

# STATES OF JERSEY



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

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Lodged au Greffe on 3rd June 2011  
by the Minister for Economic Development

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STATES GREFFE





Jersey

## **DRAFT SHOPS (REGULATION OF OPENING) (JERSEY) REGULATIONS 201-**

### **REPORT**

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#### **Introduction**

On 4th November 2009, the States approved the Shops (Regulation of Opening and Deliveries) Law 2010 (“the 2010 Law”). This Law empowered the States to make Regulations to control the operation of shops in Jersey on Sundays and other special days.

The 2010 Law, approved as amended, establishes a scheme which (like that under the 1960 Law) is basically proscriptive in that it establishes that shops are not generally allowed to open on Sundays and other specified days (Christmas Day, Good Friday, Liberation Day, and 26th December).

With this principle established, the Regulations create a permit scheme to allow shops to open on these days with the consent of the relevant Connétable, subject to limitations the Connétable may impose.

#### **Principles**

These Regulations will create a framework for the administration of Sunday trading under the Shops (Regulation of Opening and Deliveries) (Jersey) Law 2010. The intention is that the new regime will –

- create an enforceable Sunday trading regime;
- increase flexibility;
- retain the Connétables as the initial determining body;
- create a more easily accessible appeal process;
- limit the opening of large shops; and
- allow essential services and businesses of importance to the Island to operate on Sundays.

## **Main provisions**

### Permitted transactions

The Regulations introduce a system of licensing shops according to their type and size, with consideration given to the effect that the operation of a shop on Sundays would have on nearby residents. This is intended to avoid the potentially illogical results of a transaction-defined list system, as exists under the 1960 Law.

Under the 1960 Law, there is no actual restriction on which shops could open, but instead controls are imposed by the ‘Schedule of Permitted Transactions’ on what activities shops can undertake. The Schedule is an exhaustive list of what goods can be sold on a Sunday. If a good is not on the list, it cannot be sold.

This original Schedule of goods was partly intended to ensure that tourists could obtain holiday essentials and included such items as: ‘*beachwear and beach goods*’, ‘*sun-lotions, sun-glasses and toilet requisites*’ and ‘*photographic goods, supplies and accessories*’. Over the last 50 years it has been amended to include items such as jewellery, and most recently in March 2007 the States agreed to allow cut flowers to be sold on Sundays from locations other than those on which they were grown.

The main disadvantage in such a system is that it allows shops to open to sell some, but not all, of their inventory. For instance, a corner shop could sell food, tobacco and newspapers, but if a customer attempted to purchase a DVD, the shop would theoretically be in breach of the 1960 Law if they made that sale.

As a result of the list, the 1960 Sunday trading scheme requires a Connétable to monitor what goods are being sold in each shop operating under a Sunday trading licence. Although shops can be granted a permit on the grounds that a substantial part of their normal businesses<sup>1</sup> falls under the 1960 ‘Schedule of permitted transactions’, shops are still limited to transactions on that list. Therefore to fully enforce the 1960 Law, a Connétable would be required to be aware of all goods being sold in shops open on Sundays in the Parish and to act against those selling goods which were not on the list.

Under the new Regulations, the size of a shop and its effect on the quality of life of nearby residents will be the key determining factors.

### Exemptions

Some changes have been made to those businesses that are exempt from the need to hold a Sunday trading permit. These businesses will be allowed to trade on a Sunday, Good Friday, Christmas Day, 26th December or Liberation Day without a permit for various reasons –

- Any shop ‘open during permitted hours pursuant to an on-licence granted under the Licensing (Jersey) Law 1974’.

This includes public houses, bars, clubs, etc. (but not off-licences). The operation of these businesses is regulated by the Licensing Law.

- A registered place of refreshment, within the meaning of the Places of Refreshment (Jersey) Law 1967, which is open pursuant to a permit granted under Article 13(4) of that Law.

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<sup>1</sup> Shops (Sunday Trading) (Jersey) Law 1960, Article 4(4)

This includes restaurants, cafés, burger-vans, etc. These businesses are regulated by the Places of Refreshment Law. Premises which (for whatever reason) do not fall under the Places of Refreshment Law will need Sunday trading licences.

- A shop that is registered under Article 74 of the Medicines (Jersey) Law 1995, and is open only for the sale of medicines and other medicinal products, medical and surgical apparatus, appliances, instruments and supplies.

