

STATES OF JERSEY



SUNDAY TRADING LEGISLATION (P.107/2004): SECOND AMENDMENTS

**Lodged au Greffe on 28th September 2004
by the Connétable of St. Helier**

STATES GREFFE

SUNDAY TRADING LEGISLATION (P.107/2004): SECOND AMENDMENTS

1. *In paragraph (a) for sub-paragraph (i) substitute the following –*
 - “(i) all shops may apply for a permit to open on a Sunday, Good Friday, Liberation Day and Christmas Day but –
 1. that the hours of opening should be limited according to the size of the shop, with shops over a specified size permitted to open for a limited number of hours only;
 2. that the permit shall be subject to such conditions as the Connétable of the Parish in which the shop is situated considers appropriate;
 3. that special restrictions should apply to Good Friday, Liberation Day and Christmas Day to ensure that only very limited trading is permitted.”.
2. *In paragraph (a) for sub-paragraph (iv) substitute the following –*
 - “(iv) the permit fees to be charged shall be of a variable amount linked to the retail sales area of the premises with the annual fee retained by the Parish;”.
3. *In paragraph (a), after sub-paragraph (iv), insert the following sub-paragraph –*
 - “(v) the following transactions should be exempted from the provisions of the Law, namely –
 - (1) intoxicating liquors for consumption on the premises at which they are sold; and
 - (2) meals or refreshments for consumption at the shop at which they are sold;”.
4. *In paragraph (b), after the word “Sunday” insert the words “Good Friday, Liberation Day or Christmas Day”.*
5. *In paragraph (c) substitute the words “Economic Development Committee” for the words “Legislation Committee”.*

CONNÉTABLE OF ST. HELIER

REPORT

Details of the new Law agreed by the States in 1999

On 9th November 1999 the States approved Shops: Sunday Trading – P.137/1999 and agreed to a new Law to replace the Shops (Sunday Trading) (Jersey) Law 1961. The 1961 Law provides that only certain items may be sold on a Sunday, Good Friday, Liberation Day and Christmas Day. The law thus gives rise to many anomalies e.g. flowers may be sold on the holding where grown but cut flowers may not be sold in other shops; the law is difficult to police and needs to be updated.

The new Law proposed in P.137/1999 would allow for limited trading on the specified days (Sundays, Good Friday, Liberation Day and Christmas Day) but if a shop was permitted to open it would be allowed to sell any items it usually stocked. The decision as to whether or not a shop might be granted a permit to open would be based on the size (those over a specified size would not be permitted to open) and the ‘predominant use’ or ‘special purposes’ test to be defined in the legislation. The categories proposed covered those that were believed to be essential goods, but also catered for recreational pursuits and covered sporting and tourist attractions.

It was envisaged that the main business of the shop would be identified by the ‘predominant use’ test and this would permit the opening of smaller shops selling goods that were regarded as ‘essential’. The categories would include –

- (i) sale of foodstuffs and non-alcoholic beverages;
- (ii) sale of intoxicating liquors;
- (iii) sale of newspapers, periodicals and magazines;
- (iv) sale of petroleum spirit, diesel oil, lubrication oil, paraffin and liquefied petroleum gas and solid fuel, supplies and accessories for motor vehicles, pedal cycles, aircraft and boats (including any other description of vessel used in navigation);
- (v) the hire of motor vehicles, pedal cycles, aircraft and boats (including any other description of vessel used in navigation);
- (vi) sale of agricultural or horticultural produce at roadside stalls;
- (vii) sale of medicines and surgical appliances at any premises registered under Article 13 of the Pharmacy, Poisons and Medicines (Jersey) Law 1952.

The special purposes covered certain businesses that are at present exempt from the existing Sunday Trading Law, thus putting them on the same commercial footing as other businesses, such as –

- (viii) any business carried on the foreshore under a concession granted by the Tourism Committee;
- (ix) any business within the arrival or departure halls within the Port of St. Helier or St. Peter’s Airport;

and new categories catering for recreational pursuits such as –

- (x) shops being a use incidental to the main attraction, such as the zoo and museums, or place of entertainment such as the theatre and cinema;
- (xi) shops being a use incidental to the operation of a recognised sporting facility, and stocking equipment used in connection with the sports played on the site.

The proposals were that shops over 300 square metres (or 200 square metres in St. Helier) would not be allowed

to open. However, during the States debate the view was strongly expressed that the new Law should not be applied retrospectively and, having regard to transitional provisions which would accordingly be incorporated, the Connétables would recommend that a single size apply to all shops.

In proposing new legislation providing for only limited trading the Connétables had sought to balance the needs of residents and tourists to be able to purchase essential items against the disruption and inconvenience which might be caused to residents if shops in the area traded; the availability of other smaller shops open on those days; and the likelihood of the tranquillity of Sunday being disrupted by the trading. The law should also be simple to apply and easy to police.

Progress with new Law

Although the States took the decision in 1999, it was then necessary to make a bid for law drafting time and legal opinion has been required on the implications of the more recent Human Rights Law. In particular the Connétables have considered the impact of the proposed legislation on persons of other faiths and have sought legal opinion from the Law Officers.

A draft Law was considered by the Comité des Connétables last year but it is an enabling law and the detail of the permit scheme, and which shops might be permitted to open, is to be included in subordinate legislation. It was therefore difficult to envisage the precise nature of the legislation and the Connétables agreed that before presenting the draft Law to the States for debate it would be helpful to draft the subordinate legislation so that the proposals could be clearly established.

