularly since two medicinal cannabis licences had already been granted. Whilst undertaking its review, the Panel scrutinised evidence relating to many different areas and has highlighted what it considers to be the key issues within this report. Each of these is commented on separately within the Executive Summary.

Methodology

The Panel wrote to key stakeholders which included current licence holders, the Jersey Financial Services Commission (JFSC), States of Jersey Police (SoJP), Group 4 Security (G4S) and other private security firms. The Panel did not undertake a general call for evidence from members of the public as its attention was on the regulatory aspects of the industry.

Following a full tender process, the Panel engaged the services of Grant Thornton, Malta (GTM) to assist it in undertaking its review. Following an interview with GTM, the Panel believed they held the relevant experience in undertaking all aspects of its review; in this connection, it is to be noted that, in 2018, Malta approved Chapter 578, the Production of Cannabis for Medicinal and Researches Purposes Act, an Act which the Panel believed would be key to understanding the industry regulations and would be paramount to a full and thorough scrutiny process.

Whilst accepting that the Government of Malta might itself be involved in promoting the medicinal cannabis industry in their own jurisdiction, the Panel did not consider this to be relevant to the appointment of an individual firm operating out of Malta; GTM is part of a global professional organisation (also with offices in Jersey) and, having entered into the standard confidentiality clauses within the terms of their appointment, the Panel is confident there is no cause for concern that information received by GTM might possibly come into the hands of competitors.

GTM also used the experience of Grant Thornton, Jersey (GTJ) to undertake the Jersey aspects of the review which included The Taxation Aspect, Economic Impact and the Reputational Risk Aspect of their report.

The Panel held Public Hearings with the Minister for Economic Development, Tourism, Sport and Culture (EDTSC), the Minister for Health and Social Services (HSS) and the Minister for the Environment (MENV). The Panel's advisers provided input to the areas of questioning for each of these hearings which were recorded, transcribed and can be viewed on the review page of the Scrutiny website. The Panel also wrote to the relevant Ministers including the Minister for Treasury and Resources on separate occasions to seek clarification on various issues, the details of which are discussed throughout this report.

4. Regulations

Current Regulations and The Memorandum of Understanding (MoU)

Jersey does not have its own set of regulations and licences are currently granted under the MoU between the UK Home Office Drugs and Firearms Licensing Unit (DFLU) and the Minister for Health and Social Services. The UN Single Convention of Narcotic Drugs 1961 ('Convention') requires any party to the Convention that permits the cultivation of the cannabis plant for the production of cannabis or cannabis resin to apply a system of controls. The UK is the state party to the Convention on Jersey's behalf.

The MoU makes reference to the Jersey Cannabis Agency (JCA) which is the body authorised by the UK Home Office to grant licences for medicinal cannabis*. The JCA is administered by the Chief Pharmacist with the Minister for HSS currently designated as the authorised member. The Minister for HSS is the only member of the JCA and, as such, is solely responsible for the issue of medicinal cannabis licences. The JCA does not have defined Terms of Reference and operates under the terms of the MoU which provide the framework for the JCA to exist but with no form of regulations.

It should be noted that licences are not granted for the cultivation of "medicinal cannabis". They are granted for the cultivation of "cannabis" which can then be used subsequently as the botanical raw material in the production of an Active Pharmaceutical Ingredient (API) or finished Cannabis Based Medical Product (CBPM).

Licences can be granted under Article 10 of the Misuse of Drugs (General Provisions) (Jersey) Order 2009 for the cultivation of cannabis and under Article 3 of the same order for the production, possession and supply of a controlled substance. Licences under Article 3 are not specific to cannabis but cover cannabis as a controlled substance.

The MoU recognises that the issue of licences under the provisions of the Misuse of Drugs (Jersey) Law 1978 or the Medicines (Jersey Law) 1995 remains the responsibility of the JCA (currently the Health Minister as sole representative).[2] Within its report, the Panel's advisers have stated that '*The JCA Advisory Group, even if totally non-executive, is a step in the right direction. Government should appoint a focal point made up of representations of various Ministries in order to dialogue with all operators. The JCA could also act as the focal point for the international promotion of the sector.*'[3]

The MoU is subject to be reviewed every three years and is to be updated as necessary.

In July 2021, the Government of Guernsey signed a Memorandum of Understanding (MoU) with the UK Home Office. The Guernsey-UK Home Office MoU facilitates an agreement between Guernsey's Committee for Health & Social Care (GCHSC) and the UK Home Office, in relation to granting authorisations to cultivate medicinal cannabis in Guernsey.

The Guernsey-UK Home Office MoU, in a similar manner to the Jersey-UK Home Office MoU, enables Guernsey to fulfil its obligations to ensure compliance with the UN Single Convention of Narcotic Drugs 1961 and makes reference to the 'Bailiwick of Guernsey Cannabis Agency' (BGCA), similar to that of the Jersey Cannabis Agency (JCA). The constitution of the BCGA differs considerably from that of the JCA which is comprised solely of the Minister for HSS. The BGCA as constituted by the GCHSC, comprises the Director of Environmental Health and Pollution Regulation (Dr Tobin Cook), the Chief Pharmacist (Beverley Hall) and business support from the Committee for

[2] Panel Adviser's Report – September 2021
[3] Panel Adviser's Report – September 2021

Economic Development (Keith Wilen), with close support and consultation with Bailiwick Law Enforcement officers.

Whilst the Panel is pleased to note its advisers support the JCA and see it as a step in the right direction, it is concerned that with the Minister for HSS as the sole designate on the JCA, the scope of the group and its direction could be limited. The Panel believes the JCA would benefit from additional members drawn from across the GoJ in both executive and non executive roles. In addition, the Panel advisers have recommended that a representative of the Department for Infrastructure, Housing and Environment (IHE) should form part of the JCA – something the Panel believe would benefit the JCA greatly.

Key Finding 1

The Jersey Cannabis Agency (JCA) has responsibility for the issuance of licences and is the named body in the Memorandum of Understanding (MoU) with the UK Home Office. The JCA is currently made up solely of the Minister for Health and Social Services and is administered by the Chief Pharmacist.

Key Finding 2

The Bailiwick of Guernsey Cannabis Agency (BGCA) is made up of representatives of Environmental Health and Pollution Regulation, the Chief Pharmacist and business support from the Committee for Economic Development, with close support and consultation with Bailiwick Law Enforcement officers. This is in contrast to the Jersey Cannabis Agency with the Minister for Health and Social Services as the sole designated member

Recommendation 1

The Council of Ministers should ensure that there is adequate representation on the JCA of the range of relevant Ministries, including the Minister for Economic Development and the Minister for the Infrastructure, Housing and Environment so that that matters related to all sectors impacted by the medicinal cannabis industry are fully considered. This should be carried out with immediate effect.

The Panel was concerned that, in the absence of standalone regulations and in line with what was in place in other jurisdictions, the MoU may not be robust and stand up to scrutiny. It was also keen to understand the extent of Jersey's involvement in compiling the MoU. These issues were raised at its recent public hearings and also in correspondence to the Minister for EDTSC.

The Deputy of St. Mary:

We have had the pleasure of having seen the MOU, but again on that, who was responsible for preparing the MOU? Was it the Home Office or yourselves or who had input into its preparation?

Chief Pharmacist:

So the MOU was prepared by the Home Office.

The Deputy of St. Mary:

You had no ... giving your input, did you have any consultation with Environment or the Economic Department on that?

Chief Pharmacist:

Not formally as I recall. It was very much ... because the Minister for Health and Social Services is the licensing authority to issue licences.

The Panel wish to point out that the Minister for the Environment currently has no sight of what is proposed during the medicinal cannabis licence application stage and has had very little involvement overall with the medicinal cannabis industry. In addition, the Panel wish to draw attention to the fact that the form of Environmental Impact Assessments (EIA's) required to be submitted with medicinal cannabis licence applications is not, unlike the position with a planning application, a public document and sits outside the requirements of planning. This is discussed in more detail later in this report.

Senator S.W. Pallett:

There seems to be a lack of formal consultation for any licences. You mentioned it yourself just then. Do you think that might have been an appropriate way forward at a very early stage to have more formal discussion between the 3 departments in regards to how the regulatory system and the licensing process might work? Would that have helped?

Chief Pharmacist:

We did have ... there is a cannabis co-ordination group[4] which has officers on from various departments. It is chaired by [named officer] and the MOU and (inaudible) discussed at that meeting so there was input in that regard…"[5]

Key Finding 3

The Memorandum of Understanding (MoU) is between the UK Home Office Drugs and Firearms Licencing Unit (DFLU) and the Minister for Health and Social Services as representative of the Government of Jersey. In the absence of standalone regulations, the MoU allows the Minister to issue licences in Jersey for the cultivation, processing and export of medicinal cannabis. The MoU was prepared by the UK Home Office with very little or no input from the Government of Jersey.

The Panel asked the Minister for EDTSC how the MoU guidance currently being used in Jersey compares to approved regulations in other jurisdictions. In a letter to the Panel from the Minister dated 5th July 2021, he informed the Panel:

"…The MoU is not a regulatory framework and so cannot be compared to regulations in other jurisdictions. The MoU sets out the working arrangement between the UK Home Office, as the Cannabis Agency, and Jersey regarding the process for issuing licences to cultivate cannabis in order to ensure compliance with the UN convention and any UK obligations under the Convention…"[6]

[4] The Cannabis Co-ordination group is discussed later in this report.
[5] Public Hearing with Minister for EDTSC – 21.06.21
[6] Letter from Minister of EDTSC to Panel – 05.07.21

The Panel, in the same letter, also asked the Minister if he was confident that working to the MoU at present, as opposed to approved Jersey regulations, would be considered robust, secure and in the best interests of the Island. The Minister responded:

> *"…The MoU is required to satisfy the provisions of the 1961 UN Single Convention on Narcotic Drugs. Without the MoU, HCS would not be able to issue any licences to cultivate cannabis without falling foul of the Convention. The MoU will be required irrespective of any changes to domestic legislation as it is the UK that is the State Party to the Convention and not Jersey. HCS therefore need a formal arrangement with the Home Office as the UK Cannabis Agency regarding the issue of any cultivation licences in Jersey…"*[7]

These remarks have given the Panel cause for concern. If the MoU is not a regulatory framework, the Panel questions if the MoU by itself is sufficient to regulate the industry in the absence of any approved regulations. Under the terms of the MoU, licences are granted under the provisions of the Misuse of Drugs (Jersey) Law 1978 and are required for any operation that involves the cultivation of cannabis plants. Licences are also required for the production, possession and supply of any controlled substances derived from cannabis plants.

Key Finding 4

Jersey does not have its own specific regulations to control the Island's medicinal cannabis industry.

In a letter to the Minister for EDTSC, the Panel asked what regulations, if any, were being proposed for the issuance of licences and when did the Minister propose these draft regulations would be available for the Panel to view. The Minister responded:

> *"…The cannabis industry must comply with existing regulations and legislation in the context of, for example, planning, environmental protection and competition. Consideration is being given to the need for specific legislation relating to cannabis in addition to Jersey's misuse of drugs legislation. Currently the focus is on income tax regulations. It is hoped that drafting will be relatively straightforward and take place over the summer months. The Treasury Minister will ensure that the draft income tax regulations are put before the Panel before they are lodged – and the regulations would need to be in force by 1 January 2022…"*[8]

This also gives the Panel cause for concern as it is clear from this response that the industry will continue to rely on the MoU currently in place and has no plans to introduce its own standalone regulations. The Panel understand it is necessary to have an MoU with the UK Home Office as it is the UK that is the State Party to the Convention and not Jersey.

The Panel was informed by the Minister for EDTSC that *"…by way of guidance, it is important that the legislation references are read in context alongside other provisions in different Orders or the actual Misuse of Drugs Law itself (or indeed the Medicines Law). Without reading the different pieces of legislation together, it is not possible to fully understand the impact and controls that are in place…"*[9]

Whilst the Panel understands the MoU does allow for certain regulations to be in place, it considers it imperative for Jersey to have its own specific set of regulations and thereby control (and be seen to control) its own industry. In addition, the Panel believe the current procedure of following legislation references from provision in different Orders to be confusing and technical to those

[7] Letter from Minister of EDTSC to Panel – 05.07.21
[8] Letter from Minister of EDTSC to Panel – 05.07.21
[9] Letter from Minister of EDTSC to Panel – 28.10.21

without experience in law. The Panel would like to see the regulations relating to this industry contained under one piece of legislation.

Recommendation 2

The Council of Ministers should implement Jersey's own detailed and specific regulations for the medicinal cannabis industry. This work should be carried out immediately with a clear timeline set in place with the Legislative Drafting Office

5. Licence Application

Types of Licence

There are a number of different licences required for the operation of the medicinal cannabis industry depending on the activity to be undertaken. The activity varies between cultivation, possession, processing and production of products, supply and export with the full licence application requirements set out in Appendix 3 of this report. Licences can be granted under Article 10 of the Misuse of Drugs (General Provisions) (Jersey) Order 2009 for the cultivation of cannabis and under Article 3 of the same order for the production, possession and supply of a controlled substance. Licences under Article 3 are not specific to cannabis but cover cannabis as a controlled substance.

The Application Process

The Panel wished to understand the process for granting licences from the initial application stage through to approval and issuance. It asked this in written correspondence to the Minister for EDTSC and was informed of the following process [10]

- Once an application is received it is shared with the UK Home Office for assessment as part of the MoU with them.
- The Home Office revert with any questions of clarification and together with the Chief Pharmacist, arrange to undertake a joint site inspection visit and meeting with the applicants to discuss the application and their plans and test their understanding of what is involved.
- The Home Office then produce a report for the Minister for Health and Social Services detailing their observations in relation to the application and confirming whether or not the application would be compliant with the provisions of the 1961 UN Single Convention on Narcotic Drugs. This report and the application are reviewed by the Minister and a decision on whether or not to grant a licence is made together with any conditions which might be attached to that licence.[11]

The Panel was also informed that, going forward, an advisory panel would be established to advise the Minister for Health and Social Services in relation to applications prior to any final licensing decision being made and that Terms of Reference for this Panel are currently being developed.

The Minister explained within his letter that licences for medicinal cannabis could not be issued prior to identification of a suitable site and plans for the facility at the site must be submitted as part of the planning process.

> *"…Any licence issued based on plans would explicitly prohibit the actual cultivation or processing of cannabis until the site and facilities are built and inspected and deemed to meet the necessary requirements. If the site is not developed the licence will be cancelled, or lapse at the annual renewal, and so no cultivation would be able to take place…"*[12]

The Panel wish to highlight that the medicinal cannabis licence application does not require the applicant to provide full details of their business case with financial predictions. Although the economic impact is discussed later in this report, the Panel believe it important that all applicants should provide a comprehensive business case which shows the reasoning behind the project, the

[10] It should be noted that at the time of the correspondence, the Panel was unaware the Minister for HSS was responsible for the issuance of licences and had assumed the Minister for EDTSC had full responsibility for the industry, the Panel now understands this not to be the case.
[11] Letter from Minister of EDTSC to Panel – 24.03.21
[12] Letter from Minister of EDTSC to Panel – 24.03.21

overall costs and timescales and all benefits, both financial and nonfinancial expressed in measurable terms. Government should also use an economic viability model to measure the potential success of the applicant to ensure their benefit to the Island.

Recommendation 3

The Council of Ministers should ensure that the medicinal licence application process includes a full business case setting out the project and operational costs and timescales and clearly define all benefits both financial and non- financial to Jersey. A business case template should be developed with immediate effect.

The Panel raised concern around the notification of change of beneficial ownership of the licence and was informed that:

> *"…any proposed change of ownership of the licensee* must be notified to the Chief Pharmacist in writing. Failure to notify the Chief Pharmacist may result in the licence being cancelled. The change of ownership must not take place unless expressly approved in writing by the Chief Pharmacist…"*[13]

The Panel also wrote to the Jersey Financial Services Commission (JFSC) to ascertain further clarification on the issue and was informed that upon any change in beneficial ownership of the licencee, an entity is required by the Disclosure Law to notify the JFSC of the change within 21 days. The letter went on to say:

> *"…It would be helpful if the Chief Pharmacist would forward to us a confirmation each time a proposed change of ownership is approved or not approved so that we can check this against the register to ensure that any approved change is submitted or so that we are aware if a company tries to submit a change in ownership which has not been approved. We will look to build into our process that if a change of ownership submission is received from a company carrying out cannabis related activity, it must be accompanied by an upload of the approval from the Chief Pharmacist…"*[14]

Key Finding 5

There is no requirement for the Chief Pharmacist to inform the Jersey Financial Services Commission (JFSC) of any change proposed change of ownership of the licensee whether approved or non approved.

Recommendation 4

The Council of Ministers should ensure the Chief Pharmacist informs the Jersey Financial Services Commission (JFSC) of any proposed change of ownership of the licencee whether approved or non approved. This would allow the JFSC to check the change against its existing register. Any changes of ownership should be accompanied by a copy of the approval from the Chief Pharmacist. This should be implemented with immediate effect.

[13] Additional Comments from Chief Pharmacist – 19.11.21
[14] Letter from JFSC – 24.11.21

Licence Application and the Planning Process

Although the process of planning applications is discussed later in this report, the Panel is aware of at least two situations where it believes the rules of planning were not aligned with the licence application criteria.

The Panel is aware through local media that unauthorised work has taken place on at least one site where a planning application for an electrical substation had been submitted for the purposes of producing medicinal cannabis. The Planning Committee had described the application as 'piecemeal' and explained that it should have been submitted as a retrospective application on the basis the work had already been carried out. As a result, the application was rejected.

The Chair of the Planning Committee, Connétable Philip Le Sueur stated:

> *'I'm not happy. There are too many unanswered questions with this application. It's another example of us being asked to sanction a large site to support the emerging cannabis industry and riding roughshod over planning policy.'*[15]

The Panel is also aware, again through local media, of a planning application for a 'secure horticultural laboratory' at a site in St Brelade. The plans include the construction of a development of a breeding research nursery, dry store and analytics laboratory and, despite a number of concerns being raised by the Planning Committee, particularly over the lack of information about the planned usage and future occupiers of the site, the application was approved. This concern from the Planning Committee mirrors that of the Panel in that the countryside could become industrialised if future use of sites is not monitored through the Planning process. The risk of the Island's countryside becoming industrialised is discussed later in this report.

> **Deputy Morel, a member of the Planning Committee stated:**
>
> *"…It is unsatisfactory that we still don't know what this is going to be used for. It would be better to have a full site application for the site but my hands are tied by policy…"*[16]

The Planning Committee said that whilst the application was in line with planning policy, multiple future applications to develop other areas of the site would be 'viewed dimly' and the committee had no reason to reject the application even though there were many questions that remain unanswered.

> **Connétable Le Sueur, the Chair of the Planning Committee stated:**
>
> *"…I'm concerned by these piecemeal applications by people entering – and I'll say it – this new cannabis industry…"*[17]

In addition to the lack of information around the future use of sites, another concern raised by the Panel was the possibility that, unknown to the public or IHE, work could still be carried out on sites around the Island for the purposes of cultivating without a licence, with the expectation that the licence would come later; however, when raised at a Public Hearing with the Minister for HSS, the Panel was informed that no cannabis was being grown on Jersey without a licence being granted.

> **The Deputy of St. Martin:**

[15] https://jerseyeveningpost.com/news/2021/07/17/cannabis-farm-sub-station-plan-rejected/
[16] https://jerseyeveningpost.com/news/2021/07/16/horticultural-lab-plans-for-former-restaurant-approved/
[17] https://jerseyeveningpost.com/news/2021/07/16/horticultural-lab-plans-for-former-restaurant-approved/

"…Can I just ask the question then, once you are happy with the plans and you issue a licence, who is responsible for making sure that the structures, buildings, whatever they are, are developed in accordance with the plans? Is it then the Planning Department?

Chief Pharmacist, Health and Community Services:
I would assume the Planning Department and the applicants. Certainly, once the facility is finished then we would back and visit again to inspect it as a finished entity. They would not be able to grow anything until we come back and do that visit as well, so there would be another joint visit and the end of the build out process.

The Deputy of St. Martin:
Okay, so to be absolutely clear, nobody is growing any medicinal cannabis on Jersey until they have had their licence approved and the premises have been finished?

Chief Pharmacist, Health and Community Services:
Correct…"

The Deputy of St. Martin:
That is very interesting, thank you…"[18]

The Chief Pharmacist's assumption that it is the Planning Department who have the responsibility for ensuring that the structures, buildings, etc are developed in accordance with the plans is concerning to the Panel particularly as it was informed by the Minister for the Environment that the Planning Department has had little or no involvement with the medicinal cannabis industry. Whilst it is clear from the Planning regulations that this would ordinarily sit under the responsibility of the Planning Department, this is a new industry and the lack of alignment with other Departments is a cause of concern.

The Panel is also concerned that the usage of utilities such as water and electricity are not included within the application process. The Panel has been informed that the use of these utilities can be extensive and without them being addressed at the licence application stage, with future plans put in place for usage, there is potential for the licence holders to have no choice but to 'tap' into the Island's existing water and electricity sources.

Recommendation 5

The Council of Ministers should ensure that clearly defined building and development plans are put in place at licence application stage for the use of utilities such as water and electricity with standalone structures (such as substations, pump houses etc) if required. This should be overseen by the Planning Department and put in place with immediate effect.

Licence Costs

The Panel understands that the maximum fee that is allowed to be payable to the UK Home Office for undertaking their work in the application of licences is £2,500. The licence fees charged by Jersey are set out in legislation and can be found within at the Misuse of Drugs (Licence Fees) (Jersey) Order 2020.

In a letter to the Panel from the Minister for EDTSC dated 7th May, he stated

[18] Public Hearing with Minister for HSS – 14.06.21

> *"…The initial licence fee to cultivate, produce, possess and supply cannabis is £7,500 with an annual renewal fee set at £3,750. The fee was set taking into account of UK fees set in 2010 and the time taken in dealing with licence applications in Jersey in order to ensure, as much as possible, that full costs are recovered. The level of fees was also considered by the Misuse of Drugs Advisory Council prior to being set in legislation…"*[19]

The Panel asked if there was any proposal to increase the licence fee or make it an annual cost as opposed to a one off and was informed that the *"…level of fees will be kept under review…"*[20]

By contrast to other jurisdictions, this fee appears to be low and the Panel is concerned it may not cover the costs for, not only the licence fee administration, but the ongoing work required from the office of the Chief Pharmacist.

As a comparison, the licence fee in **Malta** is an initial €100,000 and a maximum ongoing annual fee of €63,000 per annum.[21]

In **Guernsey**, the fee payable to the UK Home Office is not stated but it is likely to be the maximum fee allowed of £2,500. However, the licence fee for a single entity on a single cultivation site under 5 acres is £4,800 with at least £1,100 added per extra 5 acres of land used. In Guernsey, a fee of £1,600 is payable for a processing plant for medicinal cannabis products, £1,100 for each warehousing facility and £100 per shipment for a commercial export.[22]

The Decree Law No. 8/2019, of 2019-01-15 in **Portugal** states the fees for cultivation to be €3000.00, for manufacturing €3000.00, import /export €1200.00g and for wholesale trade, including transport and circulation, €1000.00 [23]

For **France**, *"Medicinal products must obtain a marketing authorisation to be marketed in the European Union." "In 2020, the fees for a decentralised/mutual recognition marketing authorisation application amounted to €55,000 and €35,700, respectively, depending on whether France acted as the reference member state (RMS) or not."*[24]

As discussed above, the Panel is concerned the low licence fee will not cover costs for the office of the Chief Pharmacist, let alone additional overheads. The Panel raised this in its letter to the Minister for EDTSC and was informed

> *"…the level of fees set should provide sufficient funding for the engagement of support for the Chief Pharmacist…"*[25]

At the time of asking these questions, two licences had been granted and whilst the Panel is content the level of fees may be adequate at the current time, it may not be the case in the future should more licences be granted.

[19] Letter from Minister for EDTSC – 07.05.21
[20] Letter from Minister for EDTSC – 07.05.21
[21] Panel Adviser's Report – September 2021
[22] https://gov.gg/article/184780/Guernsey-welcomes-licence-applications-for-the-cultivation-of-cannabis-for-use-in-cannabis-based-products-medicinal-CBPM
[23] Decree Law No. 8/2019, of 2019-01-15
[24] https://thelawreviews.co.uk/title/the-life-sciences-law-review/france
[25] Letter from Minister for EDTSC – 07.05.21

Key Finding 6

The Jersey licence application fee for the cultivation, processing and export of medicinal cannabis is low in comparison with some EU jurisdictions and may not be economically viable in the future.

Recommendation 6

The Council of Ministers should ensure the licence fee for the cultivation, production and export of medicinal cannabis is reviewed immediately and benchmarked against the minimum required resource to regulate this industry in Jersey. This should be carried out with immediate effect.

6. Planning and the Environment

Overarching Scrutiny – EIA and EHI Scrutiny Panels

At the beginning of the Panel's review, it was cautious not to encroach into areas of Planning and Environment and was in regular dialogue with the Environment, Housing and Infrastructure Scrutiny Panel (EHI) to ensure it was aware of the Panel's Terms of Reference and overall objectives in undertaking a review into the regulatory side of the medicinal cannabis industry. As the review progressed, it became clear the EIA Panel could not ignore certain planning and environment issues that intertwined with the licence application and overall process. It was agreed the Panel would review any planning and environmental issues that arose whilst adhering to its own Terms of Reference. The Panel identifies such planning and environmental issues in its various findings and will be pleased to co-operate with the EHI Panel in any further review considered appropriate.

Department of the Environment

As previously discussed in this report, the Minister for the Environment has stated that he has had little involvement in the promotion of the medicinal cannabis industry. He went on to state that any exposure he had had arisen as a result of views expressed by members of the public and other States Members.

The role of the Department for Infrastructure, Housing and Environment is defined on the gov.je website as:

> *We aim to safeguard Jersey's natural and historic environment by giving guidance to planning and building in Jersey.*
>
> *We are also responsible for:*
>
> - *island planning and policy*
> - *environmental management and the rural economy*
> - *environmental policy and awareness*
> - *environmental protection (waste and water)*
> - *environmental health*
> - *animal health and welfare*
> - *marine resources and fisheries*
> - *meteorological services*

The Panel believe that with these responsibilities falling under the remit of the Department for Infrastructure, Housing and Environment, it should have a much more defined role in Jersey's medicinal cannabis industry.

Key Finding 7

The Minister for the Environment informed the Panel that he had little involvement in the development of the medicinal cannabis industry, despite the Department being responsible for Island planning and environmental policy issues.

The Planning Application Process

It should be noted that should an existing agricultural glasshouse currently growing crops change to growing cannabis, this will not require planning permission because the use is essentially the same.

The planning regulations will only apply to new builds, fencing and new uses, such as the introduction of light industrial processes

Jersey has strict guidelines that must be followed in order for planning approval to be granted to proposed developments.

To illustrate how it compares with the current procedure for an application for a medical cannabis licence, this paragraph summarises such procedure in the case of a planning application.

Submitting your application and payment

You need to submit your application using the relevant form and with the correct information so anyone can understand the proposal.

When you've submitted your application, we'll review it to make sure it contains the minimum level of information required to understand the proposal. If your application doesn't contain the information we need, we'll return it to you and explain what needs to be provided.

If your application does contain the information we need, we'll send you a fee breakdown with information on how to pay. Once your payment is received, we'll register your application.

We aim to register your application within three working days from receiving the correct information and a full fee.

- **Site notices, publishing your application and comments**
  We will send you one or more site notices that you'll need to clearly display on the property for 21 days. The site notice is to make other people aware of your proposal so they can comment if they wish.

  We'll also send you a form that you need to sign and return together with photographs that clearly show the position of the site notices around the property. This should be submitted after the 21 day period to confirm that the site notices have been displayed for the full period.

- **Publishing your application**
  We'll publish your application so other people can comment on:

  - *the Jersey Gazette Official Notices*
  - *the Planning Register*
  - *the Jersey Evening Post every Tuesday*

  Comments can be made within 21 days of any of the above publication dates. We may consider comments after this timeframe provided the application has not already been determined.

  We'll consult organisations that may wish to comment on your application. We request they respond within 21 days however we'll consider comments received after this timeframe if the application hasn't already been determined. If they don't respond, we may assume they've no

comments to make. If your application raises complex issues we may extend the consultation period.[26]

The Panel firmly believe that the rules currently in place for planning applications should also apply to the medicinal cannabis industry. From the Panel's evidence gathering, it has become clear there are rules being applied to the medicinal cannabis industry which are similar to those currently in place for agriculture, in particular, glasshouses currently used for agriculture do not require planning application if they are to be used to cultivate cannabis. The Panel believe these rules to be inadequate for the cannabis industry and should be modified and made to fit in accordance with this business. The Panel is also concerned the current agricultural rules could be used as a 'loophole' to cultivate and export cannabis. As previously mentioned, the internal refurbishment of glasshouses does not currently require planning permission, but it should be noted that the Minister for the Environment is actively considering changing this exemption.

Exportation of Medicinal Cannabis

No export of cannabis can take place without a specific export licence being issued for each consignment to be exported. Any such licence can only be issued on receipt of a corresponding import licence from the competent authorities in the destination jurisdiction as required by the 1961 UN Convention. *"…Cannabis is a controlled drug just like any other controlled drugs under the Misuse of Drugs Law and the Misuse of Drugs Law provides in general that the import or export of controlled drugs is prohibited unless in accordance with a specific licence for that import or export…"*[27]

The Panel was keen to understand how the export process worked and the different grades of cannabis which could be exported and how. At a Public Hearing, the Panel was informed that any imports or exports of cannabis would need to be in accordance with a specific licence granted for that purpose under the Misuse of Drugs Law. The Panel was further informed that the licence would be independent of any other licences that may or may not be in play in regard to the manufacture of products within the industry. *"…So in order to export anything from the Island there would need to be a specific licence for that specific consignment to be exported out of Jersey…"*[28]

As advised earlier in this report, EU/GMP licences, amongst other things are granted for the export of cannabis that comply to GMP standards in relation to the production of Active Pharmaceutical Ingreditnet (APIs) or Cannabis Based Products for Medicinal Use (CBPMs).[29] This certification is the highest recognition available for companies in the pharmaceutical sector and involves rigorous testing of the product to ensure that not only the product, but the company, is compliant with strict EU regulations. Without having this accreditation, it is possible for lower grade crops to be exported under current rules however, the Panel understands that cannabis products can only be exported to companies in other jurisdictions who hold EU/GMP accreditation. It would then be the responsibility of the EU/GMP company to have negotiated the quality of the crop and its grading. The Panel has recommended that all products being exported from Jersey should be exported under the EU/GMP accreditation and has recommended the current rules are amended to reflect this. The Panel believe that without this accreditation, Jersey could be seen as an Island where lower grade medicinal

[26] https://www.gov.je/PlanningBuilding/MakingApplication/Planning/PlanningApplicationProcess/pages/planningapplicationprocess.aspx
[27] Public Hearing with Minister for EDTSC, HSS and Chief Pharmacist– 19.11.21
[28] Public Hearing with Minister for EDTSC, HSS and Chief Pharmacist– 19.11.21
[29] The Panel has referred to this as 'higher grade' cannabis within this report

cannabis is being exported which could tarnish the reputation not only of this industry, but the Island as a whole.

Environmental Impact Assessments

Environmental Impact Assessments (EIA's) can form part of the planning application process and must be submitted for proposed developments that may have a significant impact on the environment. They are public documents and can be used to alert the public to proposed developments currently being reviewed by planning. Whilst it is now the case that an EIA must be submitted on application for a medical cannabis licence, it is to be noted that it does not have the same meaning (or effect) as one in relation to planning inasmuch as the cannabis EIA is not made public. To better consider whether aspects of the EIA (in planning terms) could be successfully transposed to the medicinal cannabis licence application process, the Panel considered it necessary as part of its review to look into the position of EIAs in the planning process.

Further details of an EIA can be found below from information taken from www.gov.je.

> *An **Environmental Impact Assessment** (EIA) is a process that identifies both the positive and negative environmental effects of proposed developments prior to planning permission being considered. It aims to prevent, reduce or offset any identified significant adverse environmental effects of development proposals.*
>
> *The EIA process is a method of ensuring that planning decisions are made in the full knowledge of the environmental effects and with full engagement of statutory bodies, local interest groups and members of the public. The responsibility of completing an EIA lies with the applicant.*
>
> ### *When to get an EIA (Screening)*
>
> *Environmental Impact Assessments (EIA) are required for proposed developments that may have a significant impact on the environment. The requirement for an EIA will only affect a small number of projects in Jersey. The EIA Order specifies a range of developments which require an EIA. Any changes or extensions to a development that was previously subject to an EIA will also require an updated EIA.* [30]

The Panel raised the issue of EIA's with each of the Ministers it invited to Public Hearings in order to understand where the process of submitting an EIA fitted into the overall process of the issuing of licences for medicinal cannabis.

At its hearing with the Minister for Health and Social Services, the Panel was informed that the need for submitting an EIA was a relatively new idea and that, whilst no licences had been issued for permission to grow or cultivate anything without having submitted an EIA, it was not something that had originally formed part of the medicinal cannabis licence application process. The Panel was further informed that the submission of an EIA was not something that was a requirement by the UK Home Office; however, it was felt that it would be helpful in Jersey given the likelihood of nearby neighbours, that land is constrained and to ensure applicants give due consideration to the impact of what they are doing.