This is to ensure that medical supplies are available when required. The operation of these businesses is regulated by the Medicines (Jersey) Law 1995.

- A shop that is open for the transaction of a business within the Port of St. Helier or St. Peter's Airport.

This is retained from the 1960 Law and allows sales to arriving and departing passengers, amongst others.

- A 'shop' that is open only for the purpose of providing sports or other recreational equipment for use at the shop or at a facility (for example a golf course or tennis court) where the shop is situated.

This also includes gymnasiums. It should be noted that a retail facility within a sport facility (such as a golf accessories shop) will require a Sunday trading licence, even if the sports facility itself will not.

- A 'shop' that is a bank and is open pursuant to an Order made under Article 4 of the Public Holidays and Bank Holidays (Jersey) Law 1951.

This is a little-used Order-making power. This specific circumstance (where, for some pressing reason the Minister for Economic Development has ordered a bank to open on a Sunday) is unlikely to occur. This is not a general exemption for banks.

- Foreshore concessions.

This includes deckchair provision, ice-cream and food sales on beaches, and any business wholly operating on a slipway with a concession from the Minister for Economic Development. These businesses are already regulated under the Policing of Beaches (Jersey) Regulations 1959 and are likely to conduct most of their business on a weekend.

- Tourist facilities.

Tourist facilities have been exempted as there is no intention to limit their operations on Sundays, and therefore it would seem inappropriate for them to have to obtain a Sunday trading permit. It should be noted that a retail facility within a tourist attraction (such as a souvenir shop) will require a Sunday trading licence, even if the tourist attraction itself will not.

#### The new permit scheme

The permit scheme has been changed to allow more flexibility. The new scheme allows Connétables to introduce conditions, as well as giving a degree of control over the timing of deliveries on Sundays, which has historically been a significant concern of residents near some shops.

The provision of services has been included in the new legislation, to address a weakness of the 1960 Law, which was designed only to address the sale of goods.

Services (such as hairdressing) which involved no sale of goods were not clearly dealt with, and it was not certain that the 1960 Law would allow a Connétable to stop such a business opening on a Sunday if it chose to do so. The new legislation offers a more level playing field by treating most businesses providing services in the same manner as shops which sell goods.

An effect of this necessary step is that more types of business are covered in the new legislation, including cinemas, theatres, etc. There is no barrier to these businesses trading on a Sunday if they choose to do so, but they will require a Sunday trading permit, where they did not do so before.

Three types of permit exist under the new legislation –

- General permit – these may be granted for an individual shop. General permits can authorize the opening of a shop on Sundays, Good Friday, Liberation Day and 26th December, or any combination of those days. Conditions can be imposed to control opening hours, deliveries, etc. It will be valid throughout the year in which it is granted. These permits run until 31st December of the year in which they are granted.

A general permit cannot be granted in respect of certain types of shop with retail sales areas over 500 square metres. General permits cannot allow a shop to open on Christmas Day.

- Single permits – these may be granted for an individual shop, and can authorize its opening on a particular date or dates specified in the permit.

A single permit can specify more than one date, and a shop may apply for more than one single permit in a year. However, no shop may open for more than 10 days in any one year under one or more single permits. Single permits cannot allow a shop to open on Christmas Day.

- Blanket permits – these are granted to specified types of shop. They can only be issued on days which are ‘special occasions’ as designated by the Minister for Economic Development, after discussion with the Comité des Connétables.

The Connétable can specify which types of shops are to be affected, and those shops will be permitted to open on one or more Sundays as if they held individual Sunday trading licences. Connétables may not grant blanket permits for Good Friday, Liberation Day, Christmas Day or 26th December. Businesses will be notified by a notice published in the Jersey Gazette.

Decisions regarding the granting of permits will be taken by Connétables with consideration given to –

- The peace and tranquillity of the neighbourhood.
- The avoidance of nuisance to residents.

These effects will be governed to a large extent by –

- The kind and size of a shop.
- Any noise, traffic and litter that is likely to result from its opening.

### Permit scheme for large shops

As indicated in the permit scheme, businesses are treated differently according to the type of operation and the size of their measured trading area<sup>2</sup>. Most businesses will be able to apply for general permits, while some businesses of certain types which use over 500 square metres for commercial activity will only be able to open on 10 Sundays per year.

This system is designed to control the operation of large businesses that might cause disruption if they were to trade on Sunday, while maintaining a level playing field for those businesses across the Parishes.

