

STATES OF JERSEY



DRAFT SHOPS (REGULATION OF OPENING) (AMENDMENT) (JERSEY) REGULATIONS 201-

Lodged au Greffe on 12th May 2014
by the Minister for Economic Development

STATES GREFFE



Jersey

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REPORT

Introduction

On 21st July 2011, the States approved the Shops (Regulation of Opening) (Jersey) Regulations 2011 (“the Regulations”). These created a framework for the administration of Sunday trading under the Shops (Regulation of Opening and Deliveries) (Jersey) Law 2010.

Under this legislation, shops are not generally allowed to open on Sundays and other specified days (Christmas Day, Boxing Day, Good Friday and Liberation Day), but the Regulations provide for a permit scheme which creates a reasonably permissive regime for shops with a ‘retail sales area’ of less than 700m², (smaller shops) and a more restrictive regime for those larger than that size (larger shops).

The 700m² size (increased from 500m² by an amendment of the Connétable of St. Lawrence (P.95/2011 Amd.(2)) was intended to place some limitation on the potential disruption caused by Sunday trading. In developing this limitation, it seemed logical to assume that the larger the shop, the larger the disruption. Traffic management issues were also significant for some of these larger shops, as in the case of garden centres.

The amendment seeks to allow a more flexible (but still somewhat restrictive) trading regime for large shops. The Minister has considered the responses to the public consultation run in February and March this year, and has made changes to the proposed trial in light of the concerns raised. The amendment also makes a minor change to the application system to remove unnecessary red tape.

Additionally, the Minister recognises the concerns regarding the effect on retail workers of any expansion of Sunday trading, and he will request that the Minister for Social Security bring forward a change to the law in this area to allow workers to opt out of Sunday working if they so wish.

The current situation

Regulation 6 of the Shops (Regulation of Opening) (Jersey) Regulations 2011 describes 3 types of permit –

- a general permit
- a single permit
- a blanket permit

General Permit

These may be granted to smaller shops and authorise the opening of a shop on Sundays, Good Fridays, Liberation Day and 26th December, or any combination of those days. Conditions can be imposed to control opening hours, deliveries, etc. The permits run until 31st December of the year in which they are issued. A general permit cannot be granted in respect of larger shops, and cannot allow a shop to open on Christmas Day.

Single Permit

Larger shops can only open on single, not general permits, which can authorise its opening on a particular date or dates specified in the permit, up to 5 days per year. Single permits cannot allow a shop to open on Christmas Day or 26th December.

Blanket permit

A blanket permit authorises the opening of all shops a Connétable may specify in a parish, on any 'special occasion' as specified in the permit. The Minister for Economic Development must define a day as a special occasion (by Order) before such permits can be granted.

Currently, the 4 Sundays before Christmas in every year are designated as special occasions, allowing blanket permits to be issued by the Connétables on an annual basis around the Fête dé Noué.

Taken together, the Regulations provide that most businesses are able to apply for general permit and trade every Sunday, while larger shops are able to trade on up to 9 Sundays in any year, including the 4 established as special occasions in the run-up to Christmas.

Temporary effects of this amendment

This amendment to the Regulations will temporarily suspend the provision which prevents larger shops from applying for a general permit. This will allow them to trade every Sunday if they wish, subject to the agreement of the relevant Connétable and to any conditions he/she imposes.

This less restrictive permit scheme will be balanced by a limitation on the hours during which larger shops can trade, in line with current legislation in the UK. Under the trial scheme, larger shops will have the option of opening for up to 6 hours on Sundays between 10.00 a.m. and 6.00 p.m.

There will be a higher fee of £250 for larger shops applying for a general permit, rather than the £50 charge for smaller shops. This reflects the additional benefit to the applicant, and the additional consideration which the Connétable must undertake in determining the permit application.

Permits applied for during the trial period will expire on 31st December 2014, despite having been applied for later in the year. While it is acknowledged that this makes those permits more costly per week of trading, the benefits of trading and the relative size of the fee ought not to present this as a considerable barrier.