The Panel asked at what stage in the process was the EIA due to be submitted:

[30] https://www.gov.je/pages/search.aspx?query=Economic+Impact+Assessment&page=1

The Deputy of St. Mary:

"…I see the guidance in respect of the Jersey Licence Application does make reference to the applicant having to provide an environment impact assessment. Does that happen before you inspect or does it take account of the matters you raise during inspection or perhaps you could elaborate on that, please?

Chief Pharmacist, Health and Community Services:

Yes, that is something which, as we progress through this, we felt would be a useful addition to an application so the current application, we expect that to be delivered with the application so in advance of any inspection and in advance of everything else so that we would have sight of it and we could raise any questions that we need to around that. One of the current licence holders, when their licence was being considered, it was a condition upon granting the licence that they provided one because we had not fully developed the application process at that stage. All future applications would include that assessment with the application upfront.

The Deputy of St. Mary:

Just to clarify, are you saying therefore this EIA (environmental impact assessment) is a relatively new idea and that applications might have already been granted without one having been issued?

Chief Pharmacist, Health and Community Services:

No one has been issued a permission to grow or cultivate anything without having submitted an EIA. Yes, it a new thing, the Home Office do not require it in the U.K., it is something we felt might be helpful in Jersey given that land is constrained and we want to make sure that applicants are given due consideration to the impact of what they are doing…"[31]

Whilst the Panel was encouraged that the process of producing an EIA as part of the application process had been implemented, it was less encouraged to learn that the EIA, as part of the application process, would not be made public therefore denying members of the public the opportunity to comment on the potential impact the proposed development would have on residential properties and the surrounding areas. This is in contrast to an EIA being submitted for the purposes of standard planning applications. If the whole purpose of an EIA is to identify both the positive and negative environmental effects of proposed developments prior to planning permission being considered, the Panel questions why they are not made public at the medicinal cannabis licence application stage.

The Deputy of St. Mary:

"…The concern I have, which is clear from the emails we have had on the matter, is that certain activities are carried out without local residents knowing about it. What I am asking I suppose is, is this environmental impact assessment publicised and do the public have the right to contribute and make representations as to what their concerns are, or is purely behind closed doors?

The Minister for Health and Social Services:

I think it would only be given publicity if it was also part of any planning application but not if it is simply prepared for the purposes of an application to me, because there is no public

[31] Public Hearing with the Minister for HSS – 14.06.21

notice given of these applications under the Misuse of Drugs (Jersey) Law. It is entirely an internal process. There is no opportunity for the public to comment or likewise…"[32]

Key Finding 8

The current application procedure for a medicinal cannabis licence requires the submission of an "Economic Impact Assessment" (EIA). However, unlike the form of EIA submitted with a planning application, the EIA accompanying an application for a medical cannabis licence is not available to the public and there is no procedure for the public to then make representations relating to a licence application.

The Minister for HSS went on to explain to the Panel the reason why the EIA's were not made public was due to the fact there was no option to do so within the Misuse of Drugs (Jersey) Law.

The Minister for Health and Social Services:

"…Once or twice neighbours who had become aware of the use of premises nearby have written to me. It is just that there is no facility, no option within the Misuse of Drugs (Jersey) Law to make public the fact an application has been made. It may be that should change, I do not express any particular view. I am not the Minister who is responsible for the policy but you will know that the policy approach is that this is an agricultural use and merely by growing cannabis instead of any other crop there is not necessarily a change in use or intensification. That is why we have particularly wanted to make an environmental impact assessment a requirement so that we could go some way towards addressing these questions and getting an independent review as to whether there was likely to be any risk to neighbouring properties…"[33]

During its Public Hearing with the Minister for the Environment, the Minister described an EIA as an open and transparent document stating:

The Minister for the Environment:

"…An environmental impact assessment done under the Planning Law and under the laws, it is really important to know that it is a public document. In other words, that the assessment is published and, therefore, it is open and transparent. I am not aware what the Minister for Health and Social Services has proposed to, whether it is open or not; I really do not know…"[34]

The Panel finds it concerning that members of the Public are not consulted or given the ability to provide input on issues of the environment prior to medicinal cannabis licences being granted.

Recommendation 7

The Council of Ministers should ensure that all Environmental Impact Assessments (EIAs) submitted as part of a medicinal cannabis licence application are made public and, a process introduced that allows both the public and key stakeholders to comment on any such EIA prior to the approval of any licence with immediate effect.

[32] Public Hearing with the Minister for HSS – 14.06.21
[33] Public Hearing with the Minister for HSS – 14.06.21
[34] Public Hearing with Minister for ENV – 17.06.21

Recommendation 8

The Council of Ministers should ensure that officers of the Planning and Environment Department are solely responsible for the assessment and approval of any EIA submitted with a medicinal cannabis licence application prior to the Jersey Cannabis Agency (JCA) determining the application with immediate effect.

The Panel probed further into the area of EIA's and raised the subject it at its hearing with the Minister for the Environment. The Panel asked the Minister to what extent his Department was involved in the overall monitoring of the EIA at application stage and beyond. The Panel was surprised to hear that it seemed there was very little involvement and the Minister was not aware of what procedure was in place for the Minister for HSS to be involved in the assessment.

> **The Deputy of St. Mary:**
>
> *"…Can I ask, Minister, to what extent are you involved in monitoring the replies to that or commenting on the result of that?*
>
> **The Minister for the Environment:**
>
> *I know what I have read only through the media. I have not had that conversation with the Minister for Health and Social Services. I know that the Minister for Health and Social Services up to now has been responsible for the licensing, which is, if you like, the regulatory side of medicine or cannabis. I am puzzled, and I think the team may have to help me out here, at the moment an environmental impact arises under one of the pieces of planning legislation. There is an order that specifies the circumstances in which environmental impact assessments are required in respect of developments.*
>
> *Of course having such a process means that somebody has to assess what the impact assessment is and the general approach is to identify what issues arise environmentally; what are the impacts? Also, to investigate mitigation measures and those mitigation measures are part of the planning judgments that get made on an individual application. There is a process there. What I cannot answer you is how this assessment, that has been proposed by the Minister for Health and Social Services, fits into the planning process. I am not aware that there is a procedure in place for that but I am sure I may be out of date and the officers can help me, please…"*[35]

An officer from the Department of Infrastructure, Housing and Environment who accompanied the Minister to the Public Hearing informed the Panel that perhaps the Minister for HSS, when referring to the EIA, was in fact referring to other environment checks that were intended to be brought as part of the licence application process and not in terms of the Planning and Building regulations.

The Panel informed the Minister for the Environment of the recently received correspondence from the Minister for HSS, where the Panel asked for an overview of the medicinal licence application process and EIA's were discussed. The Panel was keen to understand if the Department of Infrastructure, Housing and Environment had 'come across' any of the EIA's required for the licence application process, understanding these would ordinarily be approved by this Department for a standard planning application.

[35] Public Hearing with Minister for ENV – 17.06.21

The Deputy of St. Martin:

"…I would just like to say to the Minister, one of the questions we put to the Minister for Health and Social Services and his officers in writing was: can you kindly give us an overview of how the application process works?

Part of the answer to that question is this: "Once the report from the Home Office is received" and this is after the application has been put in: "together with the original application, is presented to the Minister who will take advice from the chief pharmacist and any others he thinks appropriate in relation to the content of the application, for example, the police in relation to the security report provided by the applicant and Environmental Health in relation to the environmental impact assessment provided by the applicant." Minister, can I ask, have the Environmental Health Department under your remit seen any environmental impact assessments, please?

Director, Natural Environment/Acting Group Director, Regulation:

I have not seen any specifically come my way but I wonder whether [named officer] is able to elaborate on that. I think you are right, I think this is a separate process and I know that the Head of Biosecurity has had engagement in discussions about the licensing with the Health team, that that differentiates between us, as we have said, an EIA process that would be run under planning process and an EIA process that would be run under a different auspice. But in terms of specific documentation, EIA documentation coming our way, I have not been notified about any of it, unless it has gone directly to the Environmental Health officer…"[36]

The Minister for the Environment:

"…Chair, may I just check with [named officers] whether they have seen any such because I would like to know…"[37]

Head of Development and Land:

No, we have not seen any…"[38]

The Head of Biosecurity informed the Panel that part of the confusion seemed to stem from the wording and that, when repurposing existing infrastructure, the Department of Planning should definitely have received an assessment of the impact on the environment. He went on to say that the wording had possibly been transposed in a slightly different order and agreed there needed to be some finessing as to how the environmental impact of these operations are assessed.

Head of Biosecurity:

"…I think part of the confusion here stems from some of the wording. I fully agree that when repurposing existing infrastructure we should have possibly, or we definitely should have, an assessment of the impact on the environment. But I think people referred earlier to the fact that there is an official definition of an environmental impact assessment and so possibly if those words had been transposed in a slightly different order we would be in a different situation where environmental considerations should be at the fore of these issues. But what we have got at the moment is we are repurposing existing infrastructure and so the environmental impact of doing that is much lower than building a new facility on a green site.

[36] Public Hearing with Minister for ENV – 17.06.21
[37] Public Hearing with Minister for ENV – 17.06.21
[38] Public Hearing with Minister for ENV – 17.06.21

I think there needs to be some finessing as to how we assess the environmental impacts of these operations…"[39]

The Panel agrees that the wording between an EIA and an assessment of the impact on the environment should be clarified.

Following this line of discussion, it was clear the Department of the Infrastructure, Housing and Environment had not seen any EIA's for the current licence holders.

The Deputy of St. Martin:

"…I accept that answer but can I ask again the question: have you seen any environmental impact assessments?

Head of Biosecurity:

Not across my desk, no…"[40]

The Panel and indeed the Minister for the Environment were surprised at this, especially considering the Minister for HSS had informed the Panel that both licence applications had been accompanied by an Environmental Impact Assessment.

The Deputy of St. Martin:

"…Okay, is it a surprise then, Minister, to hear that the Minister for Health and Social Services told the Panel that both the applications for licences were accompanied by environmental impact assessments?

The Minister for the Environment:

It is news to me and in fact it is not the first time that our Government fails to operate in a co-ordinated way. I think the Deputy knows my concerns about the problems that we have got in our structure of our organisation at the moment. But I do think in everybody's defence, I think, this is an emerging industry and it is something we are going to have to organise for and organise differently, I believe. What I do have a concern about, because I was not aware of the details that the officers have just confirmed, that we had not seen that information. I think it is troubling when Minister X says publicly that we have got these assessments and yet they are neither public or none of the officers responsible for environmental impact assessments have seen them. That cannot be a satisfactory position and something we will have to … no doubt your report will highlight that and it is something I certainly will need to sort this out…"[41]

As previously discussed in this report, and as one of the recommendations made by the Panel's advisers, synergies need to be established between the Minister for Health and Social Services, the Minister for Economic Development, Tourism, Sport and Culture, and the Minister for the Environment to devise an adequate framework to assess the environmental impact of any application.

[39] Public Hearing with Minister for ENV – 17.06.21
[40] Public Hearing with Minister for ENV – 17.06.21
[41] Public Hearing with Minister for ENV – 17.06.21

Key Finding 9

The Department for Infrastructure, Housing and Environment, with responsibility for Environmental Impact Assessments (EIA's) under the planning application process, have not had sight of either of the EIA's submitted with the licence applications that have since been granted by the Minister for Health and Social Services.

7. Security

Cannabis is a narcotic drug with a high illicit value and the Panel believe that appropriate security arrangements should be a central concern for Jersey's medicinal cannabis sector, with a range of considerations factoring physical security, cultivation procedures, personnel security and transportation security. From the evidence gathered and following comments from its advisers, the Panel is concerned at the lack of security considerations, not only at application stage but throughout the whole process. The Panel firmly believe that security measures implemented at medicinal cannabis cultivation sites will require a robust, external monitoring and compliance audit.

The Panel and its advisers have reviewed the current medicinal cannabis security and traceability requirements in Jersey and understand that as part of the licence application process, applicants are expected to provide:

- A security assessment report prepared by an independent security adviser/specialist
- A full description of site security arrangements, including as a minimum, details of; CCTV, perimeter fencing, lockable physical security and presence/attendance of security guards
- Details on any electronic alarm system, to include details such as the installation company, alarm servicing and the level of police response
- A description of how they will comply with the safe custody requirements of the Misuse of Drugs (Jersey) Law and subordinate legislation, including stock recording, separate storage rooms and zoning, safes and prefabricated strong rooms and whether or not controlled substances are kept only on site.

It should be noted that these security requirements do not necessarily need to be put in place prior to any cannabis licence being granted. It is the opinion of the Panel that site security measures need to be in place before any commercial operations to cultivate medicinal cannabis commence.

Key Finding 10

Although the security framework is included in the initial licence application, there is no requirement for this to be approved by Planning prior to the licence being granted. Security requirements for each medicinal cannabis cultivation site must be stated at medicinal cannabis licence application stage however, the security does not need to be actually in place before the licence is issued.

Recommendation 9

The Council of Ministers should ensure that prior to a medicinal cannabis licence being issued, a detailed plan for site security should be set out within any licence application. No cultivation of cannabis should begin on site until all the approved security measures are implemented and signed off by the JCA and penalties put in place to ensure compliance.

The Panel also believe that sufficient resources should be provided by applicants to ensure appropriate levels of staff training and screening are in place. However, despite the requirement for a *"person responsible for the security of the premises to be licenced*",[42] the Panel note the absence

[42] Cultivation and Processing of Cannabis – Jersey Licence Application Guidance

of specific requirements for staff training and screening in the medicinal cannabis guidance documents.

In their report, the Panel advisers also explain that there should be resource available for *"Providing training given the peculiar requirements of this industry."* And that, *"Additionally, it should be ensured that a methodology is in place for an ongoing screening process on the applicant company as well as its officers and employees."* The requirement for staff training and screening is also considered an important prerequisite for medicinal cannabis cultivation in other jurisdictions. The Australian Office of Drug Control stated that *"While physical security systems and procedures play a critical role in preventing diversion of cannabis, a rigorous personnel security model is also necessary."*[43]

States of Jersey Police

Although the Panel did not undertake a call for evidence from members of the Public, it did ask for written submissions from key stakeholders, one being the States of Jersey Police (SoJP). The Panel asked the SoJP what involvement they have had in the initial development of the Jersey medicinal cannabis industry and what the responsibilities of the SoJP would be. It was informed that the SoJP will "…*not be directly involved in the policing of the medicinal cannabis production in Jersey, the responsibilities of SoJP will be in relation to any response to a crime occurring that requires a Police presence and investigation…"*[44]

Key Finding 11

The States of Jersey Police have informed the Panel they will not be directly involved in the policing of the medicinal cannabis industry in Jersey and their sole responsibility will be to respond to any crime occurring which requires a police presence or investigation.

At its Public Hearing with the Minister for Health and Social Services, the Panel raised the issue of security and it seemed it was not something that had yet been decided upon. The impression was given that security would be reliant upon recommendations from the UK Home Office.

> **Chief Pharmacist, Health and Community Services:**
> *"…We as part of the application require a security assessment to be submitted by the applicant to address the issues that are contained in Home Office guidance on security arrangements and that is available at the time the Home Office come to do their inspection. We are very strongly guided by the Home Office in terms of the basic principles being satisfied and then we have the option to consult with local agencies as we need to, to see whether there are any local factors that should be considered.*
>
> **The Deputy of St. Mary:**
> *Thank you for that. You say it is an option. Is it a question that as a matter of course you would get local advice or would you take a view yourself if there did not appear to be any particular problem?*
>
> **Chief Pharmacist, Health and Community Services:**
> *I think if the view from the Home Office was that everything was acceptable and in order then you would perhaps not necessarily need to take advice. The Home Office are the experts*

[43] Australian Office of Drug Control: Security of Medicinal Cannabis
[44] Written Submission – States of Jersey Police – September 2021

on this. They do it regularly in the U.K. They assess the security arrangements around these businesses in this industry, so they provide a very strong steer on whether the security arrangements are appropriate or not…"[45]

The Panel is concerned that, although a security assessment needs to be submitted at medicinal cannabis licence application stage, there are no clear milestones set out as to what needs to be put it in place following submission of the medicinal cannabis licence application.

In an anonymous submission to the Panel from a private security firm, it was stated that:

Anonymous Submission:
"I strongly recommend that all facilities have a dedicated Police liaison officer who meets with the security team weekly to ensure that intelligence is feeding to and from site so that the security envelope is not threatened and remains robust and measurable."[46]

Customs and Immigration Service

The Panel recognise that the Jersey Customs and Immigration Service will play an important role in controlling the import and export of medical cannabis product and believe that resources should be made available to ensure suitable training is provided. The Panel's advisers stated, *"the Minister for Health and Social Services and the JCA to ensure that Customs are well-informed and educated about the process"* and "*a change in approach would be mandated from their end, possibly necessitating training for the officials responsible for this aspect".*[47]

Recommendation 10

The Council of Ministers should ensure that a specialised training programme is delivered to Customs and Immigration officers in relation to handling the import and export of medicinal cannabis products. A training plan should be developed within 6 months of the presentation date of this report.

Private Security

The Panel believes the solution to security for this industry is through private security firms. This would eliminate the pressure on the SoJP and other public services within Parishes such as the Honorary Police. At a meeting between the Panel and its advisers on 26th August 2021, the Panel advisers explained that many local and international private security firms could provide the necessary security advice to on-Island medicinal cannabis cultivators. The advisers went on to say that an audit of the security requirements should be carried out by an external party to ascertain what security would be required, following which this could form part of the application process.

Key Finding 12

The involvement of private security firms to undertake the monitoring and implementation of security for medicinal cannabis sites would eliminate pressure on the States of Jersey Police and other public services.

The Panel believe that the medicinal cannabis industry could provide new opportunities for locally based private security contractors and provide medicinal cannabis cultivators with comprehensive

[45] Public Hearing with the Minister for HSS – 14.06.21
[46] A private security firm: Anonymous Submission
[47] Panel Adviser's Report – September 2021

site security options. In their submission to the Panel, G4S Secure Solutions (Jersey) informed the Panel that,

> *"G4S are engaging with the industry in Jersey to ascertain the level of security they are anticipating will be required. We would envisage an increase in manned guarding requirements (searching staff out), security systems installation (CCTV, INTRUDER, Fire Detection) and on-going maintenance of these systems".*[48]

The Panel is keen to ensure that adequate security resources are available on-Island to medicinal cannabis cultivators and was encouraged by an anonymous submission from a private security firm that stated, *"The local security industry will certainly be challenged to meet the required standard, but I am confident that there are sufficient number of us who will be able to do this to supply good quality resilient security for these new businesses".*[49]

The Panel believe that many questions in relation to the provision of physical site security, personnel and transportation security remain unanswered. In particular, the Panel is concerned about the absence of an independent site security monitoring and compliance audit, as well as the absence of a requirement for suitable staff training and screening measures from key departmental guidance.

However, the Panel is encouraged by the substantial presence of on-Island private security contractors, and their ability to support the development of the medicinal cannabis industry in Jersey.

Responsible or Qualified Person

It became apparent through discussions with its advisers and evidence gathering that it is a requirement at licence application stage that a person is designated to be the licence applicant's person responsible for regulatory affairs. Although there is nothing predetermined in terms of the qualifications necessary for the role, the person should be of good repute and have passed the due diligence process in place (currently enhanced Disclosure and Barring Service checks (DBS)). In a letter received by the Minister for EDTSC, the Panel asked the difference in standard and enhanced checks and was informed that:

> *"…DBS checks can be obtained by applicants from a number of registered providers of criminal record certificates on payment of a fee, completion of a form and verification of identification. A standard DBS check shows offences and cautions recorded on the Police National Computer including spent and unspent convictions. An enhanced DBS check shows the same information plus relevant information provided by police authorities…"*[50]

The Panel has considered if this process of screening is robust and secure enough to engage the responsible person. Without the pre-requisite for qualifications necessary for the role, it is difficult to ascertain if the responsible person nominated may have the required skill set to undertake the regulatory requirements necessary in this position.

Key Finding 13

Every licence application must designate a specific Responsible Person as the person responsible for the regulatory affairs of the medicinal cannabis business. Apart from passing due diligence and enhanced DBS checks, there are no specific qualifications necessary for the role.

[48] G4S Secure Solutions (Jersey) Limited: Submission
[49] A private security firm: Anonymous Submission
[50] Letter from Minister for EDTSC – 05.07.21

The Panel is aware there is a role within the industry for a 'qualified person' in the UK and indeed in Jersey and asked what the role of the qualified person was, and how this differed from that of the responsible person. It was informed that due to Jersey having a full manufacturing licence, legislation specifies that in order to release finished medicinal cannabis products to the market, a qualified person is required. The qualified person must have experience in production and the release of medicinal products.

Chief Pharmacist

'…Some jurisdictions have 2 types of manufacturing licence: a manufacturing specials licence and a full manufacturing licence. We only have one, which is the full manufacturing licence. In legislation it specifies that in order to release finished medicinal products to the market, that must be released by a qualified person. A qualified person is defined in legislation. It is somebody with certain qualifications; a pharmacist or a chemist who has experience in production and release of medicinal products…'[51]

The Panel was informed that there is a register of qualified persons to which the Minister for Health and Social Services has access. The qualified person would provide the service on Island as and when required.

In Malta, both the responsible person and the qualified person roles are carried out by one individual. This individual must be recognised by the Medicines Authority to act as such (they must be a pharmacist registered with the Maltese Pharmacy Council and must be resident in Malta). The responsible/qualified person in Malta has responsibility for keeping an up-to-date register to document and certify each production batch.

The Panel was informed that the system used in Malta where the qualified person and the responsible person are one and the same is not the system that would be used in Jersey.

Disposal

It was unclear to the Panel how the harvested medicinal cannabis crop would be disposed of, following its cultivation and extraction. The Panel is concerned that should the disposal of the product not be specially treated, it could become harmful and fall foul of hazardous waste disposal regulations. The Panel asked for clarification around disposal and was given this response via email correspondence from the Chief pharmacist:

"…If there are any controlled parts of the plant (i.e. leaves and flowers) or any cannabis oil extract that are not required for supply to customers, or for internal process validation or quality assurance procedures, they will need to be destroyed. Each licence holder has a named individual who is authorised under the Misuse of Drugs Law to personally witness and record any destruction. Each licence holder will have a Standard Operating Procedure (SOP) covering the destruction of controlled substances. The actual method of destruction is not mandated but destruction must render the controlled substance permanently irretrievable. In practice this will most likely be by witnessed incineration in the clinical waste incinerator – in a similar manner to that employed by the police and customs. The licence holder is responsible for ensuring the security of the controlled substance in transit form their premises to the clinical waste incinerator This method of destruction has been endorsed by the UK Home Office…"[52]

The Panel is reassured to know that the disposal of the product is controlled and has been endorsed by the UK Home Office, however, it has led it to have further concerns around the appointment of

[51] Public Hearing – 19.11.21
[52] Email from HSS Officer on behalf of Chief Pharmacist to Panel Officer – 26.08.21

the ‘responsible person’ (or named individual), their responsibilities within the company and the necessary qualifications to undertake this role.

Key Finding 14

In relation to the disposal of the harvested cannabis crop, it is not clear what procedures the Responsible Person would follow. It is also unclear what experience the Responsible Person will need to deal with its destruction within the methods set out and endorsed by the UK Home Office.

Recommendation 11

The Council of Ministers should ensure the Responsible Person who is nominated by the licence applicant at application stage should hold the relevant qualifications to undertake this role. This should include relevant experience in both the science and biological industry and in the disposal of hazardous waste materials and should be made part of the licence application process. This should be carried out with immediate effect.

8. European Union Good Manufacturing Practice (EU/GMP) Certification

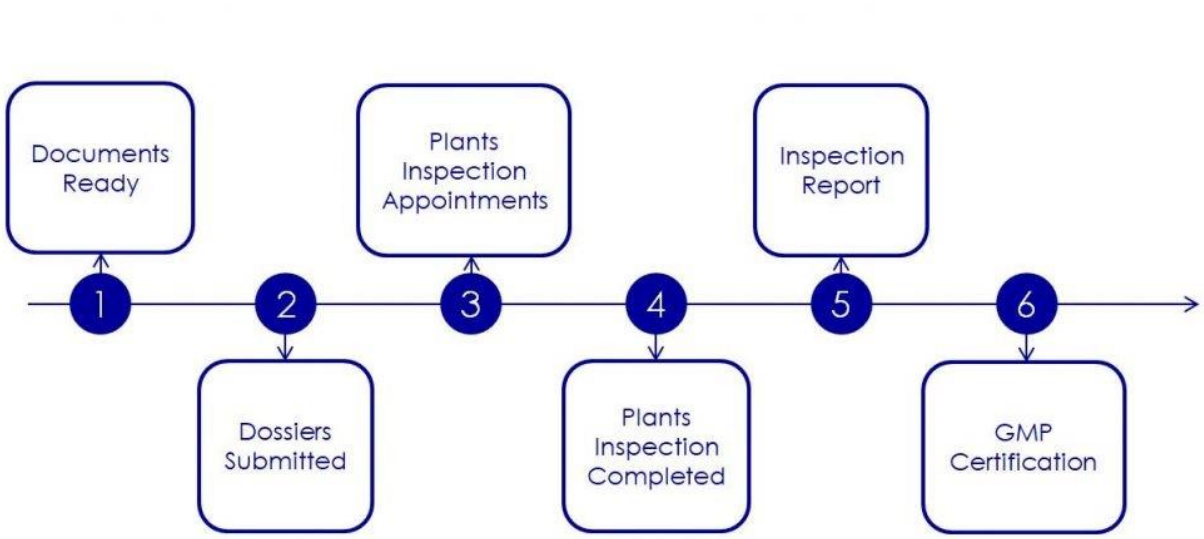
EU/GMP certification is the highest recognition available to companies in the pharmaceutical sector and involves rigorous testing of products to ensure that not only the product, but the company, is compliant with strict EU regulations. Obtaining EU/GMP accreditation shows that the company has been scrutinised and approved by the EU/GMP licensing authority and that it meets the required standards and that the product is of a high quality (products that comply to GMP standards in relation to the production of Active Pharmaceutical Ingredient (APIs) or or Cannabis Based Products for Medicinal Use (CBPMs). Without having this accreditation, it would be possible for lower grade medicinal cannabis crops to be exported from Jersey which would not stand up to the high standard of EU/GMP and could result in a negative impact on the jurisdiction of export. It is the standard by which European pharmaceutical companies are held, and has already been established for medicinal products that are sold in Europe. EU/GMP details the production, handling, storage and packaging of cannabis.

Licences which are issued in Jersey currently do not require the applicant to have EU/GMP accreditation.

For the application of the **European GMP certificate**, pharmaceutical companies have to follow these six steps:

1. Preparation of administrative and production site documents
2. Submission of dossiers to the licensing authority in Europe
3. Arrangement of plant inspection appointments
4. Organisation of plant inspections by the licensing authority
5. Procurement of the inspection report and issuance of the GMP certificate
6. Obtainment of the GMP certificate

Application Process for the European GMP[53]



[53] https://www.chameleon-pharma.com

The Panel has found no evidence of a requirement for medicinal cannabis licence holders to have to obtain EU/GMP accreditation. This concerned the Panel for a number of reasons:

- If the licence holder does not have EU/GMP accreditation, they can still harvest and export the product under its 'raw' form.
- If a licence holder is awaiting EU/GMP accreditation before it can process the 'raw product', where will the product be stored and under what type of security?
- Without the EU/GMP accreditation, lower grade crops could be exported off Jersey potentially damaging the reputation of the Island.

The Panel asked the Chief Pharmacist what mechanisms are in place to ensure a medicinal cannabis licence holder would be compliant with the EU/GMP rules, should they wish to begin manufacturing and exporting the finished product. [54]The Panel was informed that the Jersey Cannabis Agency is not authorised to grant EU/GMP Certification for exportation and any exportation of a manufactured finished product would be under a separate EU/GMP assessment and not carried out in Jersey. The Panel was keen to understand the process behind the decision making and was informed that decisions are taken by the Medicines and Healthcare products Regulatory Agency (MHRA) and not ruled upon in Jersey.

> **Senator S.W. Pallett:**
>
> *Moving on, once a determination is made by the decision-making authority following a dispute what accountability mechanisms are in place to ensure that the decision is in line with established practices for the cultivation of medicinal cannabis, such as the EU (European Union) GMP standard, for example?*
>
> **Chief Pharmacist, Health and Community Services:**
>
> *The EU GMP standard we would invite the MHRA to determine whether something is or is not in compliance with that, because they are the experts. We would not have to rule on that ourselves.*
>
> **Senator S.W. Pallett:**
>
> *So that is advice you receive from the U.K.?*
>
> **Chief Pharmacist, Health and Community Services:**
>
> *Yes.*

Although there is no defined time as to how long EU/GMP accreditation will take, the Panel has been advised that due to the rigorous testing and inspections involved, it could take at least two years from the date of the initial medicinal cannabis licence being granted. It should be noted however that each jurisdiction is different and this is the estimate given for the accreditation to be granted for a medicinal cannabis licence holder in Jersey. Whilst the Panel is pleased to note the road to EU/GMP accreditation does not seem simple and requires rigorous testing, it is also concerned that the process involved in obtaining this accreditation could discourage some medicinal cannabis licence holders from applying, resulting in lower grade, unprocessed cannabis crops being exported from Jersey.

[54] Finished product being once it is harvested, treated and processed into a medicinal cannabis product.

Key Finding 15

European Union Good Manufacturing Practice (EU/GMP) certification is the highest recognition available by companies in the pharmaceutical sector. It involves rigorous testing of the product, to ensure, that not only the product, but the company is compliant with strict EU regulations. Obtaining EU/GMP accreditation shows the company has been scrutinised and approved by the EU/GMP licensing authority, it meets the required standards and the product is of a high quality (products that comply to GMP standards in relation to the production of Active Pharmaceutical Ingredient (APIs) or Cannabis Based Products for Medicinal Use (CBPMs). There is currently no requirement for those granted licences for cultivation, production and export of medicinal cannabis in Jersey to obtain EU/GMP accreditation.

The importance of obtaining the EU/GMP accreditation should not be under estimated. Jersey has a global reputation for quality production and robust regulations which it must preserve and enhance. In striving for EU/GMP accreditation, medicinal cannabis licence holders would then provide reassurance about high quality and regulatory standards within Jersey.

The Panel heard from a current licence holder who explained the importance of EU/GMP accreditation in its written submission. It stated that:

> *For Jersey producers looking to export finished products, it is imperative that GMP remains a statutory requirement because a regulatory regime that could be perceived to fall short of EU standard would create the risk of EU importers discriminating against products 'made in Jersey'. As EU GMPs are currently the strictest cannabis manufacturing standards in the world, adherence to EU GMP will provide Jersey producers with unhindered access to global medicinal markets.*[55]

Key Finding 16

As previously mentioned, the Minister for HSS is authorised to issue licences under the terms of the MoU but these are purely for cultivation production, possession and supply. In order to process and manufacture and export the finished processed product, the licence applicant would need to have EU/GMP accreditation which requires separate assessment.

Key Finding 17

Without the licence holder obtaining EU/GMP accreditation, the risk is increased that lower grade crops could be exported from the Island resulting in damage to the Island's reputation.

Recommendation 12

To protect the quality and reputation of produce grown in Jersey, the Council of Ministers should ensure there is a requirement to apply for EU/GMP accreditation prior to receiving a medicinal cannabis licence to cultivate, process or export cannabis products. This should be monitored by a designated body (JCA) with key milestones in place to ensure the process is being followed and the licence holder is taking the relevant steps to achieve this. This should form part of the licence application process criteria and should be carried out with immediate effect.

[55]Cicada Woodside - Written Submission July 2021

Cultivation and Processing Sites

Throughout the course of its evidence gathering, the Panel became informed of the different processes involved in the medicinal cannabis industry, the licences required for each of the processes, and the regulations involved in each. As previously mentioned, the Minister for HSS is authorised to issue licences under the terms of the MoU.

There are various cultivation licences available which can be granted by the Minister for HSS, these are a:

- Licence to cultivate plants of the genus cannabis with a THC content not exceeding 0.2% (Industrial Hemp)
- Licence to cultivate plants of the genus cannabis with a THC content exceeding 0.2%
- Licence to produce, to supply, to offer to supply and to possess any controlled drug or any preparation or product containing a controlled drug
- Licence to produce any preparation or product containing a controlled drug and to supply, to offer to supply and to possess any controlled drug or such preparation or other product
- Licence to supply, to offer to supply and to possess any controlled drug
- Licence to possess any controlled drug[56]

The Panel was keen to understand how the product would be managed once it had been harvested and was at the processing stage. In particular, the Panel wanted to know how the crop would be stored and if the storage of the crop would be facilitated on the existing cultivation site.

The Minister for EDTSC informed the Panel that the Island did not want to have an industrialised countryside and it was possible that any processing of harvested crops could be done on separate sites.