Although this new scheme will allow some large shops to open where they do not currently, there does not appear to be a great deal of appetite amongst large retailers to open such shops on Sundays. Under the 1960 Law, there would be no barrier to a permit for large shops to be granted if it could be established that the permitted transactions formed '*a substantial part of the applicant's normal business*'.<sup>3</sup>

The amount of retail space operated by a shop does not include offices, storage areas or staff facilities to which the public do not have access, but does include areas for the display of goods, if the public can access (or see) those areas and if those goods can be purchased.

If a shop has more than one area from which it sells goods, the retail sales area is measured by adding all of these together. This is broadly in keeping with the definition used in the U.K.

The legislation does not permit a business to reduce its trading area to under 500 square metres on Sundays in order to acquire a general permit. The size of the retail sales area that is used on weekdays is the defining factor.

### Surveyor's plans and proof of size

When a business which sells goods to the public is making an application for a general licence, it must include a statement of the retail sales area of the shop.

Some businesses are required to provide a surveyor's plan detailing the layout and size of the retail sales area.

Businesses that must provide a surveyor's plan are –

- Businesses which claim to have a retail sales area of less than 500 square metres, and which sell goods to the public and have not previously applied for a Sunday trading licence under the new Law and Regulations.
- Businesses which claim to have a retail sales area of less than 500 square metres, and which sell goods to the public and have made alterations to the size and/or layout of their retail sales since their last application for a Sunday trading licence.

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<sup>2</sup> Defined in the legislation as 'the retail sale or hire of goods', which includes the display of goods

<sup>3</sup> Shops (Sunday Trading) (Jersey) Law 1960, Article 4(4)

Businesses that do not need to provide a surveyor's plan are –

- Any business that provides services and not goods to the public.
- Any business over 500 square metres.
- Any business that has previously applied for a Sunday trading licence and has not since altered the size and layout of its retail sales area.

A surveyor's plan is necessary because under the new Law there is a commercial benefit to a business if it informs the Connétable that its retail sales area is less than 500 square metres, and therefore statements to this effect must be supported by evidence.

Although shops seeking to obtain a general Sunday trading permit will have to provide a surveyor's plan with their first application, when a business makes its second and subsequent applications, if the retail sales area of the shops has remained the same, then the Connétable may accept a statement from the business that the retail sales area has not changed since the last application was made.

Also, the plan is not required if the shop is a vehicle.

When determining an application, a Connétable may inspect a shop, or appoint someone to do so. An appointed inspector must report to the Connétable in writing, with a copy passed to the applicant. The Connétable should inform the applicant that they may make written representations in respect of this report. The Connétable can then consider both the inspector's report and any written submission together while determining the application.

#### Special occasions and blanket permits

Under the new legislation, the Minister for Economic Development will have the power, after consultation with the Comité, to declare any day except Good Friday, Liberation Day, Christmas Day or 26th December to be a special occasion.

On such special occasions, Connétables may publish a notice in the Jersey Gazette granting permission to trade to all shops of specified types. Each Connétable has discretion over which types of business are included in this blanket permit. Conditions can be imposed upon shops opening under a blanket permit in the same way that they can in relation to a single permit.

#### Conditions that Connétables may impose on permits

Under the new Regulations, Connétables will have powers to apply conditions to Sunday trading permits. This provides flexibility to allow, for instance, potentially disruptive businesses, or those which might generate significant amounts of traffic movements, to be controlled in such a way as to limit any potential disruption on a Sunday.

The conditions which Connétables can impose will be –

- The hours on which a shop may open on Sundays or special days can be specified.



- Wholesale deliveries to a shop on Sunday can be restricted, and the permitted number and timing of deliveries can be specified. For instance, a shop in a residential area could be allowed to open at 8.00 a.m. but not receive deliveries until 10.00 a.m.
- Parking arrangements for staff and customers of the shop can be specified.

#### Appeals against the decision of Connétables

The Regulations makes provision for 2 levels of appeals against decisions made in relation to Sunday trading, firstly to the Comité against the decision of a Connétable, and then to the Royal Court against the decision of the Comité.

The legislation gives 3 grounds for appeal –

- An applicant may appeal on the grounds that a Connétable has refused to grant the requested permit.
- An applicant may appeal on the grounds that a Connétable has approved a permit subject to conditions that the applicant wishes to change, or has refused to change conditions of a permit to which the holder has objected in writing.
- A permit holder may appeal on the grounds that the Connétable has revoked or changed their existing permit.