Since the original decision, the Connétables have also received legal opinion with regard to services provided by shops. It would seem that the provision of services does not constitute the retail sale of goods under the 1961 Law and thus further anomalies between businesses have arisen. As a result the scope of the new Law has been widened to include all shops.

Recent changes to current legislation

On 19th May 2004 the States approved a proposition to permit jewellery to be sold under the 1961 Law. During that debate, it was obvious that the States required a further opportunity to debate the general principles of Sunday trading as views of the public and States members may have changed since the decision was taken in 1999.

More recently Senator E.P. Vibert has lodged 'au Greffe' the proposition 'Sunday trading legislation' P.107/2004 which would deregulate Sunday trading. The Connétables have commented separately on that proposition and it is not intended to restate those comments in this report.

Proposals of the Connétables

The Connétables have, for some time, recognised that the States should have the opportunity for a general debate on the issue of Sunday trading and had intended this to take place when the draft legislation was presented. The Connétables consider that general deregulation is not necessarily in the best interests of all members of the community and it is necessary to strike a balance. This amendment therefore provides that all shops may apply for a permit to open but that shops over a certain size will only be permitted to open for a limited number of hours. The principle could be similar to the current United Kingdom legislation [where shops over 280 square metres may open for 6 hours on a Sunday between 10.00 and 17.00] but the Connétables would wish to analyse shop sizes before proposing the specific size to be applied – it would not necessarily be appropriate to adopt the size used by the U.K. as average shop sizes in Jersey are likely to differ.

The Connétables are aware that general deregulation will have a number of implications which must also be taken into account by States members when considering the proposition. These include –

- Whilst the majority are consumers who may benefit from shops opening on a Sunday and other days, there are currently 8,220 persons employed in the wholesale and retail trades [June 2003 Report on the Jersey Labour Market, Statistics Unit, Policy and Resources Department] who may

be adversely affected as they may be required to work. This is an increase from 7,295 in 1996 [Census report].

- The proposed Employment (Jersey) Law 2003 requires employees to have a certain amount of rest days but there is no requirement for this to include weekends. It is likely that retail/wholesale staff will have less opportunity to have a rest day at the weekend and this could impact upon family life and indeed upon demand for child care provision for working parents.
- The 1999 proposals recognised that development in Jersey is a composite of retail and residential property and that many people living near shops appreciate the relative tranquillity afforded by the current law which limits trading on a Sunday and other special days. Deregulation would have a significant impact and is likely to result in considerable nuisance to those living near shops. It is therefore essential that the Connétable has powers to revoke a permit where conditions are breached or the opening causes a nuisance.
- Deregulation is also likely to increase the number of deliveries to shops. Often, it is the noise and disturbance caused by deliveries that forms the basis of many complaints received by Connétables and the draft Law will therefore enable a Connétable to impose controls on deliveries to a shop.
- The United Kingdom experience of deregulation shows that Sunday trading is largely rearranging the same level of spending rather than generating additional consumer expenditure. However, it may be that Jersey would benefit from some increased spending from day-trippers and short-stay visitors e.g. those attending conferences, but such additional trading is likely to be limited to certain times of the year. Many shops which cannot at present open on a Sunday instead open in the evenings during the summer and on Bank Holidays. Recent surveys by retailers show a preference for limited deregulation relating to the time of year [e.g. summer months, pre-Christmas] rather than throughout the year. In this case it may be that market forces will lead to quieter days in the winter months and busier days in the summer months to cater for the tourism season.
- General trading will increase the traffic as shoppers, and shop workers, require transport. A decision will be required as to whether parking charges will be introduced on a Sunday [parking is currently free of charge in car parks administered by the States of Jersey] and whether parking control staff will be employed or required to work to police car parking. The current Sunday and bank holiday bus services are very limited.
- General trading will have implications for street cleaning rotas and cost implications, which have not yet been estimated, for the States and Parishes.
- Longer trading hours are likely to increase the demand for labour and thus business overheads as it has been shown that deregulation largely rearranges the same level of spending rather than generating additional consumer expenditure. This should be considered taking into account the States Strategic Plan 2005 to 2010 which proposed that “the working population should not be allowed to grow by more than 1% per annum and workforce changes should be redirected from low wage jobs into other sectors”.
- Sundays, Good Friday and Christmas Day are, by customary law, observed as general holidays. In addition Liberation Day and a number of other days are specified as Public Holidays and Bank Holidays but only banks are required to close on such days. The Connétables consider that Good Friday, Liberation Day and Christmas Day should remain ‘special’ days and that trading should not be deregulated on these three days. One option would be to require all shops to close on these three days but this is unlikely to be acceptable as, to date, limited trading has been permitted and many would expect to be able to purchase daily newspapers and other essential items on these days. The Connétables therefore recommend limited trading based on the scheme approved by the States in 1999 which covers essential goods but also caters for recreational pursuits, sporting and

tourist attractions.

Members must decide whether legislation permitting trading on Sundays, Good Friday, Liberation Day and Christmas Day should allow –

- total deregulation; or
- general trading by all shops subject to certain limitations on opening hours of larger premises and in respect of Good Friday, Liberation Day and Christmas Day (as proposed in this proposition); or
- limited trading enabling the purchase of essential items (as set out in P.137/1999 and approved by the States on 9th November 1999).

If these amendments are approved by the States, the Connétables intend to bring forward draft Regulations and the enabling Law before the end of 2004.

This amendment has no implications for the financial or manpower resources of the States.