> **The Minister for Economic Development, Tourism, Sport and Culture:**
> *"…On the site the level of activity that is going to be undertaken, I mean, we do not really want to have an industrialised countryside. We have areas, trading estates and appropriate areas for industry and we have areas for agriculture. Depending on what the … perhaps I ought to pick up where I left off very quickly, which talks about what happens after cultivation and the extraction, then the opportunity for manufacture, which possibly would have to be done on separate sites…"*[57]

The Minister's statement was supported by the Chief Pharmacist who informed the Panel:

> **Chief Pharmacist:**
> *"…Just because you cast out sites, it is just initially led and someone else you could cultivate, potentially, barley, dried flowers, the extraction facility, the GMP requirements that the active substances that are used to start (inaudible) of medicine, which could then supply to another facility. Absolutely, yes, so I think there are various ways of delivering it…"*[58]

The Panel does not have confidence in these comments by the Chief Pharmacist as it is not being confirmed one way or the other as to whether or not the processing of the crop would be carried out in a separate facility. The Panel believe more consideration needs to be given as to whether sites

[56] Medicinal Cannabis Licence Application Form
[57] Public Hearing with Minister for EDTSC – 21.06.21
[58] Public Hearing with Minister for EDTSC – 21.06.21

are for cultivation and/or processing and the Panel is of the opinion this key area has not been given any forethought. The Panel is aware of concerns around Planning applications for the medicinal cannabis industry and the Panel believe there is the potential for cultivation sites, with planning approval for "cultivation only" could be developed further and also be used as processing sites. Without the right checks and balances, this has the potential to turn the countryside into an industrial processing site, something the Minister informed the Panel he would not want and, indeed, to which the Panel believe most Islanders would be strongly opposed.

Key Finding 18
There is little evidence to show that checks and balances are in place to ensure the processing of the medicinal cannabis crop is done on an appropriate processing site. There is also little evidence in place to ensure secure monitoring so that the existing cultivation sites do not become 'industrialised'. Without these checks and balances there is a risk that existing cultivation sites could become sites for processing, which requires a more commercial approach and a relevant planning application.

Recommendation 13
The Minister for Planning and Environment must ensure that any sites to be used for the cultivation of medicinal cannabis remain solely for that use. Should a licence holder require a site for processing of the medicinal cannabis crop once harvested, a separate planning application for this industrial activity should be submitted for these purposes in a suitably zoned area. This should be carried out with immediate effect.

8. Overall Responsibility

Ministerial Responsibility

The Panel, prior to undertaking the review, had understood the Minister for EDTSC had overall responsibility for the medicinal cannabis industry; however, as the review progressed, it became apparent that no one Minister had overall responsibility for the industry in its entirety. The Panel learnt that the Minister for HSS has responsibility for the issuance of licences (in his capacity as the sole member of the JCA), with the Minister for EDTSC holding responsibility for the overall economic development and rural economy. The Minister for the Environment's role on planning and environmental issues remaining unchanged (but otherwise having little or no input as previously highlighted), the Panel did not see Planning and Environmental Regulations being suitably aligned with the licence application process and has raised its concern.

The Panel asked the Minister for EDTSC if he could explain the overall ministerial responsibility for the medicinal cannabis industry and define the roles for both himself and the Minister for Health and Social Services. The Minister explained his role stemmed from the rural economy strategy.

> **The Minister for Economic Development, Tourism, Sport and Culture:**
>
> *"…So, the interest of my part in the medicinal cannabis industry stems from the rural economy strategy. The department has overall responsibility for that. Since the last rural economy strategy was launched, one of the key aspects of that strategy was to identify more high-revenue crops to increase the variety and sustainability of the agricultural sector, given the challenges faced by the arable sector currently…"*[59]

The Panel, being aware that the Minister for Health and Social Services had responsibility for the allocation of licences went on to ask:

> **The Deputy of St. Mary:**
>
> *"…Okay, so we have a situation where the Minister for Health and Social Services is responsible for issuing the licence but the department (EDTSC) is responsible for the mechanics of operation and the regulation?..."*[60]
>
> **The Minister for Economic Development, Tourism, Sport and Culture:**
>
> *"…So the agricultural regulation, if you like, falls within our remit. I am not sure if there is a crossover, what crossover with the Environment Department…the Minister for Health and Social Services has responsibility for the control of medicines and misuse of drugs, et cetera..."* [61]

The Panel went on to ask the Minister for EDTSC what role the Minister for the Environment had to play within the industry and asked what discussions, if any, had taken place over the production of medicinal cannabis. The Minister responded:

[59] Public Hearing with Minister for EDTSC – 21.06.21
[60] Public Hearing with Minister for EDTSC – 21.06.21
[61] Public Hearing with Minister for EDTSC – 21.06.21

The Minister for Economic Development, Tourism, Sport and Culture:

"…Well, we have not really had any detailed discussions over the process of production or really cultivation, extraction and manufacture. Conversations between the Minister for Health and Social Services and the Minister for the Environment are based around the planning issues, planning challenges, and really the conversations have just confirmed that we agree. Having said that, I think that the Minister for Planning is mindful of the potential impacts, especially the aesthetic impacts on the countryside, so I understand that the planning authorities are perhaps considering whether that needs to be looked at also the majority of the activity carried out by these operations are agricultural, and there could be questions as to whether this goes over into light industry…"[62]

This response from the Minister for EDTSC is further indication that there seems to be a lack of alignment with working between Departments. It is clear that more than one Department needs to be involved in the medicinal cannabis industry, and without collaborations there may be a danger of key areas being overlooked. In addition, the Panel's advisers were keen to point out the importance of synergies between Departments and stated that:

"…In order to facilitate and support industries that want to do business in Jersey, it is strongly recommended that synergies are developed between the Minister for Health and Social Services, the Minister for Economic Development, Tourism, Sport and Culture, and the Minister for the Environment to devise an adequate assessment framework on the environment impact that would at the same time protect and safeguard the interests of third parties and all. It is strongly recommended for any conditions and requirements forming part of the said assessment to be rendered clearly and in a transparent manner before licences are granted…"[63]

During the Public Hearing with the Minister for the Environment, the Panel was informed by the Minister that he had had very little involvement regarding the medicinal cannabis industry. When questioned around his involvement, it was clear the Minister had played little part in creation and promotion of the industry and the degree of consultation that had taken place. The Minister also informed the Panel that any exposure he had had with the regulatory side of the industry had arisen as a result of the views expressed by members of the public.

The Deputy of St Mary:
"…Can I simply ask the basic question as to your role, Minister, in the creation or the promotion of this industry and the degree of consultation that is taking place with your department?

The Minister for the Environment:

To be frank, very little. I am certainly aware, having been present at the Council of Ministers' meeting when there was, if you like, a strategic proposal coming forward from the Deputy Chief Minister and his team about the potential that exists for medicinal cannabis. I think that was an issue, I believe, entirely focused on what you might call the business aspect of the matter. As Minister, I think the exposure I have had too with regulatory has basically arisen as a result of views expressed by members of the public and other States Members,

[62] Public Hearing with Minister for EDTSC – 21.06.21
[63] Panel Adviser Report – September 2021

who have raised quite a number of very challenging questions about the impact of this industry…"[64]

The Minister also informed the Panel he believed "…*we are on a learning curve and, therefore, I am discussing this regularly with my team…"*[65]

The role of the Minister for the Environment was in contrast to that of the Minister for Health and Social Services who was clear of his role in the industry and was able to give the Panel a complete overview as to why the Department of Health and Social Services, together with the Chief Pharmacist, was involved:

The Minister for Health and Social Services:

"…The Minister for Health and Social Services is responsible for the licensing of any cannabis cultivation and production, and generally the use of any cannabis plants grown in the Island. That authority given to the Minister to licence arises out of the provisions of the Misuse of Drugs (Jersey) Law, which is 1971 or something like that. It is an old piece of legislation. I do not think it envisaged the sort of uses for licensing that are now being seen but nevertheless that is the structure that is in place. The Chief Pharmacist also has statutory duties under that legislation. Where a cannabis product is to be refined into a medicine in Jersey then a licence needs to be obtained under the Medicines (Jersey) Law, which of course also then involves me and the Chief Pharmacist. That is just a brief background to the reasons why the Minister for Health and Social Services is involved…"[66]

The Panel finds it alarming that there is no clear Ministerial responsibility for this industry. There are no boundaries as to responsibility and, in addition, some Departments have little or no involvement when it is clear they should be playing an extremely important role in the overall medicinal cannabis process. As noted above, a strong recommendation has been made by the Panel's advisers that synergies are developed between Departments which the Panel will recommend to the Council of Ministers as part of this report[67].

Key Finding 19
The medicinal cannabis industry cuts across a number of political responsibilities, and the Council of Ministers has not appropriately established an holistic Government approach to the matter which has in turn blurred lines of accountability. It is therefore difficult to see where the Ministerial responsibility lies.

Recommendation 14
The Council of Ministers must recognise cross departmental requirements and ensure synergies are developed especially between the Minister for Health and Social Services, the Minister for Economic Development, Tourism, Sport and Culture, and the Minister for the Environment. This should be carried out with immediate effect.

[64] Public Hearing with Minister for ENV – 17.06.21
[65] Public Hearing with Minister for ENV – 17.06.21
[66] Public Hearing with Minister for HSS – 14.06.21
[67] *It should be noted that the Panel has made its recommendations within this report to the Council of Ministers as there is no clear Ministerial responsibility and accountability for the medicinal cannabis industry.

At its recent Public Hearing on 19th November, the Panel was made aware of work currently in progress to establish a Political Oversight Group (POG). The Panel was informed the POG would oversee process and evolve as the industry developed. This was new information for the Panel and whilst it had been aware of the Cannabis Co-ordination Group, a group made up of officers across different Departments, at the time of originally drafting this report and making the recommendation above, the POG did not exist. The Panel has since been informed the first meeting of the POG took place on 16th September 2021.

The Panel has agreed to leave the recommendation as drafted and looks forward to the Ministerial response in due course, where it is hoped more detail on the future of this group will be provided.

Internal Groups Involved in the Industry

During the course of the Panel's review, it became aware of various groups involved in the medicinal cannabis industry. During the drafting of this report, these were as follows:

- Jersey Cannabis Agency
- Jersey Cannabis Advisory Group (now cannabis trade body)
- Cannabis Co-ordination Group
- Cannabis trade body

Jersey Cannabis Agency

The Jersey Cannabis Agency (JCA) is the named body on the MoU with the UK Home Office. It is the body responsible for the issuance of licences under the MoU and is made up solely of the Minister for Health and Social Services.

A written question on the formation of the JCA was presented on 8th February 2021 to the Minister for EDTSC by the Connétable of St Martin. The question asked for the JCA's respective Terms of Reference, details of any annual funding provided by the Government of Jersey, when and where any information on both the Agency (the JCA) and the Advisory Group will be made public and details of membership, where possible, including any Ministerial responsibilities that may have been assigned.

The Minister responded to the question stating

> *"…The 'Jersey Cannabis Agency' is simply the licensing authority in respect of licenses to cultivate and is administered by the Chief Pharmacist. No Government funding is provided to the Jersey Cannabis Services Advisory Group. An Economic Development Framework for Cannabis Investment in Jersey is under development and which is anticipated to be completed in Q2 with an associated communication plan that will specify the roles and responsibilities of the various associated agencies. The Jersey Cannabis Agency is effectively the Health Minister under MOU with the UK Home Office…"*[68]

The full question and response can be found here.

At its Public Hearing with the Minister for EDTSC on 26th June 2021, the Panel raised the issue of the JCA's terms of reference with the Minister and was informed the terms of reference were, to a certain extent, the MoU.

[68] WQ.28/2021

Senator S.W. Pallett:
"…The J.C.A., does that have formal terms of reference?

The Minister for Economic Development, Tourism, Sport and Culture:
It is the MOU, is it not, to a certain extent?

Chief Pharmacist:
To a certain extent, the MOU provides the framework for the Jersey Cannabis Agency to exist. There are no specific terms of reference for the Jersey Cannabis Agency. It is guided by legislation in terms of what it can and cannot do…"[69]

The Panel went on to ask if it might be worth considering widening the Terms of Reference and was informed:

Chief Pharmacist:
"…Certainly, widening the (several inaudible words) but I think there is an acceptance that there needs to be a broader group to advise on licensing decisions and that group could (several inaudible words)…"[70]

Key Finding 20
The Jersey Cannabis Agency does not have clearly defined Terms of Reference and is reliant solely on the Memorandum of Understanding (MoU) currently in place with the Government of Jersey (with the Minister for Health and Social Services as the sole representative of the GoJ) and the UK Home Office.

Expansion of the JCA Remit

The Panel's advisers have stated that *"the JCA advisery group*, *even if totally non-executive, is a step in the right direction."*[71] However, they have also pointed out the importance of having other representatives on the JCA and have recommended an expansion in its remit to include the monitoring function of the industry. This would include compliance with security, quality of production, clear moral conduct of people working in the industry and issuance of trade licences. The monitoring function would also include ensuring Customs and Excise and the States of Jersey Police are well informed about the process of the medicinal cannabis industry and are trained to be attentive to illicit drug importation and possession. The JCA could also act as the focal point for the international promotion of the sector. Rules governing the set-up, governance and operations of the JCA should be established and the JCA should have sufficient internal controls to adopt a system of checks and balances with regards to decision making.

Recommendation 15
The Council of Ministers should ensure the Jersey Cannabis Agency has representatives of other Departments as members. At a minimum, this should include Department of Infrastructure, Housing and Environment, Economic Development, and the Chief Pharmacist and with further support from Law enforcement officers. This group should also be responsible for undertaking due diligence on new licence applications. This should be carried out with immediate effect.

[69] Public Hearing with Minister for EDTSC – 21.06.21
[70] Public Hearing with Minister for EDTSC – 21.06.21
[71] Panel Adviser's Report – September 2021

Recommendation 16
The Council of Ministers should ensure the remit of the Jersey Cannabis Agency is expanded to include both the monitoring function of the medicinal cannabis industry, and compliance with security, quality of production, clear moral conduct of people working in the industry and issuance of trade licences. The monitoring function would also include ensuring Customs and Excise and the States of Jersey Police are well informed about the process of the medicinal cannabis industry and are trained to be attentive to illicit drug importation and possession. This should be carried out with immediate effect.

Jersey Cannabis Advisory Group

The Panel advisers asked a series of questions of the Minister for EDTSC in relation to this group and asked:

- What is the role of the Jersey Cannabis Services Advisory Group (JCSAG)?
- Who does it report to?
- What is the background of its members and what function does it seek to occupy?
- Does it have any oversight with respect to the licencing process? If yes, please elaborate.

The response received was as follows:

> *"…The purpose of the JCSAG is to provide an industry perspective on what is required. It is evolving as the industry develops. A meeting is being scheduled for the purpose of identifying membership of the group going forward…"*[72]

The response also confirmed the JCSAG had no oversight with respect to the medicinal cannabis licensing process. At the time of drafting this report, the Panel was informed the JCSAG is in fact the newly formed Cannabis Trade Body (CTB) which is discussed at the end of this section.

Cannabis Co-ordination Group

The Panel became aware of the Cannabis Co-ordination Group (CCG) during its Public Hearing with the Minister for EDTSC on 21st June 2021 and was informed the group is made up of officers from various departments. The Panel was also informed via correspondence, that the group has no Terms of Reference as it is simply an informal grouping of officers who may have some involvement in various aspects of the project and whose task it is to meet once a month to coordinate activity across Government Departments. The Panel was given some background to the group by the Group Director of Economy at its Hearing with the Minister for EDTSC.

> **Group Director, Economy:**
>
> *"…Because, as we are discussing this afternoon, this is a multi-disciplinary sort of Jersey PLC (public limited company) type challenge. We have all got to kind of work together like officers, politicians or external companies to support this. It does require some co-ordination and working outside of silos. The group is an internal officer group but that joins the dots as far as is possible in what is a formative process. That has allowed us to get to where we are today and I take your point about political oversight, well made. But the officer group, I think, has worked really well. I think it has had 27 meetings in its lifetime, meets once a month and it is entirely an officer group that applied that, just to make sure that the economic development imperative is not lost in discussions around regulation…"*[73]

[72] Question from Panel Advisers to Minister for EDTSC – June 2021
[73] Public Hearing with Minister for EDTSC – 21.06.21

At the same Public Hearing, the Panel asked if minutes of meetings from the Cannabis Co-ordination Group would be available for review and was informed these were available and the Panel was welcome to see them. The Panel has asked for these and at the time of drafting this report, had received them, however, in a heavily redacted format. The Panel has since asked for unredacted versions to hopefully better inform it as to the direction of travel for the medicinal cannabis industry.

The Panel is encouraged that a group of cross departmental officers are working in coordination however, believes it would be beneficial to the Island's medicinal cannabis industry if this group were more transparent, published their findings and made the Public aware of how the medicinal cannabis industry was moving forward.

Key Finding 21

The Panel appreciates the need for a Cannabis co-ordination group of civil servants but is concerned that, with no Minister being involved in this group, it might lead to key decisions being taken without considered input from Ministers.

Recommendation 17

The Council of Ministers should ensure the Cannabis Co-ordination Group is more transparent and publishes its minutes on the Government of Jersey website. Furthermore, it should carry out a wider communications strategy to help the public gain a better understanding of the potential benefits of the medicinal cannabis industry in Jersey. The Council of Ministers should also carry out a communication strategy with members of the public which may help the public gain a clearer understanding of what the future holds for the medicinal cannabis industry in Jersey.

This should be carried out within 6 months of presentation of this report.

Cannabis Trade Body

In August 2021, the Panel was informed via a media announcement that a new government-backed cannabis trade organisation, recognised by the Government, had been launched in what was described as a *'landmark development' for the emerging industry.*[74]

The media article went on to say

> "*the Cannabis Services Advisory Board will hold monthly meetings between businesses, lawmakers and other interested parties. It will seek to work with the government on business development and regulation issues. Board members include medical cannabis cultivation business Northern Leaf and cannabis production company Cicada, both of which are Jersey-based, as well as cannabinoids business Tenacious Labs, which has offices in London and Miami*".

The Panel is not aware of the operation of the Cannabis Trade Body or its structure, and has written to the Minister asking for further details. The Panel's letter can be viewed here.

The Panel received a response from the Minister on 10th September and whilst the Cannabis Trade Body is viewed as an individual entity, the Panel is concerned it may not be 'independent enough' to provide impartial advice to Government, especially as each of the members are involved directly in the medicinal cannabis industry and are … "*interested parties wishing to develop this new sector*

[74] https://edition.pagesuite.com/popovers/dynamic_article_popover.aspx?artguid=ec654df6-bb76-426e-b770-b5ce6f5788d1

of the economy…"[75] Although the Panel and its advisers view the formation of the JCAG and the CCG as positive recent steps, it still raises concern that there does not seem to be a defined structure of responsibility for the medicinal cannabis industry with no overall Ministerial accountability. The Panel considers it necessary that a structure chart is put in place with clear lines of communication for each of the groups advising the relevant Minister. The Panel also firmly believe there should be one Minister with overall responsibility for the industry with the various groups clearly defined with Terms of Reference and objectives.

Recommendation 18

The Council of Ministers should ensure a clearly defined structure chart is in place showing the layout and responsibility for each of the supporting groups for the medicinal cannabis industry. This should show defined reporting lines from each of these groups to the relevant Minister with Terms of Reference setting out clear objectives. This should be carried out with immediate effect.

[75] Letter from EDTSC Minister to Panel – 10.09.21

9. Economic Impact

Potential Economic Impact to Jersey's Economy

The Panel was informed at its Public Hearing with the Minister for the EDTSC that in the UK, the value of sales in the medicinal cannabis industry was close to £700 million just last year alone however, the Panel is not aware what percentage of this went to the UK Treasury. The Panel advisers informed within their report that *"the legalisation of cannabis for medical purposes has the potential to make a significant contribution to Jersey's economy. These benefits take the form of employment creation, the generation of tax revenues, and value added; the latter being the sum of the wages and profits that would be generated by the industry."*[76]

Within their report, the advisers present high-level estimates of the potential economic impact of the industry over the short-to-medium term. The estimates presented are based on the agricultural land that has been earmarked for the cultivation of medical cannabis and a set of industry-specific indicators that are based on information obtained from a sample of companies operating in the industry in other countries.[77]

These are broken down in the adviser's report under the following 5 headings:

- Space Requirements
- Employment
- Wages and Salaries
- Taxation
- Value Added

Each of these topics is discussed in more detail in this section of the Panel's report however, a more comprehensive analysis can be found in the adviser's report which is attached as Appendix 5.

Space Requirements

Jersey is an Island 9 miles by 5 miles and it is widely known that development space in Jersey is at a premium. During its Public Hearing with the Minister for EDTSC, the Panel was informed that the total area of land that has been allocated, or is earmarked to be allocated, for the cultivation for medical cannabis in Jersey amounts to 7.9 hectares. The Panel's Terms of Reference did not cover it researching space requirements in more detail however, as mentioned previously, the Panel has been liaising with the EHI Scrutiny Panel who may undertake additional scrutiny into the planning and environmental impacts of the medicinal cannabis industry and this is something the Panel will raise with the EHI Scrutiny Panel in due course.

Employment

Part of the economic impact to Jersey would be the employment sector and how much revenue this would generate to the Island. This was raised by the Panel at its Public Hearing with the Minister for EDTSC where it asked if there was any indication of the value of jobs the industry would create. The Panel was informed there was a range of high value technical jobs in addition to lower valued jobs, however, the Department could not provide any actual detail. It was estimated that in their view, a facility would need about 50 people. This was based on speculative conversations held between the Group Director, Economy and an investment company in Southern Europe which was

[76] Panel Adviser's Report – September 2021
[77] Panel Adviser's Report – September 2021

looking at approximately 50 staff with an annual salary bill of £1.9 million per year. It was further explained to the Panel that '*this is a really, really, potentially, lucrative and beneficial initiative for the Island*'.

Group Director, Economy:

> *"…Yes, we do not have the actual detail but there is obviously a range of high-value technical jobs and lower-value jobs. A facility, in my view, means about 50 people. One of the speculative conversations we have with a company that (inaudible) with investment company from southern Europe was looking at approximately 50 staff where they bill an annual salary of about £1.9 million a year.*
>
> *Then if you look at that at 2 per cent inflation over the next 20 years, which is the length of their business, so long-term investment. But I did not think about £47 million creates a lot of … if that is the income tax receipts coming from that. But there is also construction costs that better be and better fixed around banking and administration, as well as the industry itself. This is a really, really, potentially, lucrative and beneficial initiative for the Island…"*[78]

The Panel was informed by its advisers that the number of jobs generated by a medical cannabis licence holder would depend heavily on its business model as some companies would engage in cultivation only, others engage in production only, while others would engage in both. Different positions are required in different stages of the production process each having their own responsibilities and corresponding salaries. The Panel therefore found it difficult to understand how the number of approximately 50 staff per facility, even as an estimate, could be so easily arrived at without an understanding of what the company would produce.

The Panel's advisers briefly described the human resource requirements in the different stages of the production process as follows:

> ***The Cultivation Stage***
> *The cultivation stage of the production process includes the plantation and nourishing of the cannabis plant. The employees are responsible for maintaining the proper environment required to grow the cannabis plant in terms of lighting, chemicals and so on. The cultivation process is managed by the master grower who is directly responsible for managing all operations and employees falling under the cultivation process to be able to deliver the flower onto the next stage of the production process.*
>
> ***The Extraction and Laboratory Testing Stage***
> *The extraction and laboratory testing stage of the production process entails all operations required to process the cannabis flower into the medicinal product. An extractor is responsible to convert the marijuana trimmings/flower into concentrates required to make the medicinal product. The concentrates are packaged and sold or infused into edibles. Proper ventilations systems in laboratories as well as monitoring over operations is vital. The extraction and testing stage is directly managed by the master extractor who is responsible for the overseeing of all functions in the production facility.*
>
> ***The Dispensary Stage of the Production Process***
> *The dispensary stage of the production process entails the selling of the finished cannabis product to patients or consumers. Various types of employment opportunities are presented in this final stage of the process which range from overseeing all the administrative*

[78] Public Hearing with Minister for EDTSC – 21.06.21

operations in the dispensing facility, handling inventory, delivering to dispensing units (such as pharmacies), upkeeping, recording of transactions and marketing of the finalised cannabis product.[79]

The Panel's advisers have estimated that the industry has the potential to employ anything between 40 and 50 employees in the immediate term, increasing to 160-180 employees in the medium-term, and growing to 330-360 employees in the long-term.

> *"…Expert knowledge of the industry suggests that a company engaged in both the cultivation and extraction stages of the production process of medicinal cannabis products employs individuals for cultivation and the production process in the ratio 1:3. We complement this information with Key Performance Indicators (KPIs) for the international medical cannabis industry to gauge the economic impact that the industry may have on Jersey's economy. On this basis, we estimate that the industry has the potential to employ anything between 40 and 50 employees in the immediate term, increasing to 160-180 employees in the medium-term, and growing to 330-360 employees in the long-term…"*[80]

Key Finding 22

The medicinal cannabis industry in Jersey has the potential to employ between 40-50 people in the immediate term, 160–180 in the medium term and 330-360 in the long term.

Wages and Salaries

The Panel's advisers highlight:

> *Market research shows that senior management in the medical cannabis industry could earn anything between £55,000 and £145,000 per annum; general management could earn £36,000 to £50,000 per annum; and labourers could earn £22,000 to £30,000 per annum. Thus, indicative estimates suggest that in the short-term, the industry could generate as much as £1.3 million in wages and salaries. This may increase to £4.8 million per annum by 2023; and may increase further to £9.7 million per annum beyond 2023 if employment increases to around 350 in the long-term. Whilst the Panel is encouraged by these figures, further research by the Panel advisers state that it is likely tax intake to the Island through employment will be close to zero in the first few years. This is discussed in more detail in the taxation section of this report.*[81]

Although it is encouraging for the advisers to give these estimates, further research by the Panel advisers also indicates that if Jersey opts for a 20% tax rate on companies' profits, tax revenues from such activity will be minimal for several years from the date of licence registration. This is discussed in more detail later in this report.

Key Finding 23

It has been agreed that a tax rate of 20% will be applied to this industry on all profits.

[79] Panel Adviser's Report – September 2021
[80] Panel Adviser's Report – September 2021
[81] Panel Adviser's Report – September 2021

Key Finding 24

Now that Jersey has opted for a 20% rate on companies' taxable profits, tax revenues from such activity may be minimal for several years from the date of licence registration.

Taxation

During its Public Hearing with the Minister for EDTSC, it was reported that tax revenues are expected to amount to around £4.9 million per hectare; based on a 20% tax rate on company profits. On the basis of the information presented to the Panel and its advisers, this would translate into £4.4 million in tax revenues in the short-term; £19.1 million in the medium-term; and £38.7 million in the long-term.

This is covered in more detail in the taxation section of this report.

Value Added

The Panel's advisers wrote within their report that the contribution of the medicinal cannabis industry to the Jersey economy is ideally measured by its contribution to its Gross Domestic Product (GDP). "*…In its simplest form, this may be measured as the sum of wages and profits generated by the industry.*

It should be noted that the accounting losses that would be registered by a typical medicinal cannabis company in the early years of operation imply that the industry's contribution to Jersey's GDP through wages would be partly offset by the accounting losses registered by the companies operating in the industry. Thus, in its infancy, the medical cannabis industry's contribution to the Jersey economy should not be expected to exceed wage estimates presented in the table on the previous page…"[82]

Key Finding 25

The medicinal cannabis industry's contribution to the Jersey economy is not expected to exceed wage estimates in the early years.

Economic Framework

The Panel understands that the Council of Ministers has endorsed an economic framework for the medicinal cannabis industry on the Island. Within the response to a written question submitted by the Connétable of St Martin on 8th February, the Minister for EDTSC stated that *"an Economic Development Framework for Cannabis Investment in Jersey is under development which is anticipated to be completed in Q2 with an associated communication plan that will specify the roles and responsibilities of the various associated agencies."*[83]

The Panel, at its Public Hearing with the Minister for EDTSC asked for an update to the Economic Framework and was informed that Part 1 was to achieve the MoU (which had been completed) with Part 2 being the Amendment to the Proceeds of Crime Law. At the time of drafting this report, the Amendment to the Proceeds of Crime Law had been approved and is discussed in more detail later in this report. Part 3 of the Economic Framework involved research and development and the Panel

[82] Panel Adviser's Report – September 2021
[83] WQ.28/2021

was informed that this was currently being determined and discussed. The Panel was informed updates would be communicated to it once the situation became clearer.

Senator S.W. Pallett:

"…So once that gets through you will start to communicate to us about how that is going?

Group Director, Economy:

Exactly. So it has been quite difficult to be really clear about what the situation is until the situation has been landed, effectively…"[84]

At the time of drafting this report, the Panel had not received an update on the Economic Framework however, it would continue to monitor the situation and if necessary, following completion of this review, would include it as an ongoing area of questioning at its Public Hearings with the Minister, held each quarter.

Economic Impact Assessments of Applicants

As previously mentioned in this report, the Panel was informed that the Minister for EDTSC has responsibility for the economic and business aspect of the medicinal cannabis industry. It was important for the Panel to understand the economic impact to the Island, be it positive or negative, and to review the steps which had been undertaken by the Minister to arrive at the conclusion and economic predictions.

At its hearing with the Minister for EDTSC, the Panel asked how the commercial viability and feasibility of applicants was assessed and by whom. It was informed that this was part of the work of the Department of Economic Development who undertake research through various entities to ascertain the scale and size of the market.

Group Director, Economy:

"…So, we do a lot of research through various entities to ascertain the scale and size of the market, so BDS Analytics, Arcview, Prohibition Partners, to name but a few, but also we work quite closely with applicants who after all are investing private money and generating investment from third parties to drive this forward…"[85]

The Group Director of Economy went on to say that some of the details within the medicinal cannabis licence application are speculative around how the applicant would access the market and take advantage of it. However, medicinal cannabis licence applications include detail around the business plan and activities which are then reviewed by the Department of Economic Development to gain an understanding of the fiscal receipts which may be received from the organisation.

Group Director, Economy

"…What is in the application is really a speculation around how those companies are going to access that market and take advantage of it. Within those applications are quite a lot of detail around their business plan and their activities, which we review and, therefore, get an indication of the fiscal receipts that we might receive from that organisation…"[86]

[84] Public Hearing with Minister for EDTSC – 21.06.21
[85] Public Hearing with Minister for EDTSC – 21.06.21
[86] Public Hearing with Minister for EDTSC – 21.06.21

The Group Director of Economy explained that the Council of Ministers have endorsed an investment framework for cannabis which involved the Island having the ability to have its own cannabis agency to issue commercial licences to cultivate and sell products.

Group Director, Economy:

"the investment framework endorsed by the Council of Ministers involves the Island having the ability to have its own cannabis agency to issue effectively commercial licences to cultivate and sell products. The reason it was important to Jersey from an economic development perspective to have its own cannabis agency is that as long as our parent regulator is content that we are, i.e. the U.K. Home Office, working against the necessary convention that all other advice that we may receive from them is optional and we can actually overlay our own policies around the development of this sector from an economic development perspective as we see fit where we see the market opportunities…"[87]

The Group Director of Economy also informed the Panel that, from an economic development perspective, the framework in place is the minimum required to create conditions for commercial operators and private sector individuals to make investments on the basis of their own due diligence. The Panel to date has not seen the detail of any such investment framework.

Group Director, Economy:

"…Our job, in my view, is to create the best conditions for success, and what we do have and what the Council of Ministers has endorsed is an investment framework for cannabis…"[88]

The Panel was keen to make the connection between how the economic impact of a medicinal cannabis licence application could influence the decision to grant a licence and, recalling that the medicinal cannabis licences were ultimately granted by the Department of Health and Social Services, the Panel was keen to understand where the Department of Economic Development provided input during this process. The Panel asked the Group Director of Economy to what extent the Department of Economic Development would be involved in the licence application and decision-making process.

The Deputy of St. Mary:

"…before we move on to other sections, the basic situation is that the licence is granted by the Chief Pharmacist/Medical Officer of Health, (sic) but to what extent in determining whether that licence should be granted does commercial viability play a part in all the decision-making? Do you give input at that stage…?

Group Director, Economy:

"…So I would not speak to the regulator directly and say: "I do not think this is commercial" or: "I do think it is commercial." What we would rely on is the private sector to determine that for itself. It has the framework to make those investments and, of course, all investments in businesses are to some extent speculative…"[89]

This concerned the Panel as it seemed the Group Director of Economy was informing it that they didn't fully scrutinise each medicinal cannabis licence application for its economic impact to the Island and relied on the private sector investors.

[87] Public Hearing with Minister for EDTSC – 21.06.21
[88] Public Hearing with Minister for EDTSC – 21.06.21
[89] Public Hearing with Minister for EDTSC – 21.06.21

The Group Director of Economy explained that what they found useful was to look at the costs of investment and the potential output from those investments and what it means in terms of market access and what it means for fiscal receipts in terms of tax. He went on to say that the detailed costs in the applications that are reviewed are sense checked and the Department work with an industry body that advised them on the sort of activity which is being undertaken.