Permanent effect of this amendment

If approved, this amendment will have one permanent effect. The Minister has been informed by numerous small shops that the need for a surveyor's plan to accompany permit applications is overly bureaucratic, and represents a cost to smaller shops that is usually higher than the application fee itself.

The Regulations contain provision for the Connétable to investigate shops applying for a permit and to verify the accuracy of any documents supplied by them. There is also a penalty for making false declarations for that purpose. With these safeguards in

place, the Minister has decided to remove some red tape from the application system by eliminating the need for a surveyor's plan.

The Connétable will be responsible for establishing to his/her own satisfaction that the shop is of a particular size. For the vast majority of shops this will take little effort.

The arguments

The exact balance between the economic costs and benefits of allowing the remaining shops in Jersey to open on a Sunday is unclear (and that is one of the reasons the proposal is for a trial period). However, with economic growth objectives focused on raising productivity across the economy, there does not appear to be a strong economic case for keeping such regulation in place.

The aims of the proposed de-regulation of the current Sunday trading scheme are to realise the following potential benefits –

- Allow all retailers the opportunity to compete with Internet shopping on a Sunday and also to maximise the benefit from the visitor market.
- Provide job opportunities for those who want to work on a Sunday and currently cannot.
- Allow competition between all retailers on a Sunday, and the benefits this can bring consumers.
- Maximise efficiency and productivity across the whole retail sector, including reduced congestion and queuing at busier times, and reduced wastage for retailers selling perishable goods.
- Improve consumer choice and convenience by allowing those who want to shop in the larger stores on a Sunday to do so.
- To support tourism as a vital part of the Island's economy by capturing revenue from visitors on Sundays.

It is recognised that there are potential costs that could result from the extension of Sunday trading to the remaining larger stores, such as –

- While there is the potential to increase revenues for some retailers, there is also the potential to increase variable costs, and it is not necessarily the case that the increase in costs will be outweighed by the increase in revenues either for the retail sector as a whole or for individual retailers.
- Shops may be forced to open on a Sunday just to match other stores that do so. (However, some small shops that don't open on a Sunday but want to, will be able to during the trial.)
- Smaller shops (some of which may already be facing difficult trading conditions) could lose out to competition from the larger stores on a Sunday.
- Some Islanders may face increased social costs from the impact of additional Sunday trading, either directly or indirectly.
- Some employees may feel they have to offer to work on a Sunday when they would otherwise choose not to do so.

Public consultation

The Minister for Economic Development acknowledges that trading on a Sunday is an emotive issue and not just about the economic benefits and costs. This was clearly

demonstrated by the response to the public consultation which ran during February and March of this year.

One hundred and fifty-one responses to the consultation were received, and opinion was split fairly evenly, with 54% of respondents not in favour of the trial. The main concerns cited were as follows –

Most popular reasons given for opposition to trial de-regulation	% of respondents cited
Negative impact on family or social life	52%
Keep Sunday special	40%
Business will just be spread over 7 days instead of 6	35%
Unfair on retail staff	23%
Religious reasons	17%

Of those who were in favour of the trial the most popular themes were –

Most popular reasons given for supporting the trial de-regulation	% of respondents cited
Shoppers and retailers should have the choice	29%
Good for the economy and assistance for retail sector	28%
Give visitors something to do on Sundays	19%
More time for families to shop at weekends	17%
Brings Jersey into the 21st century	13%

Within the industry there also appears to be a division of opinion as to whether or not the relaxation of Sunday trading regulations would improve commercial activity. Those businesses that did respond to the consultation were passionate one way or the other.

These findings are backed up by the fact that, despite only a small number of shops in St. Helier being excluded from Sunday trading under a general permit in the existing framework, the vast majority choose not to open on Sundays even though they are able to. There is an argument which suggests that without the lure of the ‘flagship’ shops, the town centre does not attract high enough volumes of shoppers to make it worth the while of the smaller shops to open. The trial should establish whether this is the case.

Response to the consultation, changes to the proposed trial

Protection for retail workers

As noted above, some 23% of those respondents against the trial raised concerns that it would be unfair on retail staff to change the Sunday trading regime. Additionally, 52% cited the negative impact on family or social life as a reason against. In many cases, the concern was for the impact on families with members working in retail, rather than the impact of simply having shops open.