Appeals are dealt with by the Chairman of the Comité, who will convene a Panel of 3 Connétables (excluding the Connétable whose decision is to be reviewed) to consider the appeal on behalf of the Comité. If the appeal is against a decision of the Chairman, the Vice-Chairman will organise the Panel.

Appellants have the right to submit written representations to the Comité detailing their case.

Once a decision is made, the Panel will write to the appellant, detailing the decision and clearly stating the reasons for that decision, referencing the submission of the appellant and any information received from the Connétable whose decision was being reviewed. The correspondence should be copied to that Connétable.

The response must also inform the appellant of their rights to continue the process to the Royal Court.

#### Powers of Connétables to modify existing permits

A Connétable has the power to change the conditions of Sunday trading permits previously issued, either on his own initiative or at the request of the permit holder.

If a Connétable wishes to change a permit, or to refuse a request to change a permit, he must give written notice to the permit holder, then receive and consider the permit holder's response before making a decision.

As a permit holder can appeal against the Connétable's decision, changes to permits or refusals to change permits may have to be justified to the Comité in due course.

### Powers of Connétables to revoke existing permits

Connétables have limited powers to revoke permits, on the grounds that –

- One or more conditions of the permit have been contravened.
- The opening of the shop of damages the peace or tranquillity of the neighbourhood.
- The shop no longer fulfils the requirements for the grant of a general permit.
- The permit holder has been convicted of any offence under the Sunday trading legislation.

If a Connétable wishes to revoke a permit, he must give written notice to the permit holder, then receive and consider the permit holder's response before making a decision.

As in the case of changes to permits, a permit holder can appeal against the Connétable's decision, and so revocation of permits may have to be justified to the Comité in due course.

### Fees

The fee for a Sunday trading permit was previously set at £15.00, and this has now risen to £50.00. While this is a significant increase, the fee was last revised in 1984, and the increase reflects inflation and the increased cost of administration over the past 27 years.

### **Financial and manpower implications**

There are no financial or manpower implications for the States, as the Sunday trading permit scheme is, and will remain, the responsibility of the parishes.

Parishes will receive increased income from the new scheme as the permit application fee has risen from £15.00 to £50.00. This is the first fee increase since 1984, and broadly reflects the increase in administrative costs since that time.

## Explanatory Note

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These Regulations, which are to be read with the Shops (Regulation of Opening and Deliveries) (Jersey) Law 2010, revise the law as to the opening of shops on Sundays, Good Friday, Liberation Day, Christmas Day and 26th December.

In the Law, the definition “shop” includes the provision of services at a place or vehicle that is occupied by the person providing the service – for example a beauty salon, or a van that sells ice-cream.

A shop is not permitted to open on Christmas Day.

A shop is not allowed to open on Sundays, or on Good Friday, Liberation Day, or 26th December, unless it has a permit to do so that is granted under the Regulations. The Connétable of the parish in which the shop is situated (or, in the case of a mobile shop, the parish in which the applicant for the permit lives) will be the authority for granting the permit.

However, the shops and services listed in Schedule 1 are exempt from the restrictions – they will not need a permit. These are –

- (a) pharmacies;
- (b) public houses and other on-licence premises;
- (c) restaurants and other registered places of refreshment;
- (d) shops at the airport or the port of Saint Helier;
- (e) banks that are open under the Public Holidays and Bank Holidays (Jersey) Law 1951;
- (f) premises whose predominant use is as sports facilities – for example golf clubs, tennis courts and bowling alleys;
- (g) public transport and freight services;
- (h) taxi services; and
- (i) tourist amenities, facilities and other attractions that do not supply goods.

### **Kinds of permits:**

There will be 3 kinds of permit –

- (a) An individual shop may be granted a general permit. This will authorize the opening of the shop on Sundays, Good Friday, Liberation Day and 26th December, subject to any conditions in the permit.

It will be valid throughout the year in which it is granted.

However, a general permit cannot be granted to a shop described in Part 1 of Schedule 2, if the total area of its commercial activities exceeds 500 square metres. That Schedule relates to shops whose main business is to supply goods otherwise than incidentally to other services.

The restriction will not apply to tourist attractions that do supply goods, as long as in each case the area used for their supply does not exceed

500 square metres. Such businesses will be eligible for general permits in the same way as smaller shops.