Group Director, Economy:

"…The other thing we do is we work with an industry body that advises us on this sort of activity, but ultimately this is people saying: "We have an opportunity in Jersey, unlike many other places in the world, to invest in this market early because of the framework that the Island has established in terms of investment." But we are not going to say to somebody: "You cannot have a licence from an economic development perspective because we have not seen your business plan." That is not what we do…"[90]

The Panel was again concerned that there did not seem to be any rigorous checks and balances in place to understand the full economic impact of each medicinal cannabis licence application. In addition, it soon became clear that the Department of Economic Development, whilst being involved in the commercial viability the industry as a whole, played no part in the initial granting of medicinal cannabis licences.

The Deputy of St. Mary:

"…But at the time of the application for the licence, to what extent are you involved in that individual licence?

Group Director, Economy:

Directly in terms of the licensing decision, not at all…"[91]

The Group Director of Economy explained the reasoning for this was that, with the presence of the Jersey Cannabis Agency through the Minister for Health and Social Services issuing licences, this allowed the economic sector to be broadened to allow the Economic Development Department to take a larger view of the benefits to the Island.

The Panel went on to ask if the opportunities for Jersey in the medicinal cannabis industry had been assessed internationally and how the Island could benefit and possibly improve on what has been tried elsewhere. The Panel was informed that the Department worked closely with the two companies that currently held licences in Jersey and in addition, had knowledge of where the key markets were globally. The Panel was further informed that it was important not to underestimate the importance of the day to day work undertaken with the current licence holders who were constantly looking at the market and how it could be accessed. It was further explained that through working closely with the licence holders, the Department could gain privileged information which allowed it to get access to commercial realities, who the key movers in the market were and where and how fast the industry was growing.

[90] Public Hearing with Minister for EDTSC – 21.06.21
[91] Public Hearing with Minister for EDTSC – 21.06.21

Group Director, Economy:

"…We understand very, very well, through conversations and through privileged information about their commercial realities, where they are aiming and the key markets are in Europe because it is where the key growth in this market is…"[92]

Investment

Another key area of economic impact to the Island the Panel reviewed was inward investment and how much funding this would generate. The Panel asked for some insight into how successful inward investment had been to date in relation to the cultivation side of the medicinal cannabis industry and how much interest there currently was in the sector. An amendment to the Proceeds of Crime Law was approved by the States Assembly in late June 2021 which made it legal for proceeds gained by the medicinal cannabis industry not to be treated as proceeds of criminal conduct if they are generated from jurisdictions where production of medicinal cannabis is lawful. It was explained by the Group Director of Economy that the approval of this amendment was an important aspect in the Island being able to move forward and make Jersey's position absolutely clear for those wishing to invest in this sector. The amendment to this law is discussed in more detail later in this report.

The Group Director of Economy was keen to point out that the enquiries received from investors included relocations to the Island and touched on the interest in businesses wishing to headquarter their Jersey and Guernsey companies together.

Group Director, Economy:

"…Most recently we have seen quite a significant producer in Europe come into Jersey wanting to relocate their company in the Island, where there was previously a 20 to 25-year investment plan. As I say, it is a relatively new development and we also have got a number of funds across locally both Jersey and Guernsey in terms of headquartering their companies together, where they see all the benefits they make in the standard terms of the companies that we want to get behind with individuals that we want to encourage into the Island…"[93]

The Group Director of Economy went on to inform the Panel of the external investment the two current licence holders were currently making stating:

Group Director, Economy:

"…We have got a lot of interest in people wanting to come here and base themselves as cultivators. The 2 companies that have currently got licences are putting in all sorts of external investment as well. I think the reality is that there is a supply and demand issue in Europe and we are very close to being the first to market. I think people in the world recognise that…"[94]

The Panel will monitor the inward investment aspect of this industry extremely closely and will ensure the Minister for EDTSC is held to account either through its quarterly Public Hearings or via correspondence.

[92] Public Hearing with Minister for EDTSC – 21.06.21
[93] Public Hearing with Minister for EDTSC – 21.06.21
[94] Public Hearing with Minister for EDTSC – 21.06.21

10. Tax Implications

Update to Finance (Jersey) Law

As previously mentioned in this report, the Panel is concerned there are no approved regulations specific to Jersey and reliance is on a MoU between the Government of Jersey and the UK Home Office. In its letter to the Minister for EDTSC on 23rd April, the Panel asked what regulations he would be proposing to bring forward in the future. The Minister responded on 7th May stating the focus was currently on income tax regulations being brought by the Minister for Treasury and Resources which it was hoped would be drafted over the summer months. The Minister went on to inform the Panel that the regulations would need to be in force by 1st January 2022.

The Panel asked the Department of Treasury and Resources if it could receive a briefing in relation to these income tax regulations. The Panel was informed that the Regulations currently being drafted were to introduce taxation of the cannabis industry and would be stand-alone legislation. At the time of its request for a briefing, the Minister did not yet have a draft of the Regulations to share with the Panel and was further informed that:

> "*…there is ongoing discussion about policy issues with colleagues in the cross-government cannabis coordination group. Once the policy issues are resolved, law drafters will be in a position to finalise a first draft of the Regulations…*"[95]

The Panel also asked the Minister for Treasury and Resources in written correspondence on 25th June if it could be advised when the legislation for the taxation of medicinal cannabis growing and processing was intended to be brought forward. The Minister responded on 2nd July stating these would be lodged before the end of August to bring them into force for the year of assessment 2022 (i.e. from 1 January 2022).

> **Minister for Treasury and Resources:**
>
> *"…Officers within Revenue Jersey are members of the cross-government Cannabis Coordination Group, who meet regularly to discuss issues related to the cannabis industry. More recent discussions have included the scope of the charge to tax for the cannabis industry. As part of its role in the governance of key tax policies, the Revenue Policy Development Board (RPDB) decided earlier this year that the profits of the cannabis industry should be taxed at the rate of 20% and that normal business tax principles should apply. The Regulations to tax the cannabis industry are currently being drafted and officers are working closely with colleagues in the Cannabis Co-ordination Group to ensure the tax 2 treatment is in line with latest thinking and policy considerations. I expect to lodge the Regulations before the end of August and bring them into force for the year of assessment 2022 (i.e. from 1 January 2022)…"*[96]

The Panel received the draft regulations on 1st October 2021 during the final stages of drafting its report. The Panel has not yet had the opportunity to review the regulations in any detail and detailed reference to them is therefore not made within this report. The Panel reviewed the regulation and drafted a comments paper which was presented to the States Assembly on 16th November 2021, prior to the debate.

[95] Officer email correspondence – 23.07.21
[96] Letter from Minister for T&R to Panel – 02.07.21

Proceeds of Crime Amendment

On 17th May 2021, the Minister for External Relations and Financial Services lodged Draft Proceeds of Crime (Amendment of Law) (No.2) (Jersey) Regulations P.45/2021. The amendments made to the Proceeds of Crime (Jersey) Law by this particular amendment were designed to enhance the attractiveness of Jersey as a jurisdiction in which to carry out investment and management of cannabis related activities where the cultivation of cannabis is legal and have appropriate global financial regulatory standards. However, it is to be noted that such amendments were aimed at allowing entities lawfully engaged in medicinal cannabis in some form from conducting business arrangements in Jersey and were not relevant to actual production in the Island.

The Panel issued comments to the amendment as it considered it would be helpful, given its acquired knowledge and ongoing work, to contribute to this matter and in doing so re-assure Members and interested parties that the implementation of these amendments bore no impact on its ongoing review and its current Terms of Reference.

During its Public Hearing with the Minister for EDTSC, the Amendment to the Law was discussed with the Group Director of Economy who informed the Panel that the amendment set out to give a strong message to those entities that wished to invest. The Group Director went on to say there was a financial imperative to make sure that the process of investment was highly regulated with a high bar to entry, so that those who did end up investing, would be above board and the process is absolutely transparent.

> **Group Director, Economy:**
>
> *"…It is a little bit delicate with not the Minister responsible here but the reality is the proceeds of crime legislation will, effectively, have a list of jurisdictions where we feel the risk of corruption and anti-money laundering and so on and so forth, which will all impacts on reputation, it will be illegal to engage with them in this space; that is the safety net around reputation. We also believe that those people that want to invest in this space are absolutely as concerned about reputation as we are because lack of reputation in this space for all the reasons that you have said, that is your devalue to their companies…"*[97]

Having undertaken Scrutiny of this amendment and presented comments, the Panel is content the purpose of the amendment was to clarify which investments should not be treated as proceeds of crime by local Financial Services Businesses. It was the Panel's understanding that the amendment, would ease the situation for legitimate local financial services businesses looking to invest in the medicinal cannabis sector. The Panel also considered the amendment and its review as two separate issues and stated within its comments it was satisfied the amendment would not impact on its ongoing review and final report.

The Panel would like to see a similar stance taken as that undertaken with the Proceeds of Crime amendment with regards to the exportation of cannabis off Island. This would involve no cannabis being allowed to be exported without the medicinal cannabis licence holder having EU/GMP accreditation. The importance of this accreditation is mentioned throughout this report and involves rigorous testing of the product to ensure that not only the product, but the company is compliant with strict EU regulations. The Panel cannot stress enough the importance of exporters obtaining this accreditation and considers this is paramount if the Island is to retain its high standard of reputation.

[97] Public Hearing with the Minister for EDTSC – 21.06.21

Tax Intake to the Island

Throughout the course of its review and evidence gathering, the Panel came upon material, both anecdotal and factual, regarding the medicinal cannabis industry as being profitable. The Panel was keen to understand where the profitable areas were, if any, and one of the key areas discussed was the future tax intake to the Island as a result of the industry's success.

The Group Director of Economy, as previously mentioned in this report, informed the Panel that in the UK, the value of sales in medicinal cannabis was close to £700 million in the last year alone. The Panel, although pleased to hear there was such a profitable industry looking to be developed in Jersey, was still unclear how this would transfer into profit for the Island. The Panel asked what the expected fiscal receipts would be and if the Department had any numbers on the amount of money coming into the Exchequer from the industry. At its recent Hearing with the Minister for EDTSC, it was informed that fiscal receipts would be expected from possibly 2023 but more likely 2024 with an estimate of £4 million in tax receipts.

> **The Minister for Economic Development, Tourism, Sport and Culture:**
>
> *"…Yes, treasury have been working with ... it is difficult to quantify that because we do not know how the market (several inaudible words) the Government Plan, which was ... I think we are expecting to see receipts from possibly 2023 but more likely 2024. I think it is estimated that we could receive £4 million in tax receipts, and that is just pure tax receipts. I will be corrected by an officer if I have that figure wrong, because we are planning to ... the proposal, I understand, will be to introduce a corporation tax of 20 per cent on the profits of businesses licensed ... for licensed businesses…"*[98]

The Panel also asked if there would be any exemptions for the cannabis industry in the tax regime at all and was informed:

> **The Minister for Economic Development, Tourism, Sport and Culture:**
>
> *"…Not that I am aware of…"*[99]

The Panel raised the question of offsetting expenditure on set up costs against profits to try to gain more understanding of where the profit margin was.

> **The Deputy of St. Martin:**
>
> *"…But will these companies be allowed to offset their expenditure on set-up costs against profit?*
>
> **The Minister for Economic Development, Tourism, Sport and Culture:**
>
> *One of the reasons why the receipts are unlikely to be seen until 2024 is because, yes, the company can ... as I understand it, there are large set-up costs so I think that has to be taken into account. I think one of the conversations was around perhaps looking at a turnover tax as opposed to a tax on profits because that would deliver yields to the treasury sooner rather than later..."*[100]

[98] Public Hearing with Minister for EDTSC – 21.06.21
[99] Public Hearing with Minister for EDTSC – 21.06.21
[100] Public Hearing with Minister for EDTSC – 21.06.21

The Group Director of Economy provided further clarification on anticipated tax take and stated that:

> *"…We guesstimate the current value about £3,000 to £4,000 a kilogram in States market prices and that is relatively conservative. But looking at the amount of hectarage at the moment, we are anticipating a tax at 20 per cent to generate about £4.9 million per hectare…"*[101]

This is touched on earlier in the section of Space Requirements in this report however, the Panel was informed this was based on having 0.9 hectares at the moment in Phase One, and Phase Two would increase to approximately three hectares over the next two to three years. The Panel was informed that *that in itself will generate about £15 million per year in revenue*[102]*.*

In addition, the Panel was also informed that credible licence applications in the pipeline would represent a potential further 4 hectares.

> **Group Director, Economy:**
>
> *"…So if that comes to fruition and, of course, there are some hurdles externally to jump through, so GMP accreditation and so on and so forth, but if that does reach fruition - and, of course, coming back to the point, this is about us creating the conditions for these businesses to be successful - you are looking at potentially 7 or 8 hectares, around £30 million per annum in terms of fiscal receipts. Going back to the tax, yes, it is based on ordinary business principles as the tax terminology and it will be 20 per cent and you will get all the capital allowances that you would expect under the normal circumstances…"*[103]

Although the Panel was pleased to understand in which area the Department believed the fiscal receipts were due and was grateful to receive an overview, it was extremely concerned that these figures were based on overcoming a lot of challenges and could be considered speculative. The industry is very much in its infant stages and the Panel is of the opinion the fiscal receipts relied on the conditions for the medicinal cannabis industry being overall successful.

The Panel's advisers were extremely thorough in their report on the impact of taxation. This section of the report was carried out by Grant Thornton in Jersey (GTJ) who have a wealth of knowledge in this area. The Panel did not invite the Minister for Treasury and Resources to its Public Hearings instead relying on GTJ to provide an analysis using the information received from the Department of EDTSC against the current tax system in Jersey.

The following section is a brief overview of their findings with a more comprehensive view within their report.

It should be recognised that the business model of medicinal cannabis companies generally requires that they invest heavily in the early years of the business. Consequently, a typical medicinal cannabis company does not register any accounting profits in its early years of operation. This is true for many established multinational medicinal cannabis companies. Therefore, if Jersey opts for a 20% tax rate on companies' profits, tax revenues from such activity will be minimal for several years from the date of license registration. For this reason, Jersey may wish to consider other tax bases. The Panel finds this information concerning and cannot see any profit being made within the industry in the short term.

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[101] Public Hearing with Minister for EDTSC – 21.06.21
[102] Public Hearing with Minister for EDTSC – 21.06.21
[103] Public Hearing with Minister for EDTSC – 21.06.21

Key Finding 26

The business model of medicinal cannabis companies generally requires that they invest heavily in the early years of the business. Profits therefore from the industry may be minimal for several years from the date of licence registration.

The advisers informed the Panel one area of alternative tax would be to impose a 'turnover tax' or a licence charge which is directly commensurate to the medicinal cannabis companies' turnover. They went on to say that this has the advantage of enabling the Government of Jersey to earn tax revenues immediately upon a medical cannabis company's initiation of sales or exports. Like a tax on profits, it also has the advantage that the tax authority can easily obtain information about the tax base from companies' financial statements. At the same time, different European legislative systems may incentivise entities to engage in transfer pricing or other tax avoidance strategies that would enable them to minimise their tax bill.

The advisers went on to recommend additional alternative tax intake initiatives which can be viewed in more detail within the adviser's report.

Recommendation 19

The Council of Minister should consider alternative tax bases for the medicinal cannabis industry in Jersey as the indicative taxable profits for the industry may be minimal for several years from the date of licence registration. This should be carried out with immediate effect.

Employment Taxation

Jersey currently has two bases upon which to calculate personal income tax. The first method is to give personal allowances and tax at the rate of 26%, the second is to calculate tax broadly at 20%. The taxpayer enjoys the lower of the two calculations. There is the possibility that revenue will be raised for the island through indirect taxation (employment taxes etc.) and even at the higher end of the projected salary scale, all employees are likely to fall within the bracket of receiving personal allowances and paying tax on the remaining balance at 26%.

In the report produced by Statistics Jersey –February 2019 entitled *"estimating government receipts and expenditure for Jersey households"* it was estimated that in order for established Jersey residents to make a net contribution to Government revenues then their income would need to be in excess of:

- Single Adult £28,000;
- Married couple –one working £38,000;
- Married couple –one working –two children £110,000.

The Panel's advisers have informed it that based on these projections, they would suggest that industry would not make a positive impact through personal taxation. The advisers go on to say that *"…the current labour market statistics (Statistics Jersey) do not show significant levels of unemployment 1.6% (c1,000) out of a workforce estimated to be 60,000. This should be contrasted to the advertised jobs at gov.je of 939 vacancies as at 21 July 2021. It is unlikely therefore that any*

revenue generated from taxation from persons employed with the industry will represent new taxation unless staff are recruited from outside the island (directly or indirectly)…"[104]

Corporate Taxation

It was relayed to the Panel through correspondence and Public Hearings that the profits of the medicinal cannabis industry were being proposed to be taxed at 20%.

> **The Minister for EDTSC:**
>
> *"The 20 per cent rate is automatically in my thinking. That would be a fair rate. Jersey is leading the U.K. and leading the world in some instances in this sector by having a very highly regulated and controlled space from which to operate in. We want to go with quality, very high-quality production, extraction, manufacture, export, rather than quantity. 20 per cent is a competitive rate."*[105]

As stated above the business model of medicinal cannabis companies generally requires that they invest heavily in the early years of the business. As a consequence, a typical medicinal cannabis company does not register any accounting (or taxable) profits in the early years of operation. If the intention of the Revenue Policy Development Board (RPDB) is to treat a medicinal cannabis company like any other trading company then their taxable profits will be reduced through numerous business expenses, for example, interest (if funded from overseas the net recipient of the interest will not be taxable in Jersey), management charges, both domestically and overseas, repairs to buildings/ infrastructure, capital allowances in relation to investment in equipment etc.

> *It should be noted that any losses that are incurred in the initial years of trading are available to be carried forward and therefore we would not expect any taxable profits to be generated in the short to medium term*.[106]

Indirect Taxation

At the present time it would appear that the cultivation and supply of medicinal cannabis would not be exempt under Schedule 5 of the Goods and Services Tax (Jersey) Law 2007. Therefore, under basic principle, any medicinal cannabis company would be required to register as it is likely that their turnover would exceed the registration threshold currently set at £300,000. However, it is noted that virtually all of the product would be exported from Jersey and as a consequence, be zero rated for GST purposes. The net result is that the company would be able to recover all GST that it has paid on any domestic supplies received (and capital cost relating to the business) without charging any GST on its exports. Therefore the industry would not provide any GST revenue to the island.[107]

Key Finding 27

Based on the information provided, the Panel's advisers have concluded that to date, very little additional "new" taxation would arise in the short to medium term. This includes personal tax, corporate tax and indirect taxation such as GST.

[104] Panel Adviser's Report – September 2021
[105] Public Hearing with Minister for EDTSC – 21.06.21
[106] Panel Adviser's Report – 2021
[107] Panel Adviser's Report – September 2021

Taxation on Profits

Within its letter to the Minister for Treasury and Resources on 25th June, the Panel asked various questions around the taxation of profits on medicinal cannabis in Jersey. The Panel began by querying the Government Plan 2022 – 2025 where it is stated that one of the measures to raise approximately £10m is the 'taxation of medicinal cannabis growing and processing', for example what percentage of the target £10m per annum in tax revenues will be made up of taxation of profits on medicinal cannabis growing and processing? The Minister responded stating it was not yet possible to forecast as the industry was in early stages.

> **Minister for Treasury and Resources:**
>
> *"…As you rightly say, taxation of the cannabis industry is included as one of the tax measures that has been forecast to help balance budgets by 2024. It is not yet possible to forecast how much tax will be raised from the taxation of the cannabis industry in Jersey. This is because the industry is in its very early stages and forecasts would be speculative. Even when those companies that are already licensed are fully operational, we do not expect them to be profitable straight away. Officers are reviewing the position as more information becomes available…"*[108]

Key Finding 28

The Minister for Treasury and Resources has informed the Panel that it is not yet possible to forecast how much tax will be raised from the taxation of the cannabis industry in Jersey due to the industry being in its very early stages and forecasts would be speculative.

The Panel also asked at what tax rate profits from the cannabis industry would be taxed and if there would be any exemptions and was informed that the Revenue Policy Development Board (RPDB) decided earlier this year that the profits of the cannabis industry should be taxed at the rate of 20% and that normal business tax principles should apply. Although this has been discussed in information received from the Panel's advisers and during a Public Hearings with the Minister for EDTSC, the Panel felt it important to state it was also sourced during correspondence with the Minister for T&R.

[108] Letter from Minister for T&R to Panel – 02.07.21

11. Reputational Risk to Jersey

The Panel recognise that the legalisation of cannabis in some jurisdictions is a relatively new development and cannabis remains an illegal substance in a number of key global economies.[1]

The Panel is also aware, through anecdotal evidence received during the course of this review, that sections of Jersey's community are concerned about the reputational impact of medicinal cannabis cultivation on Jersey.

Consequently, the Panel believe that on-Island medicinal cannabis cultivation presents a reputational risk to Jersey's existing core industries. In their report, the Panel advisers have recommended that a reputational risk assessment is undertaken, stating that it should have a *"…particular focus on whether there is a risk of an adverse effect on the core industries that are significant contributors to Jersey's economy, such as agriculture and financial services. Care should be exercised to ensure that the island's other core industries are not prejudiced…"*

The Panel is not aware of a reputational risk assessment being undertaken and is in favour of this happening as soon as possible.

Recommendation 20

The Council of Ministers should undertake a reputational risk assessment to determine the impact of the medicinal cannabis industry on Jersey's existing core industries. This should include the mitigation of such risks and cover financial, operational, competitive, security, privacy and compliance. This should be carried out with immediate effect.

Cannabis: Medicinal vs Recreational

The Panel is keen to ensure that the cultivation of medicinal cannabis in Jersey operates within a strong regulatory framework, that promotes the consumption of medicinal cannabis and cannabis products for medicinal purposes only. The Panel's advisers stated in their report that, *"It is very important that at political level the issues are not mixed up or confused. There is a risk that the more prominent manufacturers of medical cannabis in Europe are not very much in favour of an environment where cannabis for entertainment (non-medical) purposes is allowed."*

The Panel believe that it is important to protect Jersey's good reputation. Clear distinctions need to be made at a political and operational level between acceptable medicinal cannabis and medicinal cannabis products, and unregulated and illegal recreational cannabis consumption. The Panel's advisers explained in their report that *"Distinguishing cannabis products for recreational use from medical cannabis products and unregulated CBD oils will be important for law enforcement in many jurisdictions. The monitoring team should ensure compliance with the following:*

- *Security Measures and Installations;*
- *Quality of Production;*
- *Clear moral conduct of people working in the sector; and*
- *Trade licences."*

Recommendation 21
To improve social awareness and reduce risk of misuse, a public engagement process should be carried out to educate members of the public on the differences of recreational and medicinal cannabis and also highlight the potential benefits of medicinal cannabis. A plan of communication should be compiled with immediate effect.

The Panel remain concerned that the scale of the reputational impact of medicinal cannabis cultivation on Jersey's existing core industries has not yet been determined. In particular, the Panel believe it is important that clear messaging and terminology is developed early on, to ensure distinctions are made between medicinal and recreational cannabis use.

12. Intellectual Property

Registration and Patents

Registration of IP in Jersey takes place through the Jersey Patents, Trademarks and Designs Registries, which are dependent Registries. This means that registration of any IP right on the Island is dependent upon registration first being obtained in the United Kingdom.

The importance of establishing a framework for medicinal cannabis IP protection was set out by the Panel's advisers, who stated that it is *"…very important that the office responsible for IP in Jersey is immediately engaged in the process in order to have sufficient knowledge on the subject, taking into consideration possible risk of litigation and the ensuing need for more subject matter competences and expertise from the said office and the judiciary…"*[109]

The Panel at its Public Hearing with the Minister for EDTSC asked where the initial aim was for the Jersey medicinal cannabis industry and where its future plans lay. It was informed that pharmaceutical THC* (tetrahydrocannabinol) was the gateway industry and an insight into what cannabis was going to do globally going forward and that is where the initial aim was.

> **** THC is one of many compounds found in the resin secreted by glands of the marijuana plant. It is used in a medicinal capacity to relieve the symptoms of pain, muscle spasms, insomnia, nausea and anxiety.***[110]

It was also explained to the Panel that the market around medicinal cannabis was vast and included more than just the medicinal cannabis sector. The areas of research and development, intellectual property, upskilling staff in the rural economy could, all have huge benefits. However, the area looking to have a huge global presence was around CBD* (cannabidiol) which included creams, additives to drinks, and other topical applications.

> ****CBD is one of many compounds found in the resin secreted by glands of the marijuana plant. It is used in a medicinal capacity to relieve the symptoms of seizures, inflammation, psychosis, inflammatory bowel disease and depression.***[111]

> **Group Director, Economy:**
>
> *"…In the U.K. the value of sales in this space is nearly £700 million just last year alone. So what we are trying to do is to say, right, okay, what does the framework look like just for now, and we are starting with medicinal cannabis as the gateway or what I would describe as the gateway industry, but these organisations that are growing in the Island will, I think, have a weather eye on the opening up of the CBD market for non-medicinal uses, which as I say will be ubiquitous and massive. Does Jersey want a slice of that? It ought to, in my view as an economic development adviser…"*[112]

In different legal systems, new varieties, strains and scientific developments in the cultivation of medicinal cannabis plants can be protected, either through patents or through plant breeder's rights.[113]

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[109] Panel Adviser's Report – September 2021
[110] https://www.healthline.com/health/cbd-vs-thc#medical-benefits
[111] https://www.healthline.com/health/cbd-vs-thc#medical-benefits
[112] Public Hearing with Minister for EDTSC – 21.06.21
[113] Hoban Law Group: Intellectual Property and Medicinal Cannabis

The Panel believes that there could be an opportunity for Jersey to promote the IP protection of new cannabis strains and methods of cannabis production. Within their report, the Panel's advisers stated that,

> *"…The creation of IP is necessary in order to ensure a sustainable growth and future for the sector in Jersey. Once the ecosystem starts to grow, it is likely that producers would demand intellectual property ('IP') protection especially on new strains and possibly on new methods of production…"*[114]

The advisers were also keen to point out the potential benefit of IP in the research side of the cannabis industry stating Jersey could explore cultivation activities and be encouraged to seek research partners such as hospitals, universities and clinical research organisations. They went on to say the growth of eco systems are not sustainable without the support of testing analytical and certification services with a number of universities already geared up to provide such services. The Panel believe this area of cultivation and research could be extremely beneficial to Jersey and should be explored further.

Another area linked to the research side of the medicinal cannabis industry was around Cclinical trials management. The Panel's advisers drew attention to their view pointed out that supporting research leading to further developments in medicinal cannabis could be extremely beneficial and collaboration with UK hospitals could provide opportunities in this area.

Medicinal cannabis for veterinary medicine is also a new niche area. Whilst in the last five years, the market for medical cannabis for human consumption has seen huge strides forward, that of the application of cannabis-based products to animals does not appear to have been fully considered and is a new niche area. The Panel consider this to be a completely undeveloped area and, as such, would be keen to see what further opportunities exist and how this could benefit the medicinal cannabis IP industry in Jersey.

The Panel's advisers also identified potential commercial opportunities for local Jersey law firms, stating "*The cannabis sector can provide an interesting niche for the legal profession as it is likely that operators will seek to protect their interests on the development of new production processes or new seeds. Some law firms can obtain knowledge including technical knowledge to be able to provide such services."*

The Panel's advisers explained that the Government of Jersey could consider introducing some form of incentives for on-Island producers, to apply for patents and IP protection, such as "*fiscal benefits on chargeable income generated from such patents."*

During a Public Hearing with the Minister for Economic Development, Tourism, Sport and Culture on 21st June 2021, the Head of Biosecurity advised that discussions had taken place with the National Institute of Agricultural Botany (NIAB), regarding the future registration of cannabis IP:

[114] Panel Adviser's Report – September 2021

Head of Biosecurity:

"I have asked them for an advisory report back from the highest level as to how the future of the registration of high THC cannabis might operate and also asking some questions about what the commercial opportunities for Jersey may be within that space."[115]

The Panel is keen to follow up on the findings of the NIAB advisory report, including the future registration of cannabis IP and the possible commercial opportunities for Jersey and will continue to monitor this.

Recommendation 22

The Council of Ministers should consider a range of possible incentives for on-Island medicinal cannabis growers, to apply for patent and Intellectual Property (IP) protection. This should include research and development and intellectual property, which hold potential benefits. This should be discussed with external stakeholders within 6 months of presentation of this report.

The Panel recognises that forging links with research partners can help Jersey build a reputation for supporting the research and development of new medicinal cannabis strains and production methods.

The area of IP is something that should be considered seriously by the Council of Ministers. It is not something the Panel came across during its evidence gathering and these comments from the Panel are formed from the feedback from its advisers. The Panel will continue to monitor this and question the Minister for EDTSC in due course on its status.

Recommendation 23

The Council of Ministers should consider encouraging the promotion of medicinal cannabis for the use in veterinary medicine which is a new niche area. This should be carried out with immediate effect.

Transition Period for Existing Licence Holders

Throughout this report, the Panel has made a number of recommendations which it is confident would establish a stronger regulatory framework which will be of benefit to the medicinal cannabis industry on the Island. This includes changes to the existing licence application process, review of the licence application costs, introduction of EU/GMP certification for exportation of all medicinal cannabis crops and the existing planning requirements currently in place for the medicinal cannabis industry to be reviewed. Whilst the Panel has recommended the Council of Ministers carry out these changes with immediate effect, it understands there may be difficulty in implementing these changes for existing medicinal cannabis licence holders. The Panel therefore recommends a phasing in period for existing licence holders of one year from the date of the Council of Ministers' implementation of the Panel's recommendations. The Panel has used the period of one year due to this being the current period for which licences are granted before needing to be renewed. The Panel believes this timeframe to be realistic for any changes and upgrades to be made to existing licences.

[115] Public Hearing with the Minister for EDTSC - 21.06.21

Recommendation 24

The Council of Ministers should ensure all existing medicinal cannabis licence holders implement any changes to their current medicinal cannabis business following any recommendations agreed by the Council of Ministers as a result of this report. These should be carried out within the timeframe stipulated, currently one year from the implementation of the recommendation.

13. Conclusion

The Panel has made a number of recommendations within this report which it believes will assist the medicinal cannabis industry to thrive in Jersey. The recommendations made revolve around building a strong regulatory framework, based on the processes that are currently in place yet at the same time ensuring the Public are fully informed. Jersey is a stable jurisdiction with robust regulations and, without a similar stance adopted for the medicinal cannabis industry, there is a danger of this reputation becoming tarnished. The Panel is supportive of an industry that could attract inward investment to the Island but believes it important to follow best practice and follow examples set in other successful jurisdictions which already have a flourishing medicinal cannabis industry. These are referenced throughout this report and the Panel strongly believe that with a robust, secure framework, and following best practice, the Island could become a key player in this industry.

Appendix 1

Panel Membership

Deputy David Johnson (Chair)

Deputy Steve Luce (Vice-Chair)

Senator Steve Pallett

Terms of Reference

1. To examine and benchmark the Regulations establishing the terms of licensing for the cultivation, import and export of medicinal cannabis and the comparison with other relevant jurisdictions.

2. To examine the merits to the Island of requiring applicants to obtain EU/Good Manufacturing Practice (GMP) certification.

3. To evaluate the projected economic benefit to the Island of this sector, including identifying any inherent costs to the taxpayer of associated regulation and administration.

4. To identify and evaluate the full scope of the tax regime associated with the sector.

5. To examine any potential impact, positive or negative, on the international reputation of the Island in establishing an industry based on the cultivation, import and export of medicinal cannabis.

Appendix 2

Comparisons with other Jurisdictions

The Panel has made comparisons with other jurisdictions throughout this report to use as a contrast to the measures currently being proposed, or already in place, in Jersey. A brief overview of these is as follows however, more detail can be found in the tables following this summary.

Jersey vs Guernsey

- Both operate under an MoU with the UK Home Office.
- The Cannabis Agency in Guernsey involves members from across other Departments whilst the Jersey Cannabis Agency is made up solely of the Minister for Health and Social Services.
- The Licence fee in Guernsey is higher than that in Jersey.

Jersey vs Malta

- Malta has drafted and approved specific legislation for the medicinal cannabis industry.
- Although comparisons cannot be made with the Jersey Cannabis Authority, Malta has quite strict regulations and the extent of regulation of medicinal cannabis in Malta appears much greater than that of Jersey.
- The licence fee in Malta is considerably higher than that of Jersey.

Jersey vs Portugal

- Portugal operates its industry following the Decree-Law which provides the legal framework for trafficking and consumption of narcotics and psychotropic drugs (implements 1988 UN Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances.
- Although comparisons cannot be made with the Jersey Cannabis Authority, Portugal operate under the Government Agency Infarmed* (National Institute of Pharmacy and Medicine)

  Infarmed is a Government agency accountable to the Health Ministry, that evaluates, authorizes, regulates and controls human medicines as well as health products, namely, medical devices and cosmetics for the protection of Public Health

- The licence fee in Portugal is considerably higher than that of Jersey.