The Minister recognises that there is real and well-founded concern about the implications for retail workers, given the lack of any specific legislative protection for employees with regard to working on Sundays in Jersey. The Employment (Jersey) Law 2003 ensures that employees have a ‘weekly rest period’ of not less than 24 hours

in any 7 day period, or a rest period of 48 hours in any 14 day period, but makes no specific allowance for employees not to be discriminated against should they decline to work on a Sunday.

Financial and manpower implications

There are no financial, property, ICT or human resources implications arising from the adoption of these Regulations.

Explanatory Note

These Regulations amend the Shops (Regulation of Opening) (Jersey) Regulations 2011 (the “principal Regulations”).

Regulation 1 defines the principal Regulations.

Regulation 2 removes the requirement for an application for a permit to be accompanied by a plan of the retail sales area of the shop, prepared by a surveyor. The Connétable shall continue to have the power, under Regulation 9, to require the provision of such additional information as he or she needs to determine the application, and may personally inspect the shop, or arrange for an inspection.

Regulation 3 temporarily disapplies the provision that prevents a Connétable granting a general permit in respect of a shop that has a retail sales area exceeding 700 square metres (a “larger shop”). A general permit authorizes opening on Sundays, Good Friday, Liberation Day and 26th December. The restriction would be removed from the time when these Regulations come into force until 31st December 2015. The Connétable would be required to restrict the opening of a larger shop to a maximum of 6 hours on the days in question, between 10 a.m. and 6 p.m. The fee for the grant of a general permit for a larger shop would be £250. The fee for the grant of a general permit in respect of a smaller shop is £50. If, after a general permit is granted in respect of a smaller shop, the shop expands so as to have a retail sales area exceeding 700 square metres, the Connétable must impose the restriction on opening hours described above. All general permits granted in respect of larger shops will expire on 31st December 2015.

Regulation 4 provides for the citation and commencement of these Regulations.



Jersey

DRAFT SHOPS (REGULATION OF OPENING) (AMENDMENT) (JERSEY) REGULATIONS 201-

Made [date to be inserted]
Coming into force [date to be inserted]

THE STATES, in pursuance of Article 4 of the Shops (Regulation of Opening and Deliveries) (Jersey) Law 2010¹, have made the following Regulations –

1 Interpretation

In these Regulations “principal Regulations” means the Shops (Regulation of Opening) (Jersey) Regulations 2011².

2 Regulation 8 amended

Paragraphs (6), (7) and (8) of Regulation 8 of the principal Regulations shall be deleted.

3 Regulation 23A inserted

After Regulation 23 of the principal Regulations there shall be inserted the following Regulation –

“23A Trial of general permits for larger shops

(1) In this Regulation –

‘larger shop’ means a shop with a retail sales area exceeding 700 square metres;

‘smaller shop’ means a shop with a retail sales area not exceeding 700 square metres;

‘trial period’ means the period commencing on the day the Shops (Regulation of Opening) (Amendment) (Jersey) Regulations 201-³ come into force and ending on 31st December 2015.

(2) During the trial period –

(a) Regulation 6(4) shall not have effect;

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- (b) if a general permit is granted in respect of a smaller shop and, whilst the permit is in force, the shop becomes a larger shop, the general permit shall continue subject to such condition as the Connétable imposes in compliance with sub-paragraph (c);
 - (c) notwithstanding Regulation 12(5) to (7) a Connétable must impose a condition on a general permit in respect of a larger shop, that the shop may only be open, on the days mentioned in Regulation 6(2), for a period –
 - (i) not exceeding 6 hours, and
 - (ii) between 10 a.m. and 6 p.m.;
 - (d) notwithstanding Regulation 22(1) and Schedule 3, the fee for the grant of a general permit in respect of a larger shop is £250.”.

4 Citation and commencement

These Regulations may be cited as the Shops (Regulation of Opening) (Amendment) (Jersey) Regulations 201- and shall come into force on the day after they are made.

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- ¹ *chapter 05.775*
² *chapter 05.775.50*
³ *P.76/2014*