- (b) Any individual shop may be granted a single permit.

This will authorize its opening on a particular date specified in the permit (not being Christmas Day).

A single permit may specify more than one date, and a shop may apply for more than one single permit in a year. However, no shop may open for more than 10 days in any one year under one or more single permits.

- (c) A blanket permit will be granted by a notice published in the Jersey Gazette.

It will authorize the opening in the parish to which it applies, on special occasions specified in the notice, of all shops of any categories described in the notice.

A blanket permit cannot be granted in respect of Good Friday, Liberation Day, Christmas Day or 26th December (see Regulation 4(3)).

#### **General permits and single permits:**

A Connétable may grant a general permit or a single permit on an application by the occupier of the shop concerned.

#### **Blanket permits:**

A Connétable may grant a blanket permit for a parish for a day that the Minister for Economic Development, by Order, designates as a special occasion because of its economic, social or cultural importance – for instance, the Fête de Noué.

Before making an Order, the Minister must consult the Comité des Connétables.

The Connétable will have a discretion whether or not to grant a blanket permit on any particular special occasion. He or she will not be bound to do so.

A blanket permit will apply to those kinds of shops that it specifies. For example, the Connétable of a parish may choose to grant it only in respect of shops that sell food. Alternatively, he or she may decide not to limit it to particular kinds of shops.

Individual shops to which a blanket permit relates will not need to make application to the Connétable.

#### **How the Regulations are arranged:**

The Regulations are set out in the following way –

*Regulation 1* defines expressions that are used in them.

*Regulation 2* explains the meaning of the “retail sales area” of a shop.

If the shop is one that also opens on days other than Sundays, Good Friday, Liberation Day and 26th December, this means the area that is ordinarily used in the shop for commercial activities on those other days.

If the shop is one that does not open on days other than Sundays, Good Friday, Liberation Day and 26th December, the retail sales area means the area that it is allowed to use under the permit.

*Regulation 3* exempts shops and services in Schedule 1 from the requirement to obtain a permit.

*Regulation 4* empowers the Minister, by Order, to designate special occasions for the purposes of the Regulations.

*Regulation 5* provides for forms of application and forms of permits.

*Regulation 6* provides for the 3 kinds of permits: general permits, single permits and blanket permits. It also provides that a permit for a vehicle (such as an ice cream van) is valid in all parishes.

*Regulation 7* provides that except where the shop is a vehicle, the Connétable of the parish in which it is situated is the authority for granting a permit.

In the case of a general or single permit for a vehicle, the Connétable of the parish in which the applicant lives or lived at the time of the application for the permit is the authority for its grant, variation or revocation. In the case of a blanket permit for a vehicle, the Connétable of the parish in which the applicant lives at the time of its grant is the authority.

*Regulation 8* provides that an application in respect of a general or single permit is to be made to the Connétable of the parish, and sets out the requirements for an application.

It must be in writing in an approved form, and include details of the size of the retail sales area and of the person who will manage the shop while it is open. If the application is for a general permit for a shop whose business includes the supply of goods, a surveyor's plan showing the size of the retail sales area must be provided on the first application.

*Regulation 9* enables a Connétable to require an applicant to furnish additional information, and to arrange for the inspection of the shop.

*Regulation 10* requires a Connétable, in deciding whether to grant a permit, to have regard to the peace and tranquillity of the neighbourhood, and the avoidance of nuisance to residents, when the shop would be open under the permit. In particular, the kind and size of the shop must be taken into account.

*Regulation 11* requires the Connétable to notify the applicant in writing of the decision on the application. The Connétable must also inform the applicant of the procedure for reviewing the Connétable's decision (see Regulation 20).

*Regulation 12* sets out conditions that apply to every general permit.

If there is any change in the retail sales area, management or predominant use of a shop, or the permit holder ceases to occupy the shop, he or she must notify the Connétable within 7 days.

The permit must be displayed conspicuously in the shop.

If the shop is one that also opens on days other than Sundays, Good Friday, Liberation Day and 26th December, the commercial activities that may be carried on under the permit must be substantially the same as those carried on there during those other days.

Regulation 12 also enables a Connétable to impose other conditions in granting a general permit.

These may include restrictions on hours of opening and of wholesale and retail deliveries to and from a shop, and requirements as to parking arrangements for customers.