Jersey vs Malta

Terms of Licensing for the Cultivation, Import and Export of Medicinal Cannabis in Malta

Regulatory background

Jersey	Malta
Legislation: • UN Single Convention on Narcotic Drugs 1961 (Articles 23 and 28) • Misuse of Drugs (Jersey) Law 1978 • Medicines (Jersey) Law 1995 • Misuse of Drugs (General Provisions) (Jersey) Law 2009 (Articles 3 and 10)	**Legislation:** • UN Single Convention on Narcotic Drugs (1961) • Dangerous Drugs Ordinance (Chapter 101 of the Laws of Malta) • Production of Cannabis for Medicinal and Research Purposes Act (Chapter 578 of the Laws of Malta) • Production of Cannabis for Medicinal and Research Purposes (Fees) Regulations (Subsidiary Legislation 578.01 of the Laws of Malta) • Mutual Recognition of Qualifications Act (Chapter 451 of the Laws of Malta) • Medicines Act (Chapter 458 of the Laws of Malta) • Medicinal Products (Advertising) Regulations 2005 • Maltese Medicines Authority's General Guidelines on the production of cannabis for medicinal and research purposes.
Responsible Authorities: • Jersey Cannabis Agency (facilitated by Government of Jersey-Drugs & Firearms Licensing Unit Memorandum of Understanding) • UK Home Office DFLU	**Responsible Authorities:** • Malta Enterprise • Malta Medicines Authority
Licences: • Issued under either the Misuse of Drugs (Jersey) Law 1978 or the Medicines (Jersey) Law 1995 • Issuance of licences the responsibility of the Minister for Health and Social Services.	**Licences:** • Issued by the Maltese Medicines Authority and subject to: ○ Submission and evaluation of documents including due diligence documentation. ○ Required authorisations, permits, approvals and clearances from other relevant entities are in place ○ Compliance with relevant terms and conditions and in line with the Mutual Recognition of Qualifications Act (Chapter 451 of the Laws of Malta)

	○ Additional information as requested ○ Fees made payable to the Malta Medicines Authority as specified under the Production of Cannabis for Medicinal and Research Purposes (Fees) Regulations ○ Superintendent of Public Health may suspend or revoke licences where fee payments are not made in full and on time.
Key personnel: • Minister for Health and Social Services • Chief Pharmacist	**Key personnel:** • Superintendent of Public Health

Process

Jersey	Malta
Submission: • A formal application is submitted to the Chief Pharmacist with site and planning information.	• Applicants must submit on-boarding documentation or on-Island professional services firms available to complete on-boarding process for promoters • Application with Malta Enterprise submitted and introductory meeting between promoters and Malta Enterprise officials set up.
Analysis: • Chief Pharmacist undertakes a preliminary review which is shared with the DFLU for any comments and clarifications.	**Analysis:** • Following a satisfactory outcome, application compiled and submitted to Malta Enterprise - the submitted application comprises a due diligence process, submission of business plan and relevant application forms. • Malta Enterprise issues a Letter of Intent.
Site inspection: • Chief Pharmacist and DFLU undertake joint site visit, with checks conducted to ensure: ○ Applicant proposals and planned operations are discussed. ○ An interview to ensure applicant has sufficient knowledge, understanding and experience of	**Malta Medicines Authority Application** • Licence holder name indication. • Appointment of Qualified Person - registered Pharmacist. • Evidence of site. • Import and export permits, where required. • Details on destruction and waste management.

the requirements for cultivating medicinal cannabis. o DFLU check obligations of the UN Single Convention on Narcotic Drugs are met. o Enquiries made with regards to potential suppliers and customers. o Onsite and transportation security. o Adequate procedures and safeguards are in place. o Secure destruction of medicinal cannabis waste products.	• Awareness of police report filings in case of loss/theft. • Compliance with all local laws including occupational health and safety, employment, environmental, sanitary and waste management, electrical safety, tax, and anti-money laundering legislation. • Security measures and monitoring of the site. • Where relevant (manufacturing), the site Is required to be EU-GMP compliant.
• DFLU reports its findings and observations within four weeks of the applicant site visit.	
• The DFLU report is provided to the Chief Pharmacist with the DFLU's view as to whether the applicant's proposals meet the obligations set out in the UN Single Convention on Narcotic Drugs.	
• The DFLU report and application are then presented for consideration by the Minister for Health and Social Services, with advice from the Chief Pharmacist and other relevant authorities such as the Police and Environmental Health.	
Application Decision: • The Minister for Health and Social Services makes a decision whether to issue a licence and the relevant conditions that will apply.	
• HCS review material and reach provisional decision	
• Ministerial submission prepared, with HO input as required: o If decision not in line with DFLU – DFLU Head of Unit to be informed with reasons. o A decision to grant a licence is then made. o If a decision to refuse a licence is made, reasons will be provided by letter to the applicant.	

Licence holder requirements

Jersey	Malta
The decision to issue a licence, and the conditions that apply, is made by the Minister for Health and Social Services. • Article 10 of the Misuse of Drugs (General Provisions) (Jersey) Order 2009 providers the Minister for Health and Social Services the means to authorise a licence to cultivate cannabis plants Article 3 of the Misuse of Drugs (General Provisions) (Jersey) Order 2009 provides authorisation for the production, possession, supply and offering to supply of a controlled drug.	• Licence holders must engage a qualified person recognised by the Malta Medicines Authority • Production, storage, packaging and labelling of cannabis may only be carried out inside an approved, designated site • Licence holders must supply information on their waste management procedures, in accordance with local environmental and waste legislation • Licence holders must comply with all applicable laws.
Duration of licences: • Granted for 1 year	
Compliance measures: • Licence holders subject to annual compliance visit prior to the renewal of a licence • Unannounced compliance checks may also take place.	**Compliance measures:** • Licence holders must inform the Medicines Authority of the number of finished product packs to be produced over the following quarter and whether they are intended for local market or export. • Proof of payment evidencing the research and education contribution must be provided to the Medicines Authority. • Licence holders must keep records and submit them on a quarterly basis to the Medicines Authority • Advertising must be in accordance with the Medicines Act (Chapter 458 of the Laws of Malta) and the Medicinal Products (Advertising) Regulations 2005 • Research and development activities to be carried out in sites licenced by the Maltese Medicines Authority • Testing carried out in line with European Medicines Agency guidelines • Due diligence procedures are applicable to company shareholders, ultimate beneficial owners, directors, management, qualified persons, responsible officers and any other persons with a financial interest and

	persons with decision making powers of influence. Due diligence documents are to be submitted with the application. • Access to areas within the licenced site must be physically restricted to authorised persons. • Licenced sites must have monitoring equipment in place.
Modification of licences: • To change or amend existing licences may be granted at each annual review of the licence.	**Modification of licences:** • A licence holder can apply for variation of a licence. • Medicines Authority reviews applications for variations of a licence in accordance with the Production for Medicinal and Research Purposes Act
Imports and exports: • Imports and exports operate under a separate licence regime. • No licence to export granted until a correspondence import authorisation received from the destination jurisdiction's competent authorities.	**Imports and exports:** • Licence holder's responsibility to obtain the necessary import and export documentation and permits required to comply with Maltese custom laws and international conventions on cannabis.

Summary Analysis

The above comparative analysis of the terms of licencing for the cultivation import and export of medicinal cannabis, between Jersey and Malta, evidence similar objectives with regards to the regulation of medicinal cannabis cultivation, but with a number of differences in approach.

Most notably, the extent of regulation of medicinal cannabis in Malta appears greater than that of Jersey. A number of provisions specifically legislate for cultivation, import and export of medicinal cannabis in Malta, such as the Production of Cannabis for Medicinal and Research Purposes Act (Chapter 578 of the Laws of Malta). In contrast, Jersey law appears to rely on established, general provisions such as the Medicines (Jersey) Law 1995, for regulation of medicinal cannabis.

There are also key differences in relation to the authorities responsible for the issuance and maintenance of medicinal cannabis licencing. The Malta Medicines Authority as a regulator of medicinal products and pharmaceutical activities, provides established on-Island expertise in relation to key areas such as the European Union Good Manufacturing Practices. In contrast, the Jersey Cannabis Agency as established through the GoJ-DFLU MoU is reliant on the UK Home Office DFLU.

Jersey vs Portugal

Terms of Licensing for the Cultivation, Import and Export of Medicinal Cannabis in Portugal

Regulatory background

Jersey	Portugal
Legislation: • UN Single Convention on Narcotic Drugs 1961 (Articles 23 and 28) • Misuse of Drugs (Jersey) Law 1978 • Medicines (Jersey) Law 1995 • Misuse of Drugs (General Provisions) (Jersey) Law 2009 (Articles 3 and 10)	**Legislation:** • Decree-Law No.15/93 2019 provides the legal framework for trafficking and consumption of narcotics and psychotropic drugs (implements 1988 UN Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances • Decree-Law 8/2019 and Ministerial Order 44-A/2019 2019 enacted to regulate Law 33/2019. • Decree-Law 8/2019 introduced fourth amendment regulating Ruling Decree 61/94 (which governs the illegal market for narcotics and psychotropic substances. • Ministerial Order 44-A/2019 established pricing of medicinal Cannabis-based preparations and substances. • Decree-Law No.8/2019 regulates the use of cannabis medicines, preparation and substances for medicinal purposes and regulates Law No.33/2018. • Law No.33/2018 establishes legal framework for the use of medicinal cannabis medicines, preparation and substances. • Decree-Law No.8/2019 amends Implementing Decree No.61/94 as amended by Implementing Decrees No.23/99, 19/2004 and 28/2009.
Responsible Authorities: • Jersey Cannabis Agency (facilitated by Government of Jersey-Drugs & Firearms Licensing Unit (DFLU) Memorandum of Understanding (MoU)) • UK Home Office DFLU	**Responsible Authorities:** • Infarmed (National Institute of Pharmacy and Medicine) • Intervention in Addictive Behaviours Service
Licences:	**Licences:**

• Issued under either the Misuse of Drugs (Jersey) Law 1978 or the Medicines (Jersey) Law 1995 • Issuance of licences the responsibility of the Minister for Health and Social Services.	• Issued by Infarmed with input from Intervention in Addictive Behaviours Service and the police.
Key personnel: • Minister for Health and Social Services • Chief Pharmacist	**Key personnel:** • Minister for the Economy

Process

Jersey	Portugal
Submission: • A formal application is submitted to the Chief Pharmacist with site and planning information.	**Submission:** • A formal application is submitted through a specific portal on the Infarmed website, on an individual basis.
Analysis: • Chief Pharmacist undertakes a preliminary review which is shared with the DFLU for any comments and clarifications.	**Analysis:** • Infarmed analyse the application, including the suitability of the applicant and its legal representatives. • If the correct documentation is submitted that satisfies the assessment of Infarmed, a 'decision of documentary suitability' is issued between 90 and 150 days from date of submission.
Site inspection: • Chief Pharmacist and DFLU undertake joint site visit, with checks conducted to ensure: o Applicant proposals and planned operations are discussed. o An interview to ensure applicant has sufficient knowledge, understanding and experience of the requirements for cultivating medicinal cannabis. o DFLU check obligations of the UN Single Convention on Narcotic Drugs are met.	**Site inspection:** • Applicant must request that Infarmed inspect the facility within 6 months following communication of a 'decision of documentary suitability'. • Applicants may be required to submit additional information, including: o Information on the investment and development project relating to the activity in Portugal o Information on the facilities to be used for the activity o Quantity of product to be used, harvested and obtained, its application and destination.

○ Enquiries made with regards to potential suppliers and customers. ○ Onsite and transportation security. ○ Adequate procedures and safeguards are in place. ○ Secure destruction of medicinal cannabis waste products.	○ Details of the technical officer or technical director and person responsible for site security and operations. ○ Details of on-site security measures.
• DFLU reports its findings and observations within four weeks of the applicant site visit.	**Application Decision:** • An authorisation will be granted once an inspection has been carried out and it is confirmed that the premises meet legal and regulatory requirements.
• The DFLU report is provided to the Chief Pharmacist with the DFLU's view as to whether the applicant's proposals meet the obligations set out in the UN Single Convention on Narcotic Drugs.	**Additional Requirements - Marketing Placement Authorisation (MPA):** • A separate authorisation required by Infarmed for MPAs than that required for medicines. • MPAs require: ○ Identification of the preparation or substance ○ Identification of those involved in the production chain of the preparation or substance ○ Authorisations that have already been granted ○ Proof of compliance with good practice or the applicable legislation • In order to grant an MPA, Infarmed will consider the products: ○ Pharmaceutical form ○ Administration route ○ Relevant technical and scientific knowledge of parties concerned
• The DFLU report and application are then presented for consideration by the Minister for Health and Social Services, with advice from the Chief Pharmacist and other relevant authorities such as the Police and Environmental Health.	**MPA Applications** • From the date of submission, it takes approximately 100 days to obtain an MPA, unless requests for additional documents or clarifications are made. • MPAs valid for 5 years and valid indefinitely after first renewal unless determined otherwise by Infarmed.

Application Decision:
• The Minister for Health and Social Services makes a decision whether to issue a licence and the relevant conditions that will apply.
	MPA Renewals
	• Must be submitted at least 9 months prior to the renewal, and include:
	  ○ Updated supporting documents evidencing preparation or substances adaptation to technical and scientific progress
	  ○ Summary of the preparation or substance's characteristics
	  ○ Preparation or substances updated labelling and usage instructions
	  ○ Description of the situation regarding the preparation or substances pharmacovigilance data.

• HCS review material and reach provisional decision	

• Ministerial submission prepared, with HO input as required:
  ○ If decision not in line with DFLU – DFLU Head of Unit to be informed with reasons.
  ○ A decision to grant a licence is then made.
  ○ If a decision to refuse a licence is made, reasons will be provided by letter to the applicant.	

Licence holder requirements

Jersey	**Portugal**
The decision to issue a licence, and the conditions that apply, is made by the Minister for Health and Social Services. • Article 10 of the Misuse of Drugs (General Provisions) (Jersey) Order 2009 providers the Minister for Health and Social Services the means to authorise a licence to cultivate cannabis plants • Article 3 of the Misuse of Drugs (General Provisions) (Jersey) Order 2009 provides authorisation for the production, possession, supply and offering to supply of a controlled drug.	The requirements that must be satisfied in order to obtain a licence, include compliance with: • European Medicines Agency Guidelines on Good Agricultural and Collection Practices • EU Commission Delegated Regulation 1252/2014 and EU Directive 2001/83/EC (practices for manufacturing active substances for medicinal purposes) • Decree-Law 176/2006 (legal framework for medicinal products for human use), good manufacturing practices for medicinal products.

	• Good practices for distribution of active substances and medicinal products adopted in the European Union.
Duration of licences: • Granted for 1 year	**Duration of licences:** • Granted for 1 year
Compliance measures: • Licence holders subject to annual compliance visit prior to the renewal of a licence • Unannounced compliance checks may also take place.	**Compliance measures:** • Ongoing involvement with the applicant from the Intervention in Addictive Behaviours Service and the police.
Modification of licences: • To change or amend existing licences may be granted at each annual review of the licence.	**Modification of licences:** • Licences are non-transferable and cannot be used by any other person for any purpose.
Imports and exports: • Imports and exports operate under a separate licence regime. • No licence to export granted until a correspondence import authorisation received from the destination jurisdiction's competent authorities.	**Imports and exports:** • Importation is subject to a licence from Infarmed for the importation of medicinal cannabis. • Additional and specific authorisation from Infarmed required for each importation.

Summary Analysis

The above comparative analysis of the terms of licencing for the cultivation import and export of medicinal cannabis, between Jersey and Portugal, evidence similar objectives with regards to the regulation of medicinal cannabis cultivation, but with a number of differences in approach.

In a similar approach to Malta, the extent of regulation and provisions applicable to medicinal cannabis in Portugal, appears greater than that of Jersey. Provisions such as Ministerial Order 44-A/2019 established pricing of medicinal Cannabis-based preparations and substances. In contrast, Jersey law appears to rely on established, general provisions such as the Medicines (Jersey) Law 1995, for regulation of medicinal cannabis.

The Portuguese National Authority for Medicament and Health Products, otherwise known as Infarmed, are the central authority for regulating almost all aspects of medicinal cannabis cultivation in Portugal. The role of Infarmed appears to mirror the roles of the Jersey Cannabis Agency and the DFLU in Jersey. In Portugal, there is some input from the Minister for the Economy, in relation to granting medicinal cannabis licences for industrial purposes.

In Portugal, there is a requirement for a separate marketing placement authorisation (MPA) for medicinal cannabis cultivators wishing to place medicinal preparations and substances into the Portuguese market, and which is different for the authorisation required for medicines. In contrast in Jersey, no such requirement for a separate 'marketing placement' authorisation is in place.

There are similarities between Portugal and Jersey in relation to the import and export regime, which in both jurisdictions are subject to specific authorisations before an import or export can take place.

Jersey vs Guernsey

Terms of licensing for the cultivation, import and export of medicinal cannabis in Guernsey

In July 2021, the Government of Guernsey signed a Memorandum of Understanding (MoU) with the UK Home Office, which was described as *'a significant step in the development of the Bailiwick's emerging cannabis industry which has quickly become one of the most established in the British Isles'*[116].

The Guernsey-UK Home Office MoU facilitates an agreement between Guernsey's Committee for Health & Social Care (GCHSC) and the UK Home Office, in relation to granting authorizations to cultivate medicinal cannabis in Guernsey.

The Guernsey-UK Home Office MoU, in a similar manner to the Jersey-UK Home Office MoU, enables the Bailiwick to fulfil its obligations to ensure compliance with the UN Single Convention of Narcotic Dugs 1961.

The MoU allows prospective medicinal cannabis cultivators a procedural route to apply for a licence to cultivate cannabis in Guernsey, for use in medicinal cannabis-based products.

Following the signing of the Guernsey-UK Home Office MoU, the Government of Guernsey established the Bailiwick of Guernsey Cannabis Agency (BGCA). The BGCA has responsibility for receiving and administering applications to cultivate cannabis for medicinal purposes in Guernsey.

Bailiwick of Guernsey Cannabis Agency

The BGCA as constituted by the GCHSC, comprises the Director of Environmental Health and Pollution Regulation (Dr Tobin Cook), the Chief Pharmacist (Beverley Hall) and business support from the Committee for Economic Development (Keith Wilen), with close support and consultation with Bailiwick Law Enforcement officers.

The constitution of the BCGA differs considerably from that of the Jersey Cannabis Agency (JCA), which is comprised solely of the Minister for Health and Social Services. Other key observable differences between the Jersey-UK Home Office MoU and the Guernsey-UK Home Office MoU, include:

- **Licence application process - Jersey and Guernsey:**

  The Panel found that, overall, with UK Home Office Drugs and Firearms Licencing Unit (DFLU) involvement the application process for a licence to cultivate medical cannabis was very similar in both jurisdictions. However, some notable differences included:

[116] Government of Guernsey Press Release: Guernsey welcomes licence applications for the cultivation of cannabis for use in cannabis-based products medicinal

Application Process – Key Differences	
Guernsey	**Jersey**
BCGA oversight of applications to cultivate medicinal cannabis, include input from multiple key Government of Guernsey officials, providing a range of expertise.	Licence applications are initially reviewed by the Chief Pharmacist, but the JCA consists solely of the Minister for Health and Social Services. Therefore, it is not clear to what extent other stakeholders provide input, if any, at the preliminary review stage.
It is not apparent whether the BCGA undertakes an interview, to assess applicant knowledge and experience of cannabis cultivation for medicinal purposes, of prospective applicants during the application process.	It is a requirement that applicants undertake an interview, to assess applicant knowledge and experience of cannabis cultivation for medicinal purposes, during the application process.
'Standard Operating Procedures' address environmental concerns such as potential light, odour and noise issues.	A description of any environmental concerns, such as potential light, odour or noise issues, must be included in a separate Environmental Impact Assessment (EIA).

- **Licence fees – Jersey and Guernsey:**

  In Jersey licence fees payable for applications to cultivate medicinal cannabis are set out in the Misuse of Drugs (Licence Fees) (Jersey) Order 2020.

  In Jersey, the licence fee payable to the UK Home Office for undertaking their work is £2,500. The initial licence fee for prospective applicants, payable to the Government of Jersey, to cultivate, produce, possess and supply cannabis is £7,500 with an annual renewal fee of £3,750.

  In Guernsey, the fee payable to the DFLU is not stated. However, licence fees for a single entity on a single cultivation site under 5 acres is £4,800 with at least £1,100 added per extra 5 acres of land used. In Guernsey, a fee of £1,600 is payable for a processing plant for medicinal cannabis products, £1,100 for each warehousing facility and £100 per shipment for a commercial export.[117]

[117] Fees correct as of 1st of March 2020: Cultivation and/or Processing of Cannabis and Cannabis Derived Products – Bailiwick of Guernsey Licensing Guide

- **Applicant Site Visits – Jersey and Guernsey:**

  There is a site visit requirement in both Jersey and Guernsey, and in both jurisdictions, the UK Home Office accompanies the relevant authorities as part of this inspection.

  In both Guernsey and Jersey, there is a requirement for a planning application process to be followed, and in both jurisdictions this includes; a pre-planning application/enquiries service, requirement to submit a completed application form, payment of an application fee, details of the site location and extent of the application along with necessary drawings and supporting documentation.

  In Jersey, planning applications must be submitted with an EIA. In Guernsey, it is not clear whether an EIA forms part of the application process.

- **Regulations (Excluding UK Home Office MoU) – Jersey and Guernsey:**

Guernsey

- **UN Single Convention of Narcotic Drugs 1961 (Articles 23 and 28)**
- **Misuse of Drugs (Bailiwick of Guernsey) Law 1974**
- **Misuse of Drugs Ordinance 1997**
- **Misuse of Drugs (Modification) Order 2018** (certain products exempt for import, export, possession and supply of cannabidiol products of a specified description or use as a medicinal product)
- **Misuse of Drugs (Modification) Order 2019** (definition of when herbal cannabis becomes a Schedule 2 drug in the Bailiwick. Allowing the prescribing and use of herbal cannabis products for the treatment of humans under very tightly defined circumstances)

Jersey

- **UN Single Convention of Narcotic Drugs 1961 (Articles 23 and 28)**
- **Misuse of Drugs (Jersey) Law 1978**
- **Medicines (Jersey) Law 1995**
- **Misuse of Drugs (General Provisions) (Jersey) Law 2009 (Articles 3 and 10)**
- **Misuse of Drugs (Licence Fees) (Jersey) Order 2020**

Conclusion

The Panel understands that the requirements of the UN Single Convention of Narcotic Drugs 1961 (Articles 23 and 28), that apply in both Guernsey and Jersey, have strongly influenced the medicinal cannabis regimes adopted in each Bailiwick.

It is clear from analysis of the procedural route adopted in Guernsey, that the involvement of the UK Home Office DFLU is an essential component of medicinal cannabis cultivation in the Channel Islands.

The Panel has therefore found that the procedures and legislative amendments in Guernsey, broadly mirror those in Jersey.

Appendix 3

Types of Licence and Criteria

Types of Licence	Required Information	Additional Notes
Licences required	Please indicate which licence(s) you require If you intend to cultivate cannabis you will need a cultivation licence. If you intend to use any controlled parts of the plant you will, in addition, also require a licence relevant to the activities you wish to undertake	Please clearly state which cultivation licence you will require Licence to cultivate plants of the genus cannabis with a THC content not exceeding 0.2% (Industrial Hemp) Licence to cultivate plants of the genus cannabis with a THC content exceeding 0.2% Please clearly state which of the following licences you will require – you only need to state one, which should be the one which covers all your intended activities Licence to produce, to supply, to offer to supply and to possess any controlled drug or any preparation or product containing a controlled drug Licence to produce any preparation or product containing a controlled drug and to supply, to offer to supply and to possess any controlled drug or such preparation or other product Licence to supply, to offer to supply and to possess any controlled drug Licence to possess any controlled drug.
Cultivation	You will need a licence to cultivate cannabis plant irrespective of the proposed end use The site(s) for cultivation should be carefully considered and should be away from schools or other child care facilities and other potential areas of concern	You will need to describe: Variety to be grown and seed/cutting source Location details with map Area under cultivation Indoor/outdoor/glass/polytunnel The projected output. Audit trail – e.g. tagging of each plant from cultivation to processing Final intended use.
Possession	The intact cannabis plant and also the flowers and leaves of cannabis when separated from the plant are controlled substances If you intend to use whole plants or harvest flowers or leaves of cannabis you will need a licence to possess them.	You will need to describe the intended use of the plant and/or the flower/leaves. You will need to describe the projected output You will need to describe how you will comply with the necessary record keeping and safe custody requirements specified in the Misuse of Drugs (Jersey) Law 1978 and subordinate legislation.
Processing and Production of Products	If you intend process cannabis in any way you will need a licence to do so. Please note that this is not a licence to produce a cannabis based medicinal product. In order to manufacture or produce any medicinal product a manufacturing licence is required under the provisions of the Medicines (Jersey) Law 1995 This is in addition to licences under the Misuse of Drugs (Jersey) Law 1978 to produce, possess and supply a controlled drug	You will need to describe the intended use of the flower/leaves or any other part of the plant You will need to describe the processing method. You will need to describe the projected output. You will need to describe the audit trail of plants/material used – e.g. tagging of each plant You will need to describe the disposal method of waste material You will need to describe how you will comply with the necessary record keeping and safe custody requirements specified in the Misuse of Drugs (Jersey) Law and subordinate legislation. You will need to describe: the final product including THC content and other cannabinoid content proposed market (e.g. local market or for export)

		packaging, labelling, marketing final destination quality control and quality assurance processes and methodology and its validation. A full explanation, for Drug Control purposes, as to how the product can be legally made available to the customer. HACCP and other approvals needed for preparation of a food stuff if required. MHRA approvals (and other regulatory bodies where appropriate) Environmental health clearance for preparation of foodstuffs. If the final product is a CBD product for the food supplement market the combined total content of THC and other cannabinol derivatives must not exceed 3% of the total CBD content Unless the final product has been granted a marketing authorisation as a medicine by the MHRA any labelling or promotional material must not make any therapeutic or medicinal claims.
Supply	If you intend to supply cannabis (processed or unprocessed) to another party you will need a licence to supply such products.	You will need demonstrate sufficient site security and product traceability measures are in place. You will need demonstrate sufficient secure storage of cannabis products. You will need to provide proof of agreement from Jersey Law Enforcement that security controls are adequate. You will need to provide information on the product(s) to be supplied. You will need to provide information on final customer(s). You will need to provide proof of their legitimate legal authorisation to possess the product you are supplying.
Export	If you intend to export live plants/cuttings or raw or processed cannabis or any product controlled by the Misuse of Drugs (Jersey) Law 1978 you will need a licence to export such products. Export licences will only be issued on a consignment basis therefore you will need to apply for an export licence each time you wish to export any controlled product.	You will need to provide information on the product to be exported which should include details of the product and quantities of the controlled substances. You will need to provide information on final customer. You will need to provide proof of their legitimate legal authorisation to import the product from you into their jurisdiction. Normally this will be an import licence granted by the regulator in that jurisdiction. You will need to provide proof of their legitimate legal authorisation to possess the product you are exporting.

Appendix 4

What is Medicinal Cannabis?

Medical cannabis, or medical marijuana (MMJ), is cannabis and cannabinoids that are prescribed by physicians for their patients.

Broadly speaking, medicinal cannabis is cannabis prescribed to relieve the symptoms of certain medical conditions. There is an important distinction between medicinal cannabis and recreational cannabis. For some people suffering from chronic or terminal illnesses, conventional medicines do not work, or do not work as effectively as medicinal cannabis. Also, for some patients, conventional medicines may work but cause debilitating side effects that cannabis can help to relieve.[118]

Prescriptions of Cannabis Based Medicinal Products (CBMP) issued in Jersey

In 2018, the States Assembly adopted Proposition *P.113/2018 Medicinal Cannabis: Right to prescribe by medical professionals* to give medical professionals the right to prescribe medicinal cannabis in Jersey, to alleviate certain medical conditions.[119]

As part of its review, the Panel was keen to find out how much medicinal cannabis has since been prescribed in Jersey. However, following this request, in an email to the Panel, the Chief Pharmacist stated that there was not, *"access to the prescribing data of the three clinics who are prescribing locally as these are all private businesses and they issue private prescriptions."*[120]

The Panel was informed of the quantity of CBMP's imported by Jersey pharmacies, in order to fulfil prescriptions issued by the three local clinics authorised to do so.

The Panel notes that the CBMP importation data provides an indication about the consumption of CBMP in Jersey. The Chief Pharmacist explained that the data provided to the Panel showed, *"information on the total amount of dried cannabis flower in kilograms and the total volume in millilitres of cannabis oil preparations imported"*[121].

This information is set out in the following table:

Consumption of CBMP in Jersey

Month	Cannabis Flower - Various Strengths (kilograms)	Cannabis Oil - Various Strengths (mL)
Nov-20	11.280	8,675
Dec-20	18.460	0
Jan-21	15.465	18,350
Feb-21	32.000	750

[118] https://adf.org.au/drug-facts/medicinal-cannabis/
[119] Proposition - Medicinal Cannabis: Right to prescribe by medical professionals
[120] Email from HSS officer on behalf of Chief Pharmacist to Panel officer – 26.08.21
[121] Email from HSS officer on behalf of Chief Pharmacist to Panel officer – 26.08.21

Mar-21	90.110	2,500
Apr-21	13.450	3,000
May-21	22.400	12,450
Jun-21	32.595	8,300
Jul-21	79.500	8,100

The Panel believes that the CBMP importation data provided, overall, evidences an increase in consumption of CBMP in the local market, particularly of the various types of cannabis flower, in the months March and July 2021.

The Panel welcomes the additional context provided by the Chief Pharmacist about the discrepancy between when P.113/2018 came into effect, and the date when local pharmacies started prescribing medicinal cannabis which is detailed below.

Paul McCabe, Chief Pharmacist:

> *"There was no local prescribing until November 2020 despite the law change which came into effect on 1st January 2019. Prior to the first of the three clinics opening in November 2020 all prescriptions for Jersey patients were issued by UK clinics and dispensed by UK pharmacies. We still have a number of patients who continue to use this route and therefore the totals in the spreadsheet will not fully represent the total volume of CBMPs being consumed by Jersey residents."*[122]

The Panel accepts that the Chief Pharmacist cannot obtain CBMP prescription data from private businesses issuing private prescriptions, and that the data may be incomplete due to importation of CBMP from UK clinics and pharmacies.

Although the Panel has not undertaken a thorough review of the quantities of CBMP imported into Jersey, it believes that providing analysis of the supply of CBMP for the local market, provides some useful additional information about cannabis consumption in Jersey.

The Panel notes that the collection of CBMP importation data by the Chief Pharmacist is in its infancy and that a number of patients receive CBMP issued by UK clinics. However, the Panel will be keen to monitor future trends in relation to CBMP consumption in Jersey, as the body of data available to the Chief Pharmacist increases.

[122] Email from HSS officer on behalf of Chief Pharmacist to Panel officer – 26.08.21

Appendix 5

Panel Adviser's Report

Grant Thornton

Regulations for the License Application, Production and Export of Medicinal Cannabis in Jersey

Economic and International Affairs Panel

October 2021

Audit | Tax | Advisory

Contents

Introduction

In accordance with your instructions set out in our agreement for provision of consultancy services (signed 18 May 2021), we have pleasure in enclosing a copy of our report prepared in connection with the Regulations for the License Application, Production and Export of Medicinal Cannabis in Jersey.

Our report discusses matters which fall under the agreed scope of the Agreement for Provision of Consultancy Services. The services to be provided by us pursuant to our engagement by the States of Jersey Economic and International Affairs Scrutiny Panel include feedback in relation to the following Terms of Reference (the Terms of Reference):

- To examine and benchmark the Regulations establishing the terms of licensing for the cultivation, import and export of medicinal cannabis and the comparison with other relevant jurisdictions;
- To examine the merits to the Island of requiring applicants to obtain EU/Good Manufacturing Practice (GMP) certification;
- To evaluate the projected economic benefit to the Island of this sector, including identifying any inherent costs to the taxpayer of associated regulation and administration;
- To identify and evaluate the full scope of the tax regime associated with the sector; and
- To examine any potential impact, positive or negative, on the international reputation of the Island in establishing an industry based on the cultivation, import and export of medicinal cannabis.

The report is confidential and has been prepared exclusively for the States of Jersey Economic and International Affairs Scrutiny Panel. It should not be used, reproduced or circulated for any other purpose, in whole or in part, without our prior written consent.

To the fullest extent permitted by law, we do not accept or assume responsibility to anyone other than the States of Jersey Economic and International Affairs Scrutiny Panel for our work, our report and other communications, or for any opinions we have formed. We do not accept any responsibility for any loss or damages arising out of the use of the report by the addressee(s) for any purpose other than in connection with the purpose for which it was prepared.

Dr Wayne Pisani
Partner

Executive summary

A review of the application process, economic and tax aspects was carried out and the following recommendations should be noted:

Regulatory overview

- In order to facilitate and support industries that want to do business in Jersey, it is strongly recommended that synergies are developed between the Minister for Health and Social Services, the Minister for Economic Development, Tourism, Sport and Culture, and the Minister for the Environment to devise an adequate assessment framework on the environment impact that would at the same time protect and safeguard the interests of third parties and all. It is strongly recommended for any conditions and requirements forming part of the said assessment to be rendered clearly and in a transparent manner before licences are granted.
- The planning and environment process must walk hand-in-hand with the licensing of the operation and this necessitates simultaneous assessments between the different Ministries. One could also consider having a representative from the Ministry for the Environment with the remit of planning within the Jersey Cannabis Agency ('JCA').
- Security and containment is also crucial in the medical cannabis industry. The Jersey Government should lay down clear conditions for security in the operating licence. Similarly, imports, internal transport and exports need proper supervision and control during carriage in/out.
- We recommend for the Ministry for Health and the JCA to ensure that Customs are well-informed and educated about the process.
- The JCA can be formally entrusted with the monitoring function. The monitoring team should ensure compliance with: (i) security measures and installations; (ii) quality of production; (iii) clear moral conduct of people working in the sector; and (iv) trade licences.
- One must clearly distinguish the economic aspect from the operational one. Due diligence and project evaluation should be carried out firstly from an economic point of view. The ultimate beneficial owners and key officers must be individuals of repute with a clear and transparent business history. It is also important that the people behind the project have extensive experience on the subject.
- Consistent dialogue between Government and the operators in order to understand the challenges facing the operators and to foster collaboration in general is necessary. The JCA Advisory Group, even if totally non-executive, is a step in the right direction. Government should appoint a focal point made up of representations of various Ministries in order to dialogue with all operators. The JCA could also act as the focal point for the international promotion of the sector.
- Once the ecosystem starts to grow, it is likely that producers would demand intellectual property ('IP') protection especially on new strains and possibly on new methods of production. It is therefore very important that the office responsible for IP in Jersey is immediately engaged in the process in order to have sufficient knowledge on the subject, taking into consideration possible risk of litigation and the ensuing need for more subject matter competences and expertise from the said office and the judiciary.
- Many commercial banks find difficulty in providing even basic banking services to medical cannabis operators due to risk considerations. It is therefore very important that the banks in Jersey are made aware of the opportunities and of the legality of such operations. It is also important to anticipate the needs of the operators with banks in the setting up stages.
- It is recommended that a streamlined licensing application process listing all the required information and documentation from applicants be adopted.
- It is very important to monitor the developments and to have a comprehensive set of tools that are commensurate with the growing needs in this area. The need for independent testing cannot be stressed enough.
- Understanding and monitoring trends in the composition of cannabis products (cannabinoids) such as tetrahydrocannabinol (THC) and cannabidiol (CBD) is important as it is likely to both be associated with the attractiveness of different products to consumers and have implications for associated health risks.

Executive summary

- There may be reservations on the fact that the license is issued on a yearly basis. This may create uncertainty and is not very healthy for long-term sustainable planning. While caution is appreciated, maybe one should consider that the first licence would be on a trial period of two (2) years to enable sufficient time for setting up and then the full licence would be valid for periods of at least five (5) years each, subjected to annual supervisory review. If a strong monitoring entity is set up, this should not present particular issues.
- It is recommended that Government endeavors to run information campaigns to educate the general public. For many years, cannabis has been flagged as an illicit drug so it may be challenging to convince people that medical cannabis can prove to be a very good cure for their ailments, explaining the positive therapeutic aspect of medical cannabis.

GMP certification

- For Jersey to establish itself as a centre of quality for medical cannabis, the good manufacturing practice certification, when processing or manufacturing is taking place, has to become the main language of dialogue in the whole ecosystem, applying same consistently and effectively.

Economic aspects

- Over the next 5-10 years, the world and European medical cannabis markets are expected to grow by 18% and 67% per annum, respectively, thereby providing significant growth opportunities for newly set-up medical cannabis companies in Europe and beyond.
- The Government of Jersey should encourage licensees to engage in all stages of the medical cannabis production process; starting from R&D to cultivation, flowering and distribution.
- It is recommended to ensure that the workforce employed have the necessary skills and requirements to be able to generate the total expected output and reap the maximum possible benefits.
- Indicative estimates suggest that in the short-term, the industry could generate as much as £1.3 million in wages and salaries; increasing to £4.8 million per annum by 2023; and may increase further to £9.7 million per annum beyond 2023 if employment increases to around 350 in the long-term.
- In its infancy years, the medical cannabis industry's contribution to the Jersey economy should not be expected to exceed the contribution through wages. Again, this reflects the initial impact on profitability as a result of the heavy investment required by medical cannabis companies in the early years of operation when they typically register accounting losses.

The taxation aspect

- The business model of medicinal cannabis companies generally requires that they invest heavily in the early years of the business such that they typically do not register any accounting profits in the early years of operation. Therefore, if Jersey opts for a 20% tax on companies' profits, tax revenues from such activity will be close to zero for several years from the date of license registration.
- The Government of Jersey may consider alternative tax bases, such as company turnover, or weight of the cannabis flower, or units sold; with each of these tax bases having its challenges to administer. In addition, the Government of Jersey should also consider setting lowers tax rates for higher volume producers to incentivise them to scale up production.

The reputation aspect

- It is recommended that an adequate assessment be undertaken with the aim of evaluating the risks that establishing an industry based on the cultivation, import and export of medicinal cannabis on the jurisdiction in general, may represent with a particular focus on whether there is a risk of an adverse effect on the core industries that are significant contributors to Jersey's economy.
- A clear, thorough and transparent regulatory framework documenting all policies and procedures should be implemented, whilst ensuring that all competent bodies are duly constituted.
- Due diligence processes and procedures should be adopted and these in accordance to the EU's AML and CFT framework which should serve as a basis for Jersey to continue building a robust due diligence framework.

Background to the engagement

In March 2019, the Minister for Economic Development, Tourism, Sport and Culture announced that Jersey would start to issue licences for the growth of medicinal cannabis. The Minister stated that a 'window of opportunity' now existed for Jersey to benefit from the high prices being paid for the crop, due to the current limited supply being available from well-regulated jurisdictions.

In 2020, the first licences were issued to companies for the cultivation of medicinal cannabis. As stipulated in the 'Engagement Brief – Medicinal Cannabis APPROVED' document "*The objective is to have a world-class, highly regulated, system* [that] *would be implemented to permit local production of cannabis raw materials for supply into the internationally regulated pharmaceutical market."* [Chief Minister – States Assembly Oral Questions – 26.03.19]

Jersey is operating its medicinal cannabis framework on the basis of a Memorandum of Understanding (MoU) between Government of Jersey (GoJ) and the UK Home Office Drugs and Firearms Licensing Unit (DFLU). Licences are granted under the provisions of the Misuse of Drugs (Jersey) Law 1978 and are required for any operation that involves the cultivation of cannabis plants, and also the production, possession and supply of any controlled substances derived from cannabis plants.

Applications are only considered where the applicant can demonstrate that the cultivated cannabis will be used in the production of a cannabis-based medicinal product manufactured to UK/EU Good Manufacturing Practice (GMP) standards. Any jurisdiction issuing licences to cultivate cannabis (other than industrial hemp) is required, under the provisions of the 1961 UN Single Convention on Narcotic Drugs to have a national Cannabis Agency. The UK is the State that is party to this convention, which was extended to Jersey, and the Home Office is designated as the National Cannabis Agency for the purposes of the Convention.

The Panel would like to understand the role of the Jersey Cannabis Agency (JCA) and its relationship with the UK Drugs and Firearm Licencing Unit (DFLU).

Assumptions

The following assumptions apply in consideration of the report being issued:

- The genuineness of all information and documents provided to us and all signatures (if any) on such documents and the completeness, and the conformity to original documents, of all copies submitted to us;
- That any and all rules, policies, procedures and similar documents have been duly authorised, approved, endorsed and/or issued by the appropriate body;
- The most recent variant of the information and documents provided by the Panel, as at the date of this report, were reviewed. In any case that a discrepancy was noted between any of the documents provided to us by the Panel or information sourced online, the most recent variant of any such document or information was taken to be true, superseding the other document or information;
- In preparing this report, we have relied on the information provided to us by the Panel. The views expressed herein are given in terms of the agreement for provision of consultancy services (signed 18 May 2021) and are limited to the conclusions specifically set forth herein and do not apply, by implication or otherwise, to any other matter. These are based on the completeness and accuracy of the assumptions, facts and representations made to us. If any of the assumptions, facts and/or representations is not entirely correct, complete or accurate, or should any of these facts change or otherwise be altered or should any assumption made prove to be incorrect and/or unreasonable this may affect the accuracy of anything stated herein. As a result, should any material facts have been omitted and/or should any of the facts specified and/or assumptions made not be accurate and/or should any of the facts surrounding the case under review change or be altered or should any assumptions made prove to be incorrect and/or unreasonable we recommend that this fact is brought to our immediate attention for the purpose of us reviewing the contents of this document in the light thereof, as the inaccuracy or incompleteness thereof could have a material effect on our conclusions;
- The contents of this report have been prepared by Grant Thornton Malta solely for the purpose herein and have not been independently verified in a conclusive manner by any third party, including any competent authority. This report does not purport to be comprehensive and is subject to verification, completion and change without notice. Grant Thornton accepts no responsibility for, or makes no representation or warranty, express or implied, as to the truth, accuracy or completeness of this report. Such information involves risks and uncertainties and is subject to change based on various factors;
- Grant Thornton is acting exclusively for the Panel and no one else in connection with this report. Grant Thornton shall not regard any other person as its respective client and shall not be responsible to anyone other than the Panel for providing the protections afforded to its respective clients, nor for providing the conclusions in relation to this report referred to herein;
- Grant Thornton shall not accept any liability whatsoever for any loss howsoever arising from any use of this report or the contents thereof or otherwise arising in connection therewith;
- This report shall not be construed as legal advice or a legal opinion;
- The views expressed in this report are based on current laws, rules and practices as provided to us during the course of compiling this report. The interpretations expressed in this report are subject to any changes, retroactively and/or prospectively, in the law or practices that occur in the future; any such changes could affect the conclusions set out herein. We take no responsibility for any change in circumstances, including changes in law and/or fact. Nor shall we be held responsible to automatically update any aspect of this document in order to reflect any changes in legislation and/or to the judicial and administrative interpretations thereof and/or changes in local implementation/practice, whether this shall be brought into force with retrospective effect or otherwise.

Regulatory overview

An examination and benchmarking exercise of the Regulations establishing the terms of licensing for the cultivation, import and export of medicinal cannabis in or from within Jersey and comparison with other relevant jurisdictions

Terms of licensing for the cultivation, import and export of medicinal cannabis in Jersey

Memorandum of Understanding

A Memorandum of Understanding ('MoU') has been entered into by the Minister for Health and Social Services (' Health Minister') acting through the Government of Jersey Health and Community Services Department ('HCS') and the UK Government's Home Office Drugs & Firearms Licensing Unit ('DFLU') on the 9th October 2020. The MoU is subject to be reviewed every three (3) years and is to be updated as necessary.

The UN Single Convention of Narcotic Drugs 1961 ('Convention') requires any party to the Convention that permits the cultivation of the cannabis plant for the production of cannabis or cannabis resin to apply a system of controls. The UK is the state party to the Convention on Jersey's behalf. As part of the control mechanism, Articles 23 and 28 of the Convention provide for the establishment and maintenance of a government agency, or agencies, to oversee the cultivation and sale of cannabis.

The Convention requires that an agency applies the following provisions to the cultivation of cannabis plants and to the production of cannabis and cannabis resin:

- the agency shall designate the areas in which, and the plots of land on which, cultivation of cannabis plants for the purpose of producing cannabis shall be permitted;
- only cultivators licensed by the agency shall be authorised to engage in such cultivation;
- each licence shall specify the extent of the land on which the cultivation is permitted;
- all cultivators of the cannabis plant shall be required to deliver their total crops of cannabis to the agency – the agency shall purchase and take physical possession of such crops as soon as possible, but not later than four (4) months after the end of the harvest;
- the agency shall, in respect of cannabis, have the exclusive right of importing, exporting, wholesale trading and maintaining stocks other than those held by manufacturers of cannabis and cannabis resin preparation.

The MoU provides the framework for the Jersey Cannabis Agency ('JCA') to exist. There are no specific terms of reference for the Jersey Cannabis Agency, as it is guided by legislation (such as the Misuse of Drugs (Jersey) Law 1978) in terms of what it can and cannot do. The Health Minister is currently designated as the JCA.

In Jersey, the Health Minister is responsible to carry out the functions assigned to the DFLU – the DFLU acts as the licensing authority in relation to the UK's issuance of domestic and import/export licences under the Misuse of Drugs Act 1971. The MoU recognises that the issue of any licences under the provisions of the Misuse of Drugs (Jersey) Law 1978 or the Medicines (Jersey Law) 1995 remains the responsibility of the Health Minister.

The HCS is to inform the DFLU of all relevant developments in respect of entities involved with any one of the following:

- cannabis cultivation;
- supply of materials;
- cannabinoid extraction;
- production of any cannabis-based products (irrespective of purpose);
- research activities;

and is to share relevant documentation related to the services for which consultancy services are offered. The DFLU shall provide a visit with respect to each licence application.

The MoU lays down in Clause 2.2 that there is an expectation to establish 'adequate regulation and compliance checking' around the limitation of the use of narcotic materials to medical and scientific purposes.

Any dispute arising from activities described in the MoU which cannot be resolved by senior regulatory management will be referred to the Chief Pharmacist, the HCS and the Head of DFLU in the first instance. In the event these participants are unable to reach an understanding, it will ultimately be for the Chief Pharmacist to make a determination (with Ministerial input as necessary) on behalf of Jersey, while ensuring that the terms of the Convention are adhered to.

Terms of licensing for the cultivation, import and export of medicinal cannabis in Jersey

Issuance of a licence

A licence may be issued either under the Misuse of Drugs (Jersey) Law 1978 or the Medicines (Jersey) Law 1995. These are issued by the Minister for Health and Social Services ('Health Minister') . Applicants can submit one licence application which provides for the: (i) cultivation; (ii) production; (iii) possession; and (iv) supply of controlled substances (or any combination of these activities). Import and export licences would be granted separately on an individual shipment basis. Cultivation is not restricted to research purposes, as cultivation for the purpose of producing starting material, active pharmaceutical ingredients (APIs) or finished medicinal products is also possible.[1] There are various levels of processing that can take place from simply drying and trimming the dried flower, to extracting the controlled cannabinoid (such as T.H.C [tetrahydrocannabinol] or C.B.D. [cannabidiol]) from dried flower. Whilst the growing of the crop itself and the first few processes, such as the taking-off of leaves and the drying of flowers are agricultural in nature, when it comes to extracting a completely new product from the leaves and flowers it becomes an industrial process.[2]

Presently, the production of medicinal products in accordance with a manufacturer's licence (as per the Medicines (Jersey) Law 1995) is subject to separate provisions. Nevertheless, applicants wishing to also apply for the use of cannabis or any of its controlled derivatives/extracts (as governed by the Misuse of Drugs (Jersey) Law 1978) may do so concurrently seeing that there is one licensing authority.[3]

The Health Minister is responsible for the licensing of any cannabis cultivation and production, and generally the use of any cannabis plants grown in Jersey. The authority given to the Health Minister to issue licences arises out of the provisions of the Misuse of Drugs (Jersey) Law 1978. The Chief Pharmacist also has statutory duties which emerge from said legislation. Moreover, where a cannabis product is to be refined into a medicine in Jersey, then a licence needs to be obtained under the Medicines (Jersey) Law 1995.

A licence would effectively be granting authorisation to cultivate cannabis. Nobody can grow any medicinal cannabis in Jersey until they have had their licence approved and their premises finished.[4]

Overview of the application process

Prospective applicants are to submit a formal application to the Chief Pharmacist. Applicants need to have a site and plans for that site, as the Chief Pharmacist and the UK Government's Home Office Drugs & Firearms Licensing Unit ('DFLU') would eventually need to understand when and how the applicant intends to cultivate cannabis. The application is also to fully detail the applicant's operating procedures and all other arrangements. Applicants are to also provide an environment impact assessment (EIA).[5] The Chief Pharmacist shall conduct a preliminary review; however, the application is shared with the DFLU, who will review and revert with comments and/or clarifications as required.

A joint site visit (by the Chief Pharmacist and the DFLU) and a meeting is scheduled with the applicant, to discuss the applicant's proposals and planned operations, along with the applicant's know-how in relation to the requirements for cultivating cannabis for the eventual production as a medicinal product. The DFLU is to ensure that the obligations under the UN Single Convention of Narcotic Drugs 1961 ('Convention') are met (i.e. they need to ensure that cannabis is cultivated, manufactured or processed for a medicinal purposes/use).[6]

On the basis of information provided during the public hearing with the Health Minister and his team, it is understood that the DFLU would enquire about potential suppliers and customers, as well as look into the security arrangements for the site in question, both in terms of cultivation, as well as for the storage and handling of the cannabis, once it is harvested. Assurance is also sought in regard to security for transport arrangements for moving products, on and off site. Moreover, standard operating procedures around the business are looked at to ensure that the applicant has procedures governing all the operations that it undertakes. Furthermore, the applicant's arrangements regarding the destruction and disposal of controlled substances are also examined. With respect to the destruction of the controlled parts of the plant, the DFLU would look for the same sort of assurances that would be present around the destruction of controlled drugs and medicines. In regard to transportation, arrangements are to be in place similar to transportation of other controlled drugs.

As part of the site visit, the DFLU along with the Chief Pharmacist will meet up with the person who is designated to be the applicant's person responsible for regulatory affairs so as to determine that they have the requisite knowledge, experience and understanding of the legal requirements. There is nothing predetermined in terms of the qualifications one must have, but the person's understanding and knowledge is determined through an interview conducted with said person.[7]

Terms of licensing for the cultivation, import and export of medicinal cannabis in Jersey

Overview of the application process (continued)

The DFLU is to provide a report of its findings and observations within four (4) weeks following the site visit. The report is to be submitted to the Chief Pharmacist and shall give a view as to whether the cultivation to take place is in line with the principles laid down in the UN Convention. The report, along with the applicant's application are then presented to the Health Minister. The Health Minister shall receive advice from the Chief Pharmacist and any other relevant persons, which may include the Police and the Environmental Health Department.

The Health Minister would decide whether to issue a licence, and if a licence is to be issued, what conditions are to apply. Article 10 of the Misuse of Drugs (General Provisions) (Jersey) Order 2009 ('Order') provides the ability for the Health Minister to authorise by means of issuing a licence, the cultivation of cannabis plants, whilst Article 3 of the Order provides the Health Minister to authorise by means of issuing a licence, the production, possession, supply and offering to supply of a controlled drug – whereby, cannabis is classified as a Class B controlled drug. Any licence that is granted is subject to a condition that no cultivation is to take place until the final site has been inspected again to make sure that it meets the specifications.

Duration of application process

New applications will take around twelve (12) to sixteen (16) weeks to complete. Applications for renewal of existing licences should be submitted at least six (6) weeks before the expiry of the current licence.

A licence is granted for a period of one (1) year.[8]

Checks carried out on applicants

Disclosure and Barring Service (DBS) checks, as well as checks under the RiskScreen process, which will look at any watchlists, sanctions, and adverse media in relation to the applicants are undertaken.[9]

Compliance measures

Licence holders will be subject to an annual compliance visit prior to the renewal of a licence. Unannounced compliance checks may also take place, including in situations where information received might give cause for concern.[10]

Modification of a licence

Licence holders may make an application to change or amend an existing licence (i.e. extend, add or remove its activities). Since licences are granted on an annual basis, there is always an opportunity at each annual review to look at whether the licence holder intends to do anything different from what it was doing.[11]

Fees

There are two elements to the licence fee. There is a fee that is to cover purely the local licensing involvements that all applicants are required to pay; as well as another fee, being the DFLU's fee. Moreover, with respect to the renewal of a licence, there is a separate, reduced fee.[12]

Imports and/or exports

All imports and exports are subject to separate licensing arrangements. No export licence will be issued until a corresponding import authorisation has been received from the destination jurisdiction's competent authorities, as per the process provided by the Misuse of Drugs (Jersey) Law 1978. It is to be noted that a transfer of produce/products from Jersey to the United Kingdom would be deemed as an export.[13]

The lawful importation or exportation will be a matter for customs. The licence will accompany the consignment and the person with the import/export licence is to liaise with customs.[14]

Terms of licensing for the cultivation, import and export of medicinal cannabis in Jersey

Environmental aspect

Based on information received from the Ministry for Health and Social Services, an environment impact assessment is carried out with respect to every licence holder's activities at application stage. However, during the public hearing with the Minister for the Environment and his team, it was made clear that an environment impact assessment ('EIA'), properly so-called, would need to be undertaken in accordance with planning law. Such an assessment would be published so as to be open and transparent. Based on their feedback during the said hearing, it seems that the assessment included in the application process, would not qualify to meet the definition of an EIA in terms of planning legislation. An EIA is a process that identifies both the positive and negative environmental effects on proposed developments prior to planning permission being considered. The EIA process is a method of ensuring that planning decisions are made with full engagement of statutory bodies, local interest groups and members of the public. EIAs fall within the domain of the Planning Department and are there as a planning tool.

The Minister for the Environment and his team highlighted the following as areas to be addressed in order to ensure proper regulation from an environmental and planning perspective: security fencing, light pollution and control of smell. It was also confirmed that the same licensing framework is applicable for both indoor and outdoor producers. Moreover, the Minister for the Environment opined that they should be consulted with certain aspects of the licence applications that relate to environmental matters.

Responsibility for structures and buildings

With respect to ensuring that structures and buildings are developed in accordance with all necessary plans and permits, responsibility lies with both the Planning Department and the applicants. Once an applicant's facility is finished, the Chief Pharmacist along with the DFLU will inspect it via a joint visit and until said visit, the applicant would not be able to grow anything.[15] Structures and buildings are to be in line with submitted plans.

Agricultural licence

Under the agricultural control of land laws, the occupation of agricultural land is limited and licences must be obtained.

To occupy agricultural property, one would need to be a *bona fide* agriculturist and be recorded as such. It is also possible for an applicant to have an arrangement with somebody who is a *bona fide* agriculturalist, that would allow them to use the land. [16]

Proposed amendments to Jersey's current legislation

Based on information collected, the following amendments to Jersey's current legislation are foreseen to take place:

- amendments in Jersey's Tax EIA whereby the involvement of the Environment Department is to be required;
- due diligence checks on shareholders is not to remain limited to those holding twenty percent (20%) or more of the company's shareholding.[17]

Recommendations

During our information gathering exercise we have garnered a better understanding of the requirements and process to obtain a licence to cultivate, import and export Medicinal Cannabis in Jersey, mainly through the written responses received to questions posed and verbal responses during the various public hearings. We were also guided to look at the guidelines which applicants should follow in order to submit their application. The outcome of such exercise is that although a process is in place, the written rules which should regulate such framework are either fragmented or not represented in writing. Thus we would recommend for Jersey to adopt clear and easily accessible rules which are also made public enabling transparency and clarity of process to both the general public, as well as stakeholders. For recommendations on what such rules should include, please refer to page 20 of this report.

We also recommend for clarity on the competent body which should be responsible to grant licences, carry out compliance and monitoring on licence holder, and establish the rules governing the activity. The MoU provides that the majority of such duties should lie with the JCA. Rules governing the set-up, governance and operations of the JCA should be established and the JCA should have sufficient internal controls to adopt a system of checks and balances such that decision-making is within the collective power of a collegiate body of persons.

Terms of licensing for the cultivation, import and export of medicinal cannabis in Portugal

Portugal's legal framework

As from January 2019, the legal framework that authorises the commercialisation of cannabis and products based on cannabis for medical purposes, in Portugal, came into force. Although, it was already possible (since1993), for an authorisation procedure to be granted by Infarmed (being Portugal's National Institute of Pharmacy and Medicine) to cultivate, import and export cannabis for medical purposes, it's only from January 2019 that it is possible to market these products and distribute them in the Portuguese market.[18]

Infarmed is the competent entity at the national level to establish conditions and grant authorizations for the activities of cultivation, production, manufacturing, employment, trade, distribution, import, export, transit, transport, detention by any title and the use of plants, substances and preparations included in tables I to IV annexed to Decree-Law No. 15/93, of January 22, within the strict limits of the country's needs, giving precedence to medical, veterinarian, scientific and didactic interests.[19]

Portugal's legislation re. cannabis for medicinal purposes

- Decree-law 8/2019, of 15 January and Ministerial Order 44-A/2019, of 31 January, entered into force of 1 February to regulate Law 33/2018, of 18 July, which set forth the legal framework for the use of cannabis-based medicinal products, preparations and substances for medicinal purposes, in particular their prescription and dispensation in a pharmacy – the Law on the Medical Uses of Cannabis.
- Decree-Law 8/2019 introduced the fourth amendment to Ruling Decree 61/94, of 12 October, which sets forth the rules for control of the illegal market of narcotics and psychotropic substances, adapting the existing regime to the provisions of the Law on the Medical Uses of Cannabis.
- Ministerial Order 44-A/2019 set the pricing of Cannabis-based preparations and substances for medicinal purposes.
- Law No. 33/2018, of 18 July regulates the use of medicines, preparations and substances based on the cannabis plant, for medicinal purposes.
- Decree-Law No. 8/2019, of 15 January regulates the use of medicines, preparations and substances based on the cannabis plant for medicinal purposes. This Decree-Law regulates Law No. 33/2018, of July 18, which establishes the legal framework for the use of medicines, preparations and substances based on the cannabis plant for medicinal purposes. This Decree-Law also makes the fourth amendment to Implementing Decree No. 61/94, of October 12, as amended by Implementing Decrees No. 23/99, of October 22, 19/2004, of April 30, and 28/2009, of October 12.
- Decree-Law No. 15/93, of January 22 provides the legal framework for the trafficking and consumption of narcotics and psychotropic drugs. This is a Portuguese drug control law which implements the 1988 United Nations Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances.
- Regulatory Decree No. 61/94, 12 October regulates Decree-Law No. 15/93, 22 of January.
- Ordinance No. 44-A/2019, of January 31 regulates the price regime for preparations and substances based on the cannabis plant for medicinal purposes.

What activities can be licensed in Portugal?

In Portugal, licences may be obtained to perform the following activities with respect to medicines, preparations or substances based on the cannabis plant, where such activities have a medicinal purpose: (i) cultivation; (ii) manufacture; (iii) wholesale trade; (iv) import; (v) export; and (vi) transit.[20]

Terms of licensing for the cultivation, import and export of medicinal cannabis in Portugal

What is the procedure to obtain a licence?

Applications must be submitted on the Infarmed website through a page that has reserved access for each entity. Applications for each of the abovementioned activities are made individually and must be accompanied by specific documentation, which varies according to the application type. Once an application has been submitted, it is analysed by Infarmed, which assesses the suitability of the applicant and its legal representatives along with the Intervention in Additive Behaviours Service and the police on an ongoing basis.

If the applicant meets these requirements and the supporting documents for the application are sufficient and appropriate, Infarmed will issue a decision of documentary suitability that will be communicated to the applicant. Infarmed will issue a decision on the documentary suitability of a properly completed application approximately ninety (90) to one hundred and fifty (150) days from the submission date. From the date of communication, applicants will have six (6) months to ask Infarmed to inspect the facilities where the activity in question will be performed. This period may be extended, usually only once, if the applicant provides a reasonable reason.

Once Infarmed has carried out an inspection and confirmed that the premises meet the legal and regulatory requirements necessary to engage in the activity under the terms set out in the application submitted, it will issue the corresponding authorisation. If anomalies or divergences are detected in the facilities during the inspection, the applicant will be notified and must remedy them within a reasonable time. Failing this, final authorisation will not be granted. If Infarmed's inspection confirms that there is no need to make amendments or corrections to the facilities, the final authorisation to engage in the activity is issued within approximately 45 days. The applicant may begin its activity only once final authorisation has been granted.[21]

For the purpose of examining applications, the following information may also be requested, depending on the activity to be carried out:

- information on the investment and development project relating to the activity in Portugal;
- information on the facilities to be used for the activity;
- the quantity of product to be used, harvested and obtained, as well as its application and destination;
- the details of the technical officer or technical director, as well as the details of the person responsible for the security of the facilities and the operations; and
- a description of the security measures to be implemented.[22]

Can licences be transferred?

Licences are non-transferable and cannot be assigned to or used by any other person for any purpose. However, it is possible to transfer the shareholdings representing the capital of a legal entity that is or will be the licence holder.

Furthermore, each specific authorisation will be valid only for the period set out in the applicable order. This period cannot exceed one (1) year, but the authorisation can be renewed or maintained for additional periods of one (1) year.[23]

What are the main requirements to obtain a licence?

The requirements to obtain a licence vary according to the activity in question, hence, where applicable, the application must comply with:

- good agricultural and harvesting practices, as provided for in the European Medicines Agency's Guideline on Good Agricultural and Collection Practice;
- good practices for manufacturing active substances intended for medicinal products for human use, as provided for in Commission Delegated Regulation (EU) 1252/2014 of 28 May 2014 supplementing EU Directive 2001/83/EC;
- good manufacturing practices for medicinal products, as provided for in Decree-Law 176/2006 of 30 August 2006, which sets out the legal framework for medicinal products for human use, with the necessary adaptations; and
- good practices for the distribution of active substances and medicinal products which are in force in the European Union.[24]

Terms of licensing for the cultivation, import and export of medicinal cannabis in Portugal

Manufacturing and import activities

Manufacturing and import activities are regulated and licensed by Infarmed. The production of medicinal cannabis is subject to the following approvals:

- license for the industrial activity to be provided by the Minister of Economy;
- license for the manufacturing of medicinal products to be provided by Infarmed; and
- license for the manufacturing of medicinal cannabis to be provided by Infarmed.

For the import of medicinal cannabis it is necessary to obtain a license from Infarmed for the undertaking of such activity and also an additional and specific authorisation from Infarmed for each import transaction.[25]

How are cannabis-based medicinal preparations and substances placed on the market?

Those who wish to place cannabis-based medicinal preparations and substances on the market must obtain a marketing placement authorisation (MPA) from Infarmed. This is a different authorisation to that which is required for medicines.

MPA applications must be accompanied by various information, including the following:

- the identification of the preparation or substance;
- the identification of those involved in the production chain of the preparation or substance;
- the authorisations that have already been granted; and
- proof of compliance with good practice or the applicable legislation (eg, copies of manufacturing authorisations and the Good Manufacturing Practice for Medicinal Products certificate).

To determine the outcome of the application, Infarmed will consider the preparation or substance's safety, including:

- its pharmaceutical form;
- its administration route; and
- relevant technical and scientific knowledge.

Infarmed will reject applications if:

- the documents submitted do not comply with the requirements;
- the preparation or substance's qualitative or quantitative composition does not correspond to that which was declared;
- the preparation or substance's pharmaceutical quality has not been properly demonstrated; or
- the preparation or substance’s safety is not guaranteed.

It takes approximately one hundred (100) days from the submission of the application to obtain an MPA. Where Infarmed requests additional documents or clarification, the procedure is suspended until they have been submitted. This may lengthen the overall time required.

MPAs are valid for five (5) years, although they can be renewed. After its first renewal, an MPA is considered valid for an indefinite period, unless Infarmed determines that it is valid for only a further five (5) years for pharmacovigilance reasons.[26]

MPA Renewals

Applicants must submit MPA renewal applications at least nine (9) months before the MPA expires. Renewal applications must detail any changes that have occurred since the first MPA was granted, including:

- any updated complementary documentation that evidences the preparation or substance's adaptation to technical and scientific progress;
- a summary of the preparation or substance's characteristics;
- the preparation or substance's updated labelling and usage instructions; and
- a description of the situation regarding the preparation or substance's pharmacovigilance data.[27]

Terms of licensing for the cultivation, import and export of medicinal cannabis in Malta

Malta's legal framework

No cultivation, importation or processing of cannabis and no production of any products intended for medicinal and, or research purposes deriving from or resulting from the use of cannabis as defined in the Production of Cannabis for Medicinal Research Purposes Act ('Act') and no trade in cannabis and, or any preparations intended for medicinal and, or research purposes as deriving from cannabis shall be carried out in Malta prior to obtaining all necessary approvals, authorisations, licences and, or permits as required by or under all applicable laws including this Act and any regulations subsidiary to it:

Provided that an approval, authorisation, licence and, or permit may only be granted where the intended use of cannabis and, or products deriving therefrom is for medicinal and, or research purposes:

Provided further that cultivation that does not form an integral part of a production process intended for production of products for medicinal and, or research purposes is expressly prohibited.[28]

To carry out the activities listed above, one needs to obtain a letter of intent from Malta Enterprise after making an application on the prescribed form. The issuing of a letter of intent by Malta Enterprise shall be subject to the applicant submitting an application via Malta Enterprise's prescribed form; and is subject to any additional information required by Malta Enterprise, deemed at its discretion to be necessary for the evaluation of the application. Following the issuance of a letter of intent as aforementioned, the applicant would be required to obtain a licence from the Maltese Medicines Authority. The application for such licence would not be entertained unless a letter of intent from Malta Enterprise is in hand. Malta Enterprise vets the fitness and properness of the project and individuals involved from a commercial, competence and integrity perspective, whilst the Medicines Authority is responsible to assess the medical and scientific aspects, ultimately responsible for granting a Good Manufacturing Practice (GMP) certificate.

Malta's legislation re. cannabis for medicinal purposes

- Production of Cannabis for Medicinal and Research Purposes Act (Chapter 578 of the Laws of Malta);
- Production of Cannabis for Medicinal and Research Purposes (Fees) Regulations (Subsidiary Legislation 578.01 of the Laws of Malta); and
- Maltese Medicines Authority's General Guidelines on the production of cannabis for medicinal and research purposes.