*Regulation 13* enables a Connétable to impose conditions when granting a single permit.

*Regulation 14* provides for the issue of general and single permits to applicants to whom they are granted.

*Regulation 15* empowers a Connétable by a notice published in the Jersey Gazette to grant a blanket permit on Sundays that are designated as special occasions, for all shops in his or her parish that are within categories described in the notice. In doing so, the Connétable may impose any conditions that could be imposed in respect of a general permit or single permit.

If the shop is one that also opens on days other than Sundays, the commercial activities that may be carried on under the permit must be substantially the same as those carried on there during such other days.

*Regulation 16* enables a Connétable to vary a general permit or a single permit, either on the application of the permit holder or on the Connétable's own initiative.

Before varying a permit on his or her own initiative, the Connétable must give the holder the opportunity to make written representations, and must take into account any representations so made.

The Connétable must notify the applicant in writing of the decision, and must also inform the applicant of the procedure for reviewing the decision.

*Regulation 17* provides that a general permit or a single permit ceases to have effect if the holder ceases to occupy the shop for which it is granted.

*Regulation 18* enables a Connétable to revoke a general permit or a single permit.

The Connétable may do so if, because of a change in the retail sales area or predominant use of the shop concerned, it no longer meets the requirements for the grant of such a permit.

The permit may also be revoked for breach of a condition, or if the holder has been convicted of any offence under the Law.

The Connétable may also revoke a permit if he or she thinks fit to do so, having regard to any disturbance of the neighbourhood or nuisance to residents.

The Connétable must notify the applicant in writing of the decision, and inform the applicant of the procedure for its review.

*Regulation 19* requires a Connétable to give his or her reasons for refusing to grant an application for a general permit or single permit or for its variation, or for granting it on conditions, or for varying it on the Connétable's own initiative or revoking it.

*Regulation 20* gives the person the right to have the Connétable's decision reviewed by the Comité des Connétables. The review will be conducted by a panel of 3 Connétables, who must themselves give their reasons for their decision.

*Regulation 21* gives a person a right of appeal to the Royal Court against a decision on review by a panel of the Comité des Connétables.

*Regulation 22* prescribes a fee that is payable for an application for a general permit or single permit. The fee is set out in Schedule 3 (see below), and will be credited to the revenues of the parish to whose Connétable the application is to be made.

Under *Regulation 23*, the holder of a general permit or single permit must produce it within 7 days when required by a Connétable (or by a person authorized by a Connétable) to do so. Failure to comply is an offence punishable by a fine not exceeding level 2 on the standard scale in the Criminal Justice (Standard Scale of Fines) (Jersey) Law 1993.

The maximum penalties for each level on that scale are, currently –

Level 1 – £50

Level 2 – £500

Level 3 – £2,000

Level 4 – £5,000

*Regulation 24* contains transitional provisions and a saving.

If, immediately before the commencement of the new Law, a transaction is excepted from the prohibition in the 1960 Law against trading on Sundays, Good Friday, Christmas Day and Liberation Day, the exception will continue in force for 3 months after the restrictions imposed by Article 2(1) of the new Law come into force.

If a permit under the 1960 Law has not expired before the commencement of Article 2(1) of the new Law, it will continue in force, according to its tenor, in respect of the days for which it was granted. It will do so until it expires or is revoked under the new Law.

*Regulation 25* provides for the citation and commencement of the Regulations. They will come into force on the same day as the Shops (Regulation of Opening and Deliveries) (Jersey) Law 2010.

*Schedule 1* sets out the exemptions from the restrictions on opening.

*Part 1* of *Schedule 2* specifies shops for which general permits cannot be granted if they are bigger than 500 square metres. *Part 2* of that Schedule contains exceptions from this restriction.

*Schedule 3* imposes a fee of £50 for an application for a general permit or a single permit. No fee is imposed for a blanket permit, or for an application to vary a general permit or single permit.







Jersey

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

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FEES 32



Jersey

## **DRAFT SHOPS (REGULATION OF OPENING) (JERSEY) REGULATIONS 201-**

*Made* [date to be inserted]

*Coming into force* [date to be inserted]

**THE STATES**, in pursuance of Articles 3, 4 and 10 of the Shops (Regulation of Opening and Deliveries) (Jersey) Law 2010<sup>1</sup>, have made the following Regulations –

### **1 Interpretation**

In these Regulations, unless the context otherwise requires –

“approved form” means –

- (a) a form approved by the Comité des Connétables under Regulation 5(1) for use in all parishes, where the Comité has approved the form; or
- (b) a form approved by the Connétable of a parish under Regulation 5(2) for use in that parish, where the Connétable has approved the form;

“blanket permit” means a blanket permit to which Regulation 6 refers;

“general permit” means a general permit to which Regulation 6 refers;

“Law”, and “the present Law”, mean the Shops (Regulation of Opening and Deliveries) (Jersey) Law 2010<sup>2</sup>;

“1960 Law” means the Shops (Sunday Trading) (Jersey) Law 1960<sup>3</sup>;

“permit” means a blanket permit, a general permit or a single permit;

“retail sales area” shall be construed in accordance with Regulation 2;

“single permit” means a single permit to which Regulation 6 refers;

“special occasion” means a day that is designated by the Minister, by an Order made under Regulation 4, as a special occasion;

“supply of goods” means a commercial activity described in Article 1(2)(a) of the Law, but does not mean a commercial activity described in Article 1(2)(c) of the Law;

“weekday” means any day of the week except –

- (a) a Sunday; or
- (b) a day that is Good Friday, Liberation Day, Christmas Day or 26th December.

## **2 Meaning of “retail sales area”**

- (1) In these Regulations, “retail sales area”, when used in respect of a shop that is open on weekdays as well as on a Sunday, Good Friday, Liberation Day or 26th December, means the area that is ordinarily used for commercial activities on weekdays.
- (2) In these Regulations, “retail sales area”, when used in respect of a shop that is not open on any weekday, means the area that may be used for commercial activities under a permit.
- (3) The retail sales area of a shop includes the working space behind any counter, but does not include –
  - (a) any office;
  - (b) any storage area to which the public is not given access; or
  - (c) any staff facility (for example, a staff kitchen or staff washroom) to which the public is not given access.
- (4) The retail sales area of a shop that is in a building shall be determined by measuring the internal floor space.
- (5) Where more than one area of a shop to which paragraph (1) refers is ordinarily used for commercial activities, the aggregate of those areas of the shop is the retail sales area.
- (6) Where more than one area of a shop to which paragraph (2) refers is the area that may be used for commercial activities under the permit, the aggregate of those areas of the shop is the retail sales area.

## **3 Exemptions**

- (1) The shops in Schedule 1 are exempt from Article 2(1) of the Law.
- (2) If a shop in Schedule 1 is one that is open on weekdays, it is a condition of the exemption under this Regulation that the commercial activities that are carried on at the shop on Sundays, Good Friday, Liberation Day and 26th December shall be substantially the same as those carried on at the shop on weekdays.

## **4 Special occasions**

- (1) If the Minister considers –
  - (a) that a particular day is a special occasion that is of economic, social or cultural importance to Jersey; or
  - (b) that a particular day is one on which an event that is of economic, social or cultural importance to Jersey is to be held,the Minister may by Order designate that day as a special occasion.

- (2) Before making an Order under this Regulation, the Minister shall consult the Comité des Connétables.
- (3) An Order cannot designate Good Friday, Liberation Day, Christmas Day or 26th December as a special occasion.

## **5 Authorized forms**

- (1) The Comité des Connétables may approve forms of applications and permits for the purposes of these Regulations.
- (2) If the Comité des Connétables has not approved a form for use for a purpose of these Regulations, the Connétable of a parish may approve the form for use for that purpose in the parish until the Comité approves a form.
- (3) The Connétable of a parish shall make the approved forms available for use in the parish.

## **6 Types of permit**

- (1) The following permits may be granted in accordance with these Regulations –
  - (a) a general permit;
  - (b) a single permit;
  - (c) a blanket permit.
- (2) A general permit authorizes the opening of a shop on the following days –
  - (a) every Sunday;
  - (b) Good Friday;
  - (c) Liberation Day; and
  - (d) 26th December.
- (3) A general permit shall remain in force until the end of the 31st day of December in the year in which it is granted, unless it ceases to have effect under Regulation 17 or is revoked under Regulation 18.
- (4) A general permit cannot be granted in respect of a shop to which Part 1 of Schedule 2 applies, if its retail sales area exceeds 500 square metres.
- (5) A single permit authorizes the opening of a shop on any date or dates specified in the permit.
- (6) However –
  - (a) a single permit cannot authorize the opening of a shop on Christmas Day; and
  