Issuance of a licence

A licence issued by the Medicines Authority is subject to:

- the applicant's submission and the evaluation of documents, including due diligence documentation, and other information deemed necessary;
- the attainment by the applicant of the required authorisations, permits, approvals and clearances from other entities as applicable;
- compliance by the applicant with applicable terms and conditions, including the possession of relevant qualifications in line with the Mutual Recognition of Qualifications Act (Chapter 451 of the Laws of Malta); and
- any additional information requested by the Medicines Authority, at its discretion, deemed necessary for the evaluation of the licence application.

The Medicines Authority shall receive the fees as specified in the Production of Cannabis for Medicinal and Research Purposes (Fees) Regulations from persons intending to carry out importation, wholesale distribution, cultivation and processing, and/or production of cannabis, and any other activity related to cannabis for medical use and/or research purposes as determined by the Medicines Authority.[29]

The Medicines Authority provides guidance and consultation on scientific matters to support research and development as well as accessibility of quality medicinal cannabis. The Medicines Authority is responsible to review applications for the importation and wholesale distribution of cannabis-based products for medicinal use. Activities related to the production of cannabis for medicinal and research purposes are regulated through comprehensive evaluation of scientific and technical documentation, security considerations, and good practices.

The validation and processing of applications submitted for the approval, renewal, authorisation, licence, and/or permit, shall only start once the relevant fees have been paid in full by the applicant to the Medicines Authority, unless otherwise decided by the Medicines Authority. The Superintendent of Public Health may suspend or revoke licences, certificates, or permits granted or issued if the fees stipulated in these regulations are not paid in full and on time.[30]

Terms of licensing for the cultivation, import and export of medicinal cannabis in Malta

Good Manufacturing Practice

As already mentioned, operations related to medicinal cannabis production, analysis and research require a letter of intent from Malta Enterprise. This is then followed by an assessment through the regulatory authority, being the Medicines Authority. Inspections of facilities are carried out in accordance with the principles and guidance of EU good practices. The Medicines Authority considers applications for EU-GMP certification, both for local and international facilities.

The Medicines Authority reviews applications for the granting of Good Manufacturing Practice certification and/or licensing in accordance with the Production of Cannabis for Medicinal and Research Purposes Act ('Act'), from applicants who have obtained a letter of intent from Malta Enterprise.[31]

Manufacturing

Products may be consistently produced and controlled in accordance with the quality standards appropriate to their intended use and in line with the current good manufacturing practice guidelines published by the European Union Commission. The Medicines Authority shall inspect the licensed site to attest EU(GMP) compliance.

Whether local or overseas, cultivation of cannabis to be subsequently manufactured in Malta, must be in accordance with Good Agricultural and Collection Practices (GACP), backed by a documented quality system. Active substances, as dried flower in bulk, must be handled under GMP.[32]

Application process

Applications for the production of cannabis for medicinal and research purposes must be completed and the licence and EU(GMP) certificate must be granted before activities related to cannabis production in terms of the Act are carried out.

The application/renewal fee must be paid on first application and on renewal of the licence every three (3) years or as otherwise determined by the Medicines Authority. An annual fee must also be paid upon the first issuance of the licence and is due every twelve (12) months thereafter. Fees are not refundable.

Furthermore, applications are subject to on-going review by the Medicines Authority.[33]

Obligations

- Applicants must engage a qualified person; this person must have the necessary requirements and be recognised by the Medicines Authority to act as such (this person must be a pharmacist registered with the Maltese Pharmacy Council and must be resident in Malta). The qualified person is, *inter alia*, responsible for keeping an up-to-date register to document and certify each production batch.
- The production, storage, packaging and labeling of cannabis may only be carried out inside the approved designated site.
- Licence holders must provide details on waste management, which must be in accordance with environmental and waste legislation.
- Licence holders must comply with all applicable laws, including occupational health and safety, employment, environmental, sanitary and waste management, electrical, safety, tax, and anti-money laundering legislation.[34]

Import and/or Export

A licence holder is responsible for obtaining the import and export documentation and permits required and must comply with Maltese custom laws and international conventions on cannabis. Exportation of cannabis is restricted to finished products intended for medicinal use and must be in conformity with import permits issued by the competent authority of the country of final destination and must comply with the laws of that country, or of the country of transit or transshipment, and relevant provisions of the United Nations Single Convention on Narcotic Drugs (1961), as well as obtain the necessary authorisations from the Office of the Superintendence of Public Health.[35]

One is to note that with respect to importation of medicine containing cannabis, this is to be done in accordance with the Dangerous Drugs Ordinance (Chapter 101 of the Laws of Malta), as opposed to when an industrial process is involved, and thus, the terms of the Production of Cannabis for Medicinal and Research Purposes Act (Chapter 578 of the Laws of Malta) shall be applicable.

Terms of licensing for the cultivation, import and export of medicinal cannabis in Malta

Possession and transactions

A licence holder must inform the regulatory authority of the number of finished product packs that shall be produced over the subsequent quarter, whether intended for the local market or export. Proof of payment of the corresponding research and education contribution must be provided to the Medicines Authority who shall consider approving the generation of an equivalent number of serial numbers.[36]

Reporting obligations

Licence holders must keep records and submit them on a quarterly basis to the Medicines Authority. Records include the source from which cannabis was received at the local licensed facility, the quantity and form of cannabis received, including a copy of the import permit, the number of finished unit product packs produced, and the name o the entity to which the products are sold or provided and the site to where the cannabis is transported or delivered, including copy of export permit for exported products.[37]

Advertising

Advertising must be in line with the advertising regulations in the Medicines Act (Chapter 458 of the Laws of Malta) and the Medicinal Products (Advertising) Regulations, 2005 (S.L. 458.32).[38]

Research and Development

Research and development activities related to cannabis may be carried out in licensed sites, subject to approval by the Medicines Authority and other relevant bodies such as the ethics committee as may be applicable.[39]

Testing

Tests should be carried out in line with the European Medicines Agency (EMA)'s guidelines

- Guideline on quality of herbal medicinal products/traditional herbal medicinal products EMA/HMPC/201116/2005, as amended; and
- Guideline on specifications: test procedures and acceptance criteria for herbal substances, herbal preparations and herbal medicinal products/traditional herbal medicinal products EMA/HMPC/162241/2005, as amended.[40]

Security Measures

- Due Diligence – due diligence procedures are applicable to company shareholders, ultimate beneficial owners, directors, management, qualified persons, responsible officers and any other persons with a financial interest and persons with decision making powers of influence. Due diligence documents are to be submitted with the application. The licence holder is responsible to request and retain clean police conducts for all personnel, with up-to-date certificates being accessible to the Medicines Authority as required.
- Security Compliance – access to areas within the licensed site must be physically restricted to authorised persons, with adequate managerial supervision. A licence holder must ensure that sufficient security measures are in place.
- Monitoring – the perimeter of a licensed site, and particularly areas within a site where cannabis is present, must at all times be visually monitored by suitable visual recording devices and an intrusion detection system. The visual recording devices should be backed up at least every two (2) weeks and historical records retained.[41]

Variation of a Licence

It is possible to apply for a variation to a licence. The Medicines Authority reviews applications for variation(s) to a licence issued in accordance with Production of Cannabis for Medicinal and Research Purposes Act, from applicants who were issued with a licence in accordance with said Act.[42]

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Recommendations

Industrial Space, Security and Monitoring

Providing operational space especially for foreign, and even for local investors, is crucial. It would also be important to assess the investors appetite to pledge capital towards the development and adaptation of the operational facilities compared to the lease of **ready-made structures**. Being a small territory, planning and environment considerations are important. Concerns raised by the Environment Minister were noted. Perhaps one could consider some form of **zoning** whereby all cannabis operations are clustered within one or two zones. Such zones could furthermore be fenced off. This would surely facilitate security, monitoring and logistics as shall be explained further on. The facilities, even those rented from the private sector, should have all the necessary requirements to be able to qualify for the status of GMP. An 'industry' stamp versus one of agriculture is recommended. While the cannabis cultivation process is 'regulated' through the Good Agricultural and Collection Practice (GACP) certification, an industrial process is regulated in more detail under the Good Manufacturing Practice (GMP).

It is understandable that in Jersey, industrial space or indeed space in general, comes at a premium. At the same time however, there is competition for good medical cannabis investments from a number of countries like Portugal, Greece, and Macedonia where space for industrial operations is much more readily available. Thus, the rates of **rent for the space** available in Jersey must remain competitive.

It is recommended for Jersey to consider the **planning and environmental issues** raised by the Environment Minister. It is understood that in some cases there would be a simple change of use from 'common' agriculture to 'medical cannabis'. Although this may *prima facie* appear a simple operation, in reality it is more complex, because medical cannabis poses issues of smell, security and transport and logistics considerations.

In order to facilitate and support industries that want to do business in Jersey, it is strongly recommended that **synergies** are developed between the Minister for Health and Social Services, the Minister for Economic Development, Tourism, Sport and Culture, and the Minister for the Environment to devise an adequate assessment framework on the environment impact that would at the same time protect and safeguard the interests of third parties and all. It is strongly recommended for any conditions and requirements forming part of the said assessment to be rendered clearly and in a transparent manner before licences are granted.

As aforementioned, having a cluster of operators in one zone would facilitate matters significantly. The planning and environment process must walk hand in hand with the licensing of the operation and this necessitates simultaneous assessments between the different Ministries. One could also consider having a representative from the Ministry for the Environment with the remit of planning within the JCA.

Additionally, Medical cannabis operations are demanding on the **services infrastructure** given the substantial electricity and water consumption. Accordingly, the infrastructure must be readily available. Regard is to be also had of supply chain validation process which may be digitally based and would require good bandwidth connectivity that could eventually facilitate internet and blockchain based setups. Today many countries do operate through the use of innovative technology, such as distributed ledger technology, a system of traceability, compliance and control in order to ensure that all the conditions of the UN Treaty and the national legislation are met.

Security and containment is also crucial in the medical cannabis industry. The Jersey Government should lay down clear conditions for security in the operating licence. If possible, when the premises consist of glass houses, a perimeter fencing should be built around the premises so that a double layer of security can be installed. It is also important that companies that operate in this sector are made responsible for their own security and containment with clear penalties for breaches. It is recommended that applicants be assigned the responsibility of ensuring that all required security measures are in place, possibly by requiring them to appoint a third-party professional firm that has the necessary trained resources to handle the applicant's security compliance within the premises and the surrounding perimeter.

The body responsible for monitoring, should monitor and control on an ongoing basis all security features in coordination with law enforcement bodies. Providing for training given the peculiar requirements of this industry. To this effect it is advisable that both the Chief Pharmacist and the JCA together with the law enforcement bodies coordinate a plan of action and continued training to address the said security aspects. It is recommended that an entity be vested with supervisory responsibility to monitor and control, where such an entity would have the power to place mitigation measures in cases of breaches and if such breaches are consistent and substantial, the entity could recommend to the Health Minister that the operating license is withdrawn. Additionally, it should be ensured that a methodology is in place for an ongoing screening process on the applicant company as well as its officers and employees.

Recommendations

Similarly, imports, internal transport and exports need proper supervision and control during carriage in/out. Such measures are important to strengthen security.

Moreover, we recommend for the operating licence to clearly lay down the conditions for the disposal of waste material. One frequently used option is incineration, as it possibly represents the easiest method, but there are other options.

Customs

We recommend for the Ministry for Health and the JCA to ensure that Customs are well-informed and educated about the process. Again, like the Police, Customs are trained to be attentive to illicit drug importation. Therefore, there is a chance that a change in approach would be mandated from their end, possibly necessitating training for the officials responsible for this aspect.

Here one cannot but open a window of caution on the issue of recreational cannabis. It is very important that at political level the issues are not mixed up or confused. There is a risk that the more prominent manufacturers of medical cannabis in Europe are not very much in favour of an environment where cannabis for entertainment (non-medical) purposes is allowed. One must keep in mind that cannabis is by far the most widely used illicit drug in the European Union[43] accounting for thirty-eight percent (38%) of all money spent on the illicit drug market. [44]

Market monitoring

The JCA can be formally entrusted with the monitoring function.

Cannabis products have become increasingly diverse in Europe. This trend may continue as more countries open for medical cannabis. It is therefore important to ensure that countries capture adequate information with which to monitor these products and their effects on health. Distinguishing cannabis products for recreational use from medical cannabis products and unregulated CBD oils will be important for law enforcement in many jurisdictions. The monitoring team should ensure compliance with the following:

- Security Measures and Installations;
- Quality of Production;
- Clear moral conduct of people working in the sector; and
- Trade licences.

Processes and support

One must clearly distinguish the economic aspect from the operational one. Due diligence and project evaluation should be carried out firstly from an economic point of view. The ultimate beneficial owners and key officers must be individuals of repute with a clear and transparent business history. It is common for authorities to engage external service providers to carry out external due diligence on the UBOs and key officers, as such entities would have the necessary resources to carry out the necessary checks.

It is also important that the people behind the project have extensive experience on the subject. On one hand, encouraging startups with new ideas is commendable but at the same time being a nascent sector for Jersey, equally important is that one starts on the right footing and therefore at least initially it is very important to have experienced operators.

This type of due diligence/economic evaluation should be carried out keeping in mind the importance of a sound system of checks and balances such that authority is not exercised by one and the same source of control.

The third aspect of evaluation is the economic one or the actual viability of the project. Ideally an economic benchmark of ‘x’ pounds per sq. metre of added value is worked out and every project would be measured against this benchmark. Once a project is granted an ‘economic’ approval, then the process for an operating license in line with the requirements of the MHRA and the home office, may be initiated.

Working committees

Consistent dialogue between Government and the operators in order to understand the challenges facing the operators and to foster collaboration in general is necessary. The JCA Advisory Group, even if totally non-executive, is a step in the right direction.

Government should appoint a focal point made up of representations of various Ministries in order to dialogue with all operators. Thus, the operators would have quick, immediate and direct access to different Ministries. This is especially important in the setting up stages. At the same time, the operators can put forward ideas and actions on how to grow and implement the medical cannabis ecosystem. One could explore building on the Steering Committee brought to light during the public hearing with the Economy Minister.

Recommendations

We recommend for every Ministry involved to appoint a representative in order to become the focal point such that all matters related to a medical cannabis project are referred to the said point of contact. The most important ones would be:

- industrial;
- planning permit issuance;
- security; and
- trade and exports.

As already pointed out, the set-up and governance structure of the JCA is very important. The JCA should be equipped to the extent that it acts as a link with the three main Ministries namely those of health, economy and environment. The JCA could also act as the focal point for the international promotion of the sector.

Generation of IP

The creation of IP is necessary in order to ensure a sustainable growth and future for the sector in Jersey.

Once the ecosystem starts to grow, it is likely that producers would demand intellectual property ('IP') protection especially on new strains and possibly on new methods of production.

It is therefore very important that the office responsible for IP in Jersey is immediately engaged in the process in order to have sufficient knowledge on the subject, taking into consideration possible risk of litigation and the ensuing need for more subject matter competences and expertise from the said office and the judiciary.

The Government may consider introducing incentives (if not already available) for patents and IP generation including fiscal benefits on chargeable income generated from such patents.

It is recommended that if Jersey goes for cultivation activities, the operators are encouraged in order to seek research partners. These could be other operators in more complex value chains, hospitals, universities, clinical research organizations etc. It would be very positive for Jersey to build a reputation that its cultivation plants are supporting research and development.

International law firms and IP

The cannabis sector can provide an interesting niche for the legal profession as it is likely that operators will seek to protect their interests on the development of new production processes or new seeds. Some law firms can obtain knowledge including technical knowledge to be able to provide such services.

Funding

Some entity from Government or supported by Government could work on the creation of a startup fund to help the smaller companies. This could be done in many ways with financial contribution either directly by Government or through the stock exchange and similar avenues. This could be instrumental for attracting research especially research related to the development of either new processes or new strains. As commonly acknowledged, research is initially almost always a cost centre and startup funding is very often necessary to attract and kick start even the smallest element of Research and Development.

Banking

Many commercial banks find difficulty in providing even basic banking services to medical cannabis operators due to risk considerations. It is therefore very important that the banks in Jersey are made aware of the opportunities and of the legality of such operations. It is also important to anticipate the needs of the operators with banks in the setting up stages.

Licence applications

We were provided with redacted copies of recently submitted Jersey licence applications as part of our review process. We note that some licence applications are more detailed than others. To eliminate any variations from one licence application to another, it is recommended that a streamlined and formal application process listing all the required information and documentation from applicants be adopted.

Currently Jersey licence applications are being processed in around 12 to 16 weeks, whilst licences are valid for a period of 1 year. Having a licence with a validity period of 1 year is likely to create an element of uncertainty for the applicant. It is thus recommended that licences be issued for a longer period, possibly of between 3 to 5 years.

Recommendations

Such an approach would also provide administrative efficiency to manage resources and enable more thorough vetting of license applications coupled with ongoing supervision to ensure compliance with all expected requirements, rather than the pressures of annual renewal of applications.

Clinical trials management

In order to support research leading to developments in medical cannabis, possibly leading also to personalized cannabis medicine, one needs to lay the foundations for a clinical trial management and support entity. Such an entity should gather as much knowledge as possible on how to attract, support and implement the setting up of clinical research operations. Collaboration with UK hospitals could be very important and possibly a number of UK hospitals could be open to such arrangements. Again, a number of UK universities and CRO companies could be potentially attracted to carry out clinical research in a country that fosters cultivation.

Analytical and testing laboratories

No ecosystem can be sustainable or can grow without the support of testing, analytical and certification services. Today, a number of universities have geared up to provide such services and if the cultivation and processing of medical cannabis grows, certain operators may be encouraged to set up their own laboratory.

At the same time, the person or entity responsible, must have access to a laboratory in order to be able to challenge and corroborate laboratory results of the operators. Monitoring developments in the area of cannabis is complicated because the number of cannabis-based medical and health-oriented products has expanded. These include products manufactured to pharmaceutical quality standards (under GMP) and other with varied composition and product descriptions. Some of these may potentially be confused with the forms of cannabis available for recreational use.

Jersey could consider opening up to international Universities of good repute. This dialogue with Universities could help Jersey officials to gain and increase knowledge to become more conversant with development in the different areas of medical cannabis. The international market is very dynamic and is changing rapidly.

There is no uniform legislation across Europe, so THC concentrations have risen in European cannabis activities in different amounts.

Overall, the dynamic nature of the current cannabis market and diversification of cannabis products available gives rise to considerable challenges for existing monitoring approaches and therefore gaining constant knowledge and keeping up to date on the subject are of paramount importance. The same applies for the protection of consumers in Jersey. New forms of cannabis have the potential to impact public health. It is therefore very important to monitor the developments and to have a comprehensive set of tools that are commensurate with the growing needs in this area. The need for independent testing cannot be stressed enough.

Achieving value added

Cultivation contributes towards providing the raw material for an industrial process but in many instances the real added value is in the production process converting the ‘raw material’ into a finished product. The process is complex and in many instances in Europe as long as any part of the process such as flowering is done under GMP conditions, then the process is considered to be of an industrial nature (as against an agricultural one). The more advanced the process the more value added there is.

Understanding and monitoring trends in the composition of cannabis products (cannabinoids) such as tetrahydrocannabinol (THC) and cannabidiol (CBD) is important as it is likely to both be associated with the attractiveness of different products to consumers and have implications for associated health risks. Although THC is the most important component of cannabis in relation to its attractiveness for recreational use, yet consumer interest in CBD is growing exponentially both because it is considered to have some beneficial effects and because it may moderate some of the less desirable effects associated with THC consumption.

There is growing interest in the medical value of cannabis and cannabinoids, and these are increasingly becoming available as medicines in Europe. Some cannabis-based medicines contain CBD only and may be used to treat specific conditions such as paediatric epilepsy, treat pain and provide remedies for well-being in general.[45]

Recommendations

Other cannabis-based medicines contain significant levels of THC and/or combination of THC and CBD. These may be subject to national legal sanctions unless approved for medical use. While medicines containing cannabinoids can resemble other medicinal products, some cannabis-based preparations can be very difficult to distinguish from illicit cannabis.

Here one must debate the validity of having a law or maybe an amendment of an existing one that specifically regulates cannabis for medical use. This amendment would facilitate the process from a marketing point of view, from a licensing one as well as from a regulatory perspective. Certain conditions such as the process for the economic approval, the process for licensing and the remits of the respective organisation could easily be explained in a specific legislation.

From a marketing perspective international players prefer to have a regulated environment which is easy to understand. Jersey has the advantage of the English language. Other competing countries lack the clarity of regulations in this sector. Having clear and easily understandable legislation could prove to be a competitive advantage and a unique selling point in attracting foreign investment.

There may be reservations on the fact that the license is issued on a yearly basis. This may create uncertainty and is not very healthy for long-term sustainable planning. While caution is appreciated, maybe one should consider that the first licence would be on a trial period of two (2) years to enable sufficient time for setting up and then the full licence would be valid for periods of at least five (5) years each, subjected to annual supervisory review. If a strong monitoring entity is set up, this should not present particular issues.

Other business areas

Outside US and Canada very few seedbanks exist. There could be an opportunity to set a seedbank for existing and new strains that could be sequenced from a genetic perspective. This could eventually be commercialised equally to producers in medical cannabis as well as to pharmaceutical companies.

Another important area that is being developed is the use of medical cannabis for veterinary medicine. This is a new niche area. While in the last five (5) years the market for medical cannabis for human consumption has seen huge strides forward, that of the application of cannabis-based products to animals is practically maiden territory. While competences are rare and it would not be very easy for the authorities to find people with such competences; yet given that it is an unexplored market that could grow equally to the human consumption market, it could be worthwhile to explore. Some Canadian companies have specialised in this field and surely this is an area for growth.

Agritech

Production processes continue to be developed with higher yields per sq. metre. Vertical growing and hydroponic growing are increasingly becoming popular especially where the cost of electricity is substantial. The use of medical cannabis for certain agricultural processes is to a large extent at an experimental level although some positive progress has been achieved.

Awareness

It is recommended that Government endeavors to run information campaigns to educate the general public. For many years, cannabis has been flagged as an illicit drug so it may be challenging to convince people that medical cannabis can prove to be a very good cure for their ailments, explaining the positive therapeutic aspect of medical cannabis.

At the same time, local operators should be motivated to carry out corporate social responsibility actions and events not only to win market share but also to educate people on its use, explaining the pros and cons of cannabis use for medical purposes. On a parallel level the ‘education’ of the medical profession may prove to be a good challenge. This could be done by either sponsoring visits of medical people to events overseas, sponsor local events and conferences, inviting the medical profession to such events, invite leading researchers for educational events and workshops, etc.

Distribution of responsibilities

It is advisable that responsibility for the vetting and oversight of licence applications be assigned to a body having a pool of resources available to it, with expertise and proficiency in relevant areas including pharmaceutical, commercial and environmental fields. A way of achieving this might be through the addition of resources within the JCA.

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GMP certification

To examine the merits to the Island of requiring applicants to obtain EU/Good Manufacturing Practice (GMP) certification

Requirement of applicants to obtain a GMP certificate - Jersey

Good Manufacturing Practices (GMP) certificate

- The MHRA issues GMP certificates for manufacturers of active pharmaceutical ingredients (APIs) or finished medicinal products, following inspections made in accordance with the MoU between the MHRA and Health and Community Services.[1]
- Licences for the manufacturing of medicinal products (in terms of the Medicines (Jersey) Law 1995) are only granted by the Minister following the applicant's granting of a GMP certificate issued by the MHRA.
- Any entity wanting to (i) manufacture the raw substance to be used in the medicine; or (ii) the medicine itself would need to have a GMP certificate.
- Anybody wanting to manufacture a medicine or to manufacture the active substance needs to be GMP certified.[2]
- It is not anticipated that there will be local development in relation to expertise around the GMP inspections as reference will always be made with the MHRA, being an internationally recognised expert body in that area.
- A good agricultural and collection practices (GACP) certificate is only required for the cultivation of cannabis, whereas manufacturing of the product necessitates possession of a GMP certificate.
- Any cannabis flower that is going into the pharmaceutical or lucrative market will be regulated by the industry and will require a GMP certificate, which will be externally audited. The primary audit would be done by the MHRA, which would confirm GMP compliance. Customers would then most likely want to do their own audit to a similar or higher standard as well.[3]

The hallmark of success: GMP

For the purposes of establishing oneself as a centre of quality for medical cannabis, the good manufacturing practice certification has to become the main language of dialogue in the whole ecosystem. GMP enables Jersey to build a brand of quality and seriousness. It enables the operators in its territory to join international value chains which otherwise would not be available.

GMP is the hallmark of success. The Chief Pharmacist in Jersey with the support of MHRA is instrumental in the granting of GMP certification. It is equally important that the Chief Pharmacist together with the JCA instills in the operators the GMP requirements from day one that they set their feet in Jersey.

In the long term the Chief Pharmacist and his team could acquire the necessary competences to grant GMP under the approval of the MHRA and thus reduce dependency on the UK.

The Chief Pharmacist of Jersey may also look for inspections of GMP at other European English speaking medicine authorities like those in Ireland, the Netherlands and Malta.

Today the GMP system is practically harmonised across Europe and there is mutual recognition between all medicine authorities.

It is known that the MHRA is quite a busy institution with a lot of dependency on its expertise for GMP. There may be a risk that timeliness becomes an issue on a matter where speed is crucial. Another important element of GMP is the provision of Qualified Persons.

Qualified Persons are necessary not only for GMP purposes but also to release the medical cannabis products for exports or for local consumption. One does not find Qualified Persons easily anywhere in Europe and Jersey should address this requirement immediately. Having good local Qualified Persons would also reduce dependency on the MHRA.

While discussing HR requirements, it is also important to keep in mind the other skills that are necessary for the process, like laboratory technicians and analysts, industrial pharmacists and chemists, mechanical engineers and technicians, etc.

The GMP describes the minimum standard that a medicines manufacturer (in this case a medical cannabis manufacturer) must meet in their production processes be they simple or complex.

Requirement of applicants to obtain a GMP certificate - Jersey

The European Medicines Authority (EMA) coordinates inspections to verify compliance with these standards and plays a key role in harmonising GMP activities at European Union level. Any manufacturer of medicines intended for the EU market must comply with GMP even if the manufacturer is located outside of the EU. GMP requires that medicines:

- are of consistent high quality;
- are appropriate for their intended use; and
- meet the requirements of the marketing authorisation or clinical trial authorisation.

The EMA's website gives very detailed guidelines and legal instruments in order to coordinate and harmonise GMP activities at all EU levels. Manufacturers and importers located in the European Economic Area (EEA) must hold an authorisation issued by the national competent authority of the Member State where they carry out these activities.

They must comply with EU GMP to obtain a manufacturing or import authorisation. They can ensure that they meet all their legal obligations by following the EU GMP guidelines.

Importers are responsible to ensure that the third country manufacturer they are importing from complies with GMP. Marketing authorisation applicants are responsible to ensure that the proposed manufacturing sites included in the marketing authorisation (where applicable), comply with GMP. Manufacturers of active substances intended for the manufacture of human medicines for the EU market must register with the national competent authority of the Member State where they are located.

Active substance manufacturers must comply with GMP. In addition, the manufacturer of the finished product is obliged to ensure that the active substances they use have been manufactured in compliance with GMP.

Importers of active substances intended for the EU market are also required to register. In addition, each consignment needs to be accompanied by a confirmation by the competent authority of the country where it is produced that it conforms to GMP standards equivalent to those in the EU, unless a waiver applies.

In the EU, national competent authorities are responsible for inspecting manufacturing sites located within their own territories.

Manufacturing sites outside the EU are inspected by the national competent authority of the Member State where the EU importer is located, unless a mutual recognition agreement (MRA) is in place between the EU and the country concerned. If an MRA applies, the authorities mutually rely on each other's inspections.

If products are imported directly into more than one Member State from a manufacturing site outside the EU, there may be more than one national competent authority responsible for inspecting it. The EMA facilitates cooperation between the authorities concerned in supervising the site. Moreover, EU competent authorities plan routine inspections following a risk-based approach, or if there is suspicion of non-compliance.

Recommendations

For Jersey to establish itself as a centre of quality for medical cannabis, the good manufacturing practice certification, when processing or manufacturing is taking place, has to become the main language of dialogue in the whole ecosystem, applying same consistently and effectively.

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Economic aspects

Overview of developments in the market for medical cannabis and considerations about the potential economic contribution of the medical cannabis industry to the Jersey economy

The world and European medical cannabis markets

The Medical Cannabis Marked in the World and Europe

The global cannabis market is estimated to have generated £16.5 billion in revenues in 2020 and is expected to grow at an annual rate of 18% per annum over the next five years.[1] The European medical cannabis market has also seen considerable growth. It has been valued at £198 million in 2020 and is estimated to have contributed to the treatment of over 100,000 patients. It is expected that this number will grow significantly over the next few years. Some estimates suggest that the European market will generate £2.7 billion in revenues by 2025; reflecting a growth rate of 67% per annum.[2]

Germany is the largest consumer of medical cannabis, with annual consumption estimated at around £146 million. This is equivalent to 73% of all retail cannabis sales in Europe, reflecting the Germans' legal access to medical cannabis. Italy is the second largest consumer market with an estimated value equal to £17 million, while Austria, the Netherlands and Switzerland follow with sales of just above £9 million. For this reason, most European producers seek to export to Germany. In fact, in 2019, Germany imported 6,500 kilograms of cannabis flower to be dispensed to patients in pharmacies. This is almost twice the quantity produced by Europe's largest exporter – the Netherlands.

In 2019, the Netherlands exported 3,370 kilograms of cannabis flower for pharmacy dispending across EU countries; with the majority being produced by Bedrocan. Other major suppliers of medical cannabis in Europe and the rest of the world are Canadian companies, such as Canopy Growth, Tilray, Aurora and Aphria.

As new legislation of medical and adult-use cannabis comes into play, and as existing legislation evolves (see adjacent table), an increasing number of international producers are seeking to export cannabis-based products. To some extent, these developments have slowed down since the outbreak of the COVID-19 virus. In fact, the pandemic delayed major regulatory reforms in Europe, including France's medical cannabis trial scheme as well as Germany's first local harvest of cannabis.

Year	
2001	- Portugal decriminalises the consumption of all drugs
2003	- Belgium decriminalise possession of small amounts of cannabis for personal use - The Netherlands legalise medical cannabis
2008	- Austria legalise medical cannabis
2010	- The Czech Republic decriminalises possession of small amounts of cannabis for personal use
2011	- Denmark approves several cannabis-derived drugs for medical use
2013	- The Czech Republic legalises medical cannabis. - Croatia decriminalises possession of small amounts of drugs for personal use - Italy legalises medical cannabis - France legalises the sale of medication containing cannabis derivatives
2014	- Slovenia decriminalises possession of small amounts of cannabis for personal use
2015	- Malta decriminalises cannabis - Spain decriminalises consumption of minor personal possession of drugs in public places - Croatia legalises cannabis based drugs for specified medical purposes
2016	- North Macedonia legalises medical cannabis - Austria decriminalises possession of small amounts of drugs for personal use - Poland legalises medical cannabis - Norway makes allowances for medical cannabis
2017	- Germany legalises medical cannabis - Cyprus legalises the medical use of cannabis oil for advanced stage cancer patients - The Netherlands announce plans to trial legal audit-use cannabis production - Luxembourg legalises medical cannabis extracts - Greece legalises medical cannabis

Major players: Germany

Year	
2018	The UK legalise medical cannabis Denmark introduces a medical cannabis access scheme for cannabis based-medicine Luxembourg introduces a pilot scheme and announce plans to legalise adult-use Malta legalise medical cannabis with a prescription
2019	Estonia decriminalise possession of small amounts of cannabis for personal use Italy's Court of Cassation decree that the crime of growing narcotic drugs should exclude 'small amounts grown domestically for the exclusive use of the grower' Cyprus legalises the cultivation and domestic use of the drug for medical use Ireland legalise medical cannabis as part of a five-year pilot programme France and Ireland introduce medical cannabis access pilot scheme The UK introduces Europe's first private patient registry
2020	European Court of Justice rules CBD not a narcotic substance UN reclassifies cannabis as a Schedule I- only substance Switzerland legalises medical cannabis without ministry authorisation
2021	Portugal grants first authorisation for medical cannabis flower France pilot scheme begins with first patients receiving medication

German Market

Germany is the main focus of the European medical cannabis market. during the period January to September 2020, the most recent period for which data is available, 195,313 prescriptions for medicinal cannabis products were covered by statutory health insurance. Medical physicians are allowed to prescribe medical cannabis products at their own discretion. The German medical cannabis market is known to be the first source any cannabis related product appearing on the European market.

German imports data derived from the Federal Institute for Drugs and Medical Devices (BfArM) confirm the strong growth of the German market which has driven investment in medical cannabis production facilities in Europe and internationally. However, growth has been rather unstable resulting from inconsistent supply over time.

Producers wanting to distribute to German pharmacies need to own or form an agreement with a German importer. The German importer should be a registered entity with the Handelsregister, should hold a pharmaceutical wholesaler license, and should obtain a license for dealing with pharmaceuticals at the federal level. Importers are also required to employ a pharmaceutical expert who will be responsible for narcotics. In addition, a plan specifying the type of product to be imported and the quantities must be provided to German authorities.

The German federal government confirmed that the distribution of cannabis flower for German patients were imported mainly from Canada, the Netherlands and Portugal. However, as of April 2020, the BfArM granted the first import permits from Denmark and Spain as well. Based on imports from the Netherlands and Canada, the import prices range between €4.00-€7.00 per gram.

In April 2020, following several negotiations between pharmacies and insurers, the German Pharmacists Association established a new price agreement with the National Association of Statutory Health Insurance Funds. This new price agreement ensures that a pre-determined fixed amount will be paid by the insurers to German pharmacies.

Germany planned to pursue cultivation of cannabis for medical reasons locally. However, companies willing to enrol in the cultivation process would need to spend around €30-€60 million resulting from high application fees and other strict market entry requirements.

According to information provided by an existing licence application holder (based on estimates undertaken by Brightfield Group, a leading international cannabis market data company), the potential German medical cannabis market estimated sales of unlicensed cannabis-based medical products totals to £197 million in 2020, rising to £1.5 billion by 2025.

In 2019, the BfArM awarded a tender to two German subsidiaries of Canadian producers Aphria and Aurora Cannabis alongside one German-based producer Demecan to be able to cultivate and distribute cannabis in German markets exclusively. This tender ensures that the BfArM purchases 10,400 kg of cannabis from the three companies, divided into 2600kg per year for the next four years. However, only three types of medical marijuana will be cultivated in Germany. The distinguishing feature between the three types of cannabis relate to the varying degrees of THC and CBD levels.

Major players: Netherlands and France

Netherlands Market

The Netherlands is Europe's oldest medical cannabis market having a well-established production and export market for medical cannabis in Europe. The Dutch Government heavily controls the supply chain of cannabis in the Netherlands, meaning that any opportunity to cultivate, process, distribute cannabis arises from tender applications. Medical cannabis is regulated by the Office of Medical Cannabis (OMC) under the Ministry of Health, Welfare and Sport.

Like Germany, any medical physician can freely prescribe medical cannabis products to patients if deemed necessary and they are not particularly bound by any specific list of treatable conditions. Prescription of medical cannabis must include the specific quantity and dosage among other important information. According to the Dutch Foundation for Pharmaceutical Statistics, an estimated value of 51,000 prescriptions were issued in 2018. This estimation decreased to 48,500 prescriptions in 2019, most of which relate to the prescription of oils rather than the flower.

Since the legalisation of medical cannabis treatment in 2003, the local company Bedrocan has been the sole producer of medical cannabis, selling to the OMC in Netherlands. Over the years, Bedrocan together with the OMC have established their market positioning to become the main source of medical cannabis in Europe.

Over recent years, the sales of cannabis products to the foreign markets have surpassed the sales to the domestic market by four to five times. However, since more countries are reforming their legalisation with regard to the acceptance of medical cannabis, Netherland's share of the global export market is set to decrease despite the recent increase in the standard legal export limit. According to Prohibition Partners, 2019, the Dutch and German health ministers have agreed to raise the legal export limit to 1,500 kilograms.

The OMC sells cannabis flower between €5.40 to €5.80 per gram. This estimated price is based on the cost of the flower as well as the irradiation, testing and administrative costs.

The final price per gram of medical cannabis sold in pharmacies add up to around €6.50. Alternatively, the price paid for a 10 ml oil bottle is estimated at €50. Unlike Germany, insurance agencies in the Netherlands are not bound by any specified fixed amount but are free to establish their own marijuana coverage on a case-by-case basis.

French Market

As of early 2020, France did not have a medical cannabis program. The French Agency for the Safety of Medicines and Health Products released a statement announcing the commencement of the application process to secure tenders clearly dictating the accepted THC and CBD levels as well as the permitted product format (dried flowers, capsules, oils etc.). In addition to this, the statement also details the required training for doctors and pharmacists who will eventually prescribe and dispense of the medical cannabis-based products. At the end of the two-year period, the trial programme will be assessed and more accessibility to medical cannabis will be expected. Following a number of delays, the medical cannabis programme was launched in March 2021.

Major players: Canada

Canadian Market

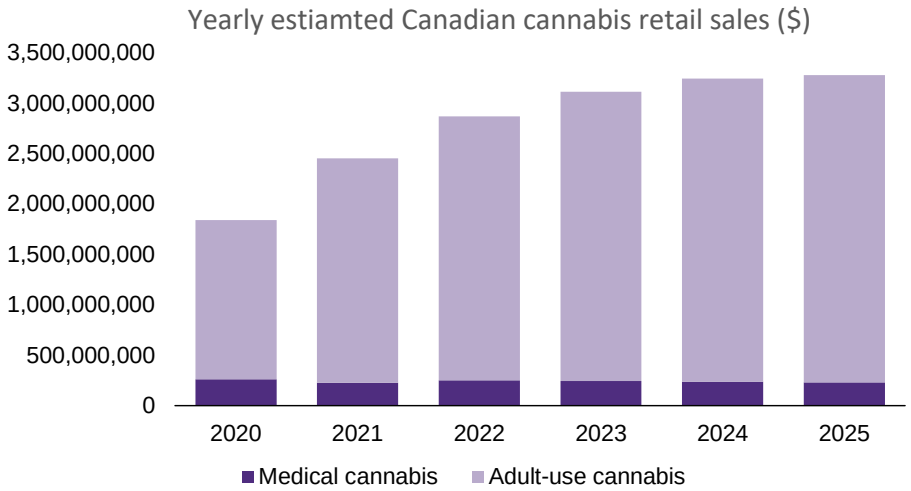
Medical cannabis was introduced in Canada in 1999. During this period, the number of patients granted access to medical cannabis was very limited. Through the implementation of the Marijuana Medical Access Regulation (2001), patients were able to be treated by medical cannabis if the doctors deem it necessary, later on developed into the Access to Cannabis for Medical Purpose Regulations (2016) which was later absorbed into the Cannabis Act (2018).

As indicated in the adjacent chart, Canadian cannabis sales as at 2020 are estimated to have reached $1.8 billion of which $260 million relate to medical cannabis sales. Medical cannabis sales in Canada are expected to drop to $228 million over the next five years, reflecting a cumulative annual growth rate of -2%. This decline could be a result of the lack of product differentiation and the difficulty patients go through to have access to medical cannabis products in contrast to purchasing adult-use cannabis products.

In 2020, Medical Cannabis Canada generated a survey assessing the current challenges faced by medical cannabis patients. Results indicate that only 37% of 1000 patients hold medical documentation prescribed by doctors. One possible reason for this result could be the financial burden faced by patients in terms of the lack of sufficient insurance to cover expenses. Moreover, unlike regular medication, medical cannabis products are charged the same tax rate as adult-use cannabis products which could be seen as an unfair treatment to patients in need of such medication.

Such barriers to obtain legal cannabis result in a decline in the rate of active medical cannabis patient registrations in Canada. Registrations have decreased from 370,000 patients in Oct 2019 to 310,000 patients in June 2020. However, due to the recent regulatory amendment in light of the COVID-19 pandemic, registration of medical cannabis patients rose.

The majority of legal cannabis imported into the EU has come from Canadian established producers. In fact, exports of oil and flowers from Canada to Europe increased by 28% from 2019-2020, with the majority of the oils exported to Australia and the majority of flowers exported to Israel.



Source: Prohibition Partners (2021)

Potential economic impact

Potential Economic Impact of the Medical Cannabis Industry in Jersey

The legalisation of cannabis for medical purposes has the potential to make a significant contribution to Jersey's economy. These benefits take the form of employment creation, the generation of tax revenues, and value added; the latter being the sum of the wages and profits that would be generated by the industry.

Below we discuss the various factors that would determine the extent of the medical cannabis industry's economic impact, and we use these as a basis to make recommendations for the design of policy and legislation that would enable Jersey to reap the maximum possible economic benefit from the activity. We also present high-level estimates of the potential economic impact of the industry over the short-to-medium term. The estimates presented in this section of the report are based on the agricultural land that has been earmarked for the cultivation of medical cannabis and a set of industry-specific indicators that are based on information obtained from a sample of companies operating in the industry in other countries.

Space requirements

Based on discussions held during a Quarterly Public Hearing of the Economic and International Affairs Scrutiny Panel (henceforth the 'Panel') on 21st June 2021, the total area of land that has been allocated, or is earmarked to be allocated, for the cultivation for medical cannabis in Jersey amounts to 7.9 hectares. Of these:

- 0.9 hectares of agricultural land are expected to be allocated in the short-to-immediate term (referred to by the Panel as Phase 1);
- approximately 3 hectares are expected to be allocated over the medium-term (i.e. in the next 2-3 years; referred to by the Panel as Phase 2); and
- another 4 hectares are expected to be allocated in the long-term (post-Phase 2).

These are based on licence applications that have already been filed with the relevant authority or that are in the process of being filed.

Employment

The number of jobs generated by a medical cannabis license holder depends heavily on its business model. Some companies engage in cultivation only, others engage in production only, while others do both. This is important because different positions are required in different stages of the production process; each with their own responsibilities and corresponding salaries (see next sub-section). We briefly describe the human resource requirements in the different stages of the production process below:

- The cultivation stage of the production process includes the plantation and nourishing of the cannabis plant. The employees are responsible for maintaining the proper environment required to grow the cannabis plant in terms of lighting, chemicals and so on. The cultivation process is managed by the master grower who is directly responsible for managing all operations and employees falling under the cultivation process to be able to deliver the flower onto the next stage of the production process.
- The extraction and laboratory testing stage of the production process entails all operations required to process the cannabis flower into the medicinal product. An extractor is responsible to convert the marijuana trimmings/flower into concentrates required to make the medicinal product. The concentrates are packaged and sold or infused into edibles. Proper ventilations systems in laboratories as well as monitoring over operations is vital. The extraction and testing stage is directly managed by the master extractor who is responsible for the overseeing of all functions in the production facility.

Potential economic impact

Employment (continued)

- The dispensary stage of the production process entails the selling of the finished cannabis product to patients or consumers. Various types of employment opportunities are presented in this final stage of the process which range from overseeing all the administrative operations in the dispensing facility, handling inventory, delivering to dispensing units (such as pharmacies), upkeeping, recording of transactions and marketing of the finalised cannabis product.

Expert knowledge of the industry suggests that a company engaged in both the cultivation and extraction stages of the production process of medicinal cannabis products employs individuals for cultivation and the production process in the ratio 1:3. We complement this information with Key Performance Indicators (KPIs) for the international medical cannabis industry to gauge the economic impact that the industry may have on Jersey's economy. On this basis, we estimate that the industry has the potential to employ anything between 40 and 50 employees in the immediate term, increasing to 160-180 employees in the medium-term, and growing to 330-360 employees in the long-term. These are presented in the table below.

	Hectares	Employment	Wages and salaries (£)
Short/immediate term	1	40-50	1,260,000
Medium term	4	160-180	4,760,000
Long term	8	330-360	9,660,000

Wages and salaries

Market research shows that senior management in the medical cannabis industry could earn anything between £55,000 and £145,000 per annum; general management could earn £36,000 to £50,000 per annum; and labourers could earn £22,000 to £30,000 per annum. Thus, indicative estimates suggest that in the short-term, the industry could generate as much as £1.3 million in wages and salaries. This may increase to £4.8 million per annum by 2023; and may increase further to £9.7 million per annum beyond 2023 if employment increases to around 350 in the long-term.

Taxation

The medical cannabis industry also has the potential to contribute to Jersey's tax revenues. For this purpose, the Finance Law 2021 introduced a new article into the Income Tax Law 1961, Article 143AA, which provides the power to make regulation for the taxation of company profits resulting from activity related to cannabis. Our understanding is that the Revenue Policy Development Board (RPDB) has already decided that the profits of the cannabis industry should be taxed at a rate of 20%.

The Quarterly Public Hearing referred to earlier in this report revealed that tax revenues are expected to amount to around £4.9 million per hectare; based on a 20% tax rate on company profits. On the basis of the information presented in the adjacent table, this would translate into £4.4 million in tax revenues in the short-term; £19.1 million in the medium-term; and £38.7 million in the long-term.

However, the basis for these estimates is unclear because information supporting the license applications has been requested but not sufficiently forthcoming. We therefore limit our opinion to the identification of potential tax revenue sources and, in particular, to aspects of the design of the system of taxation on activity related to medical cannabis.

Potential economic impact

Taxation (continued)

It should be recognised that the business model of medicinal cannabis companies generally requires that they invest heavily in the early years of the business. Consequently, a typical medicinal cannabis company does not register any accounting profits in its early years of operation. This is true for many established multinational medicinal cannabis companies. Therefore, if Jersey opts for a 20% tax rate on companies' profits, tax revenues from such activity will be close to zero for several years from the date of license registration.

For this reason, Jersey may wish to consider other tax bases. One possibility is to impose a tax or a licence charge which is directly commensurate to the medicinal cannabis companies' turnover. This has the advantage of enabling the Government of Jersey to earn tax revenues immediately upon a medical cannabis company's initiation of sales or exports. Like a tax on profits, it also has the advantage that the tax authority can easily obtain information about the tax base from companies' financial statements. At the same time, different European legislative systems may incentivise firms to engage in transfer pricing or other tax avoidance strategies that would enable them to minimise their tax bill.

One alternative to overcome this issue is to use the weight of cannabis flower or extracts as a tax base. This system overcomes tax avoidance issues associated with systems that use profits or turnover as a tax base; but would be costlier to administer and may incentivise black market activity, i.e. cannabis producers may illegally export untracked produce.

Another alternative is to use the number of units sold/produced as a tax base. This is easier to administer than a tax based on weight but introduces other challenges. For example, a per unit tax incentivises cannabis producers to sell units with larger weight. In such cases it would be advisable to charge different tax rates for different medicinal cannabis products (oils, extracts, etc) to mitigate the incentive of producers from increasing the quantity of cannabis flower in an individual unit whilst still maintaining a constant tax base.

Irrespective of the tax base, the authorities should consider whether to charge a flat tax rate (as is currently proposed) or to set lower rates for larger quantities sold/exported/produced. This has the advantage of incentivising businesses to scale up their operations.

In addition to production or profits tax revenues, subject to the considerations expounded in the next section titled "The Taxation aspect", the industry would generate additional revenues for the Government of Jersey through income tax revenues and social security contributions paid by employees and employers. However, these will make significantly smaller contributions to Government revenues with indicative estimates showing that these could add up to £0.4 million in the short term with the potential of increasing to £2.9 million in the long-term.

Value added

The contribution of the medicinal cannabis industry to the Jersey economy is ideally measured by its contribution to its Gross Domestic Product (GDP). In its simplest form, this may be measured as the sum of wages and profits generated by the industry.

Given that information supporting the applications of the existing and prospective license holders was not sufficiently forthcoming, at this stage, any estimates of the industry's economic contribution would be purely speculative. However, it should be noted that the accounting losses that would be registered by a typical medicinal cannabis company in the early years of operation imply that the industry's contribution to Jersey's GDP through wages would be partly offset by the accounting losses registered by the companies operating in the industry. Thus, in its infancy, the medical cannabis industry's contribution to the Jersey economy should not be expected to exceed wage estimates presented in the table on the previous page.

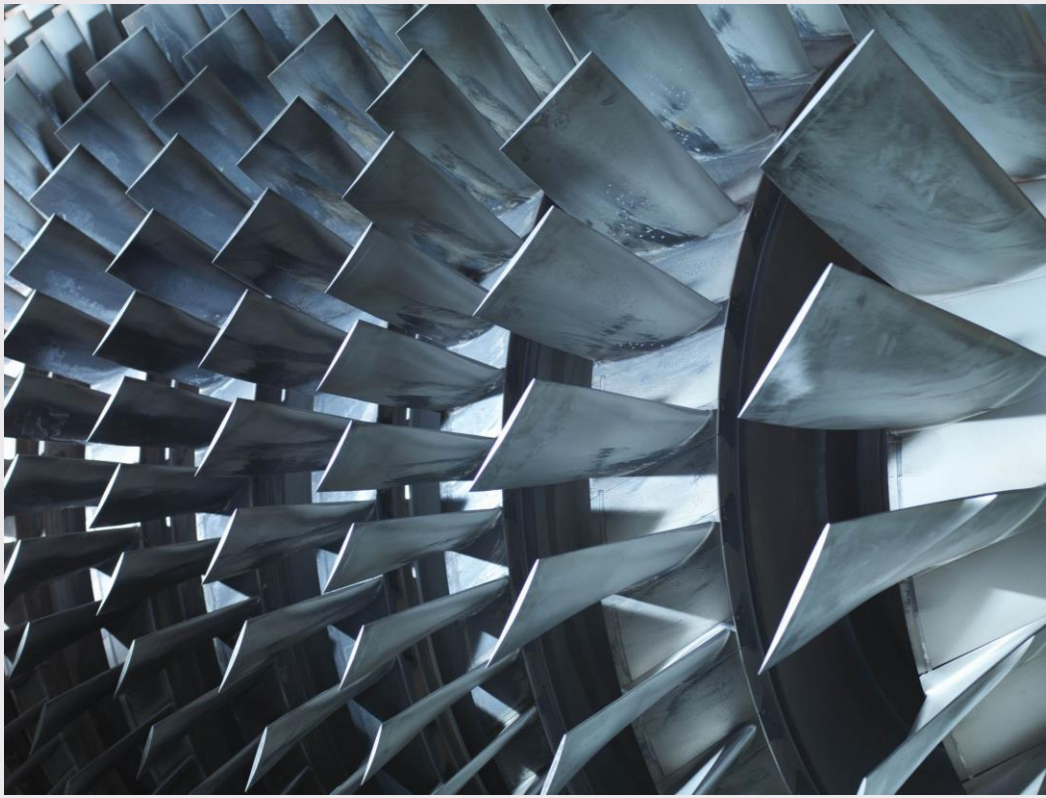
Potential economic impact

Conclusions and recommendations

- Over the next 5-10 years, the world and European medical cannabis markets are expected to grow by 18% and 67% per annum, respectively, thereby providing significant growth opportunities for newly set-up medical cannabis companies in Europe and beyond.
- The Government of Jersey should encourage licensees to engage in *all* stages of the medical cannabis production process; starting from R&D to cultivation, flowering and distribution. This would ensure the maximum possible economic return to any land allocated for the purpose of producing medical cannabis.
- The medical cannabis industry is estimated to have the potential to create around 40-50 jobs in the immediate-term, increasing to 160-180 employees in the medium-term, and growing to 330-360 employees in the long-term. These numbers are indicative and depend heavily on companies' business model. To this end, it is recommended to ensure that the workforce employed have the necessary skills and requirements to be able to generate the total expected output and reap the maximum possible benefits,
- Senior management in the medical cannabis industry could earn anything between £55,000 and £145,000 per annum; general management could earn £36,000 to £50,000 per annum; and labourers could earn £22,000 to £30,000 per annum. Thus, indicative estimates suggest that in the short-term, the industry could generate as much as £1.3 million in wages and salaries; increasing to £4.8 million per annum by 2023; and may increase further to £9.7 million per annum beyond 2023 if employment increases to around 350 in the long-term.
- The business model of medicinal cannabis companies generally requires that they invest heavily in the early years of the business such that they typically do not register any accounting profits in the early years of operation. Therefore, if Jersey opts for a 20% tax on companies' profits, tax revenues from such activity will be close to zero for several years from the date of license registration.
- The Government of Jersey may consider alternative tax bases, such as company turnover, or weight of the cannabis flower, or units sold; with each of these tax bases having its challenges to administer. In addition, the Government of Jersey should also consider setting lowers tax rates for higher volume producers to incentivise them to scale up production.
- In its infancy years, the medical cannabis industry's contribution to the Jersey economy should not be expected to exceed the contribution through wages. Again, this reflects the initial impact on profitability as a result of the heavy investment required by medical cannabis companies in the early years of operation when they typically register accounting losses.

References

1. Mordor Intelligence (2021) Global Cannabis Market (2021-2026).
2. Prohibition Partners (2021) The European Cannabis Report 6th ed.



The taxation aspect

Identification and evaluation of the full scope of the tax framework associated with the sector

Jersey's tax implications

Jersey's Taxation

The possible additional tax revenues to be enjoyed by Jersey can be split into three different categories:

- Employment Taxation;
- Company Taxation (Direct);
- Company Taxation (Indirect).

Employment Taxation

Jersey currently has two basis upon which to calculate personal income tax. The first method is to give personal allowances and tax at the rate of 26%. The second method is to calculate tax broadly at 20%. The taxpayer enjoys the lower of the two calculations.

As detailed in the section marked Potential Economic Impact (employment), there is the possibility that revenue will be raised for the island through indirect taxation (employment taxes etc.). Even at the higher end of the projected salary scale all employees are likely to fall within the bracket of receiving personal allowances and paying tax on the remaining balance at 26%.

For 2021 the main allowances are:

- Single £16,000;
- Married £25,700;
- Children £3,060;
- Second earners allowance £6,300.

Based on the salary projections, the average wage estimated at £26,833 (£9.6m / 360 workers) would not create significant taxation for the island.

- A single person earning the average wage would pay £2 816 in tax or 17.6%;
- A married couple – one working £295 or 1.1%;
- A married couple – 2 children – one working - £0 or 0%.

In the report produced by Statistics Jersey – February 2019 entitled *"estimating government receipts and expenditure for Jersey households"* it was estimated that in order for established Jersey residents to make a net contribution to Government revenues then their income would need to be in excess of:

- Single Adult c£28,000;
- Married couple – one working c£38,000;
- Married couple – one working – two children c£110,000.

Based on the projections we would suggest that industry would not make a positive impact through personal taxation.

Furthermore, the current labour market statistics (Statistics Jersey) do not show significant levels of unemployment 1.6% (c1,000) out of a workforce estimated to be 60,000. This should be contrasted to the advertised jobs at gov.je of 939 vacancies as at 21 July 2021. It is unlikely therefore that any revenue generated from taxation from persons employed with the industry will represent new taxation unless staff are recruited from outside the island (directly or indirectly).

Given the level of wages to be paid it is unlikely to generate a net increase in taxation unless the senior employees are recruited from outside of Jersey. Though one would need to consider the effects of doing this (housing / education / healthcare / etc.).

Corporate Taxation

It is believed that RPDB have decided that the profits of the Industry should be taxable at 20%. It is noted that at the time of this report the detailed tax regime in relation to cannabis has yet to be published.

Senator L.J. Farnham (The Minister for Economic Development, Tourism, Sport and Culture) has stated that:

"The 20 per cent rate is automatically in my thinking. That would be a fair rate. Jersey is leading the U.K. and leading the world in some instances in this sector by having a very highly regulated and controlled space from which to operate in. We want to go with quality, very high-quality production, extraction, manufacture, export, rather than quantity. 20 per cent is a competitive rate."

Jersey's tax implications

If one is to tax the cannabis industry upon similar lines to existing trades then its profits will be assessed under the basic principles contained with the Income Tax (Jersey) Law 1961 ("ITJL"). The profits would be assessed in due course under the rules that relate to Case I (Article 62).

As stated above the business model of medicinal cannabis companies generally requires that they invest in the early years of the business. As a consequence, a typical medicinal cannabis company does not register any accounting (or taxable) profits in the early years of operation. If the intention of the RPDB is to treat a medicinal cannabis company like any other trading company then their taxable profits will be reduced through numerous business expenses, for example, interest (if funded from overseas the net recipient of the interest will not be taxable in Jersey), management charges, both domestically and overseas, repairs to buildings / infrastructure, capital allowances in relation to investment in equipment etc.

In addition if any Jersey resident investors are High Value Residents and benefit from being taxed under Article 135A any tax that they may pay personally as a result of their investment in the industry may simply replace their existing tax payments and not be in addition to them thus giving no direct tax economic benefit to the island.

It should be noted that any losses that are incurred in the initial years of trading are available to be carried forward and therefore we would not expect any taxable profits to be generated in the short to medium term.

Indirect Taxation

At the present time it would appear that the cultivation and supply of medicinal cannabis would not be an exempt supply under Schedule 5 of the Goods and Services Tax (Jersey) Law 2007.

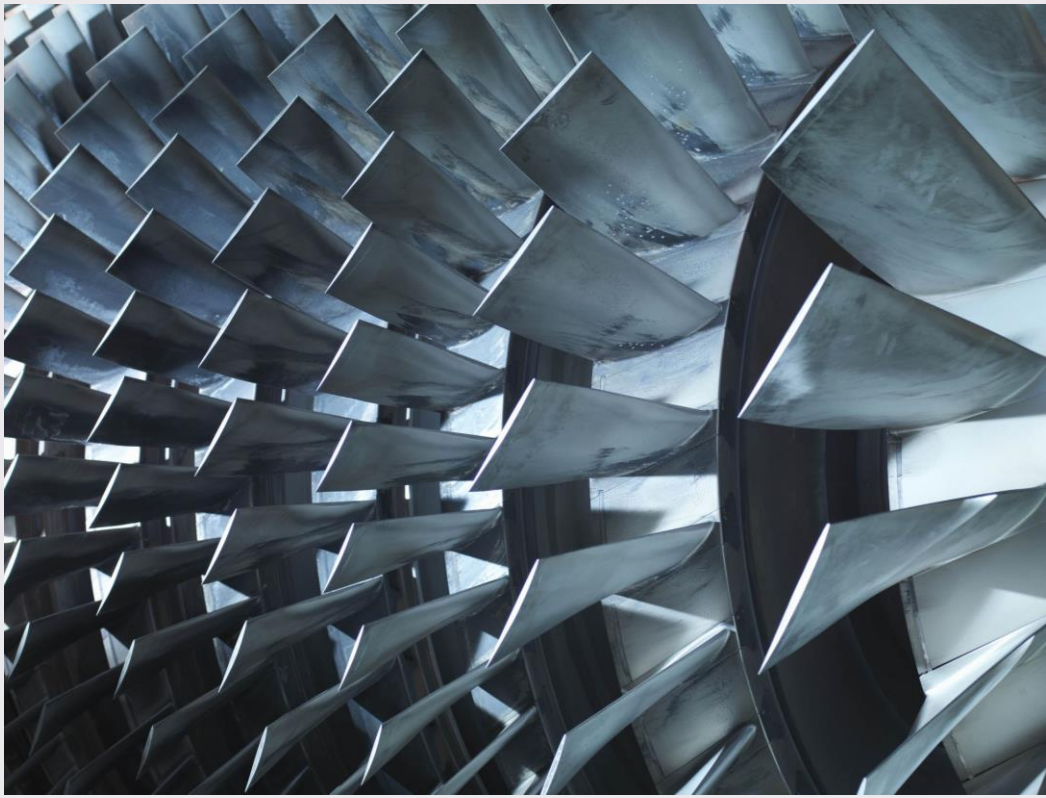
Therefore under basic principle any medicinal cannabis company would be required to register as it is likely that their turnover would exceed the registration threshold currently set at £300,000. However it is noted that virtually all of the product would be exported from Jersey and as a consequence be zero rated for GST purposes. The net result is that the company would be able to recover all GST that it has paid on any domestic supplies received (and capital cost relating to the business) without charging any GST on its exports. Therefore the industry would not provide any GST revenue to the island.

Summary

Based on the information provided to date we would conclude that very little additional "new" taxation would arise in the short to medium term.

Recommendations

There may be benefits that result from job creation (even though the current system is unlikely to generate any tax revenues in the short-to-medium term). Additionally, as has been stated in this report, Jersey may consider an alternative tax base (e.g. turnover) to generate positive tax revenues.



The reputation aspect

What steps should Jersey undertake in order to safeguard its international reputation when establishing an industry based on the cultivation, import and export of medicinal cannabis?

Aspects to consider in relation to Jersey's international reputation

Establishing an industry based on the cultivation, import and export of medicinal cannabis

We recommend for Jersey to undertake an assessment in order to determine the effect of establishing an industry based on the cultivation, import and export of medicinal cannabis on the jurisdiction in general, with a particular focus on whether there is a risk of an adverse effect on the core industries that are significant contributors to Jersey's economy, such as agriculture and financial services. Care should be exercised to ensure that the island's other core industries are not prejudiced.

Jersey Finance has indicated that it expects the new industry to be well regulated. It pointed out that whilst it was not involved in the actual drafting of any laws or rules, it *"has previously been involved in discussions with its members and with Government in relation to the issues facing the various sectors of the financial services industry arising from business connected, directly or indirectly, with cannabis, in the context of the global move towards the legalisation of medicinal cannabis and the recent steps taken in Jersey in this regard."* This is an important step that may be further developed leading to an assessment in line with the above recommendation.

To this effect, clarity and transparency in the licencing and supervisory process is key. The process should be documented and all competent bodies, including *ad hoc* set up bodies like the JCA, are duly constituted, running a business model that ensures its financial feasibility and independence in the long term or adequate alternate financing to be able to perform their functions independently.

Due diligence considerations

If it is decided that Jersey shall adopt and continue to develop this new industry within its jurisdiction, then screening of the applicants is of paramount importance in order to ensure that Jersey lends its name (as a jurisdiction) to only licit and viable activities. Based on the information collected, we understand that, as things stand, enhanced disclosure and barring service ('DBS') checks, along with background checks, are conducted on key individuals that are named on a licence application. However, a DBS check would not include checks on records of individuals who are not UK or Jersey residents, or residents of other UK dependencies. Furthermore, the starting point should be to request certain important due diligence documentation to be furnished to risk assess applicants on the basis of their background, taking into consideration the promoters' expertise and knowledge as well as the sources of financing for the proposed operations aside from the default certified passports, proof of address documentation, banking or professional references, conduct certificates, etc.

Introducing an industry to cultivate, import and export medicinal cannabis in Jersey requires the island to adopt a robust framework which provides rules as to what screening needs to take place both at application as well as ongoing supervisory stages to ensure the integrity of prospective applicants and operators, as ultimately, the persons running and controlling the proposed projects must be reliable persons, holding good repute.

It is advisable that checks be made by referring to the most reliable criminal record systems available and that the information provided is confirmed to be up to date. Additional independent background checks, assessing also any adverse media as well as a key person's prior involvements should also be undertaken. In any case where adverse media is found, the respective individual's history should be further analysed to get the whole picture and to verify the veracity of the identified news.

The framework for enhanced due diligence processes and procedures adopted in terms of EU Anti-Money Laundering and Counter Terrorism Financing legislation may serve as a good starting point for Jersey to continue building a robust due diligence framework. Enhanced due diligence checks would include, *inter alia:*

- identify and verify the applicant and its key individuals (including those entrusted with the management of the company and the key roles for the medical cannabis activity), as well as the ultimate beneficial owner/s ('UBOs');
- obtaining information on the purpose and intended nature of the applicant's proposed business;
- confirming any references provided by contacting the persons who have provided their feedback on the applicant and/or any key person;
- establishing the project promoters' and beneficial owners' source of wealth and the source of funds;

Aspects to consider in relation to Jerseys' international reputation

Due diligence considerations (continued)

- assessing the applicant's willingness to provide the necessary details and documentation; and
- undertaking ongoing monitoring checks.

As regards to checks on shareholders, it has been stated that checks are conducted on persons holding at least twenty percent (20%) of the shareholding in the applicant company. Given that the risks involved in the pharmaceutical sector, and the added risk involved in the demand for medicinal cannabis, it is advisable that from a national risk perspective the industry be classified as 'high-risk'.

Accordingly, notwithstanding the particular investor/s' integrity and situation, due diligence checks should not be limited to this twenty percent (20%) shareholding but should be conducted on all of the applicant's shareholders. We understand that changes are in the pipeline for this to be implemented. It is recommended that checks are also carried out on those entrusted with the management of the company and the key roles for the medical cannabis activity.

Recommendations

- Ensure that an adequate assessment is carried out with the aim of evaluating the risks that establishing an industry based on the cultivation, import and export of medicinal cannabis on the jurisdiction in general, may represent with a particular focus on whether there is a risk of an adverse effect on the core industries that are significant contributors to Jersey's economy.
- Set a clear, thorough and transparent regulatory framework documenting all policies and procedures, possibly by the issuance of guidance notes, whilst ensuring that all competent bodies are duly constituted and funded to be able to perform their functions independently.
- On the basis that Jersey takes this project forward, adequate and thorough due diligence checks on the project, its promoters, UBOs, directors, and key functions will be of paramount importance to ensure that Jersey lends its name only to licit and viable projects.
- The enhanced due diligence processes and procedures emanating from the EU AML and CFT framework should serve as a basis for Jersey to continue building a robust due diligence framework.
- There may be concerns that existing licence holders may have not been asked to demonstrate compliance with the rules applicable at time of writing. Furthermore, if rules are amended or added in the future, current licence holders may have not been in a position to demonstrate compliance therewith. We recommend that a reasonable transitory period (not exceeding one year) be granted to existing licence holders to gradually adapt and become in line with the proposed regulatory framework that shall be applicable to all licence applicants. A transitory period would permit existing licence holders to continue to operate, and thus, not halt existing business, whilst ensuring that compliance with all applicable laws/rules/guidelines is sought. Applicable competent bodies may act as a point of reference to aid existing licence holders with this transition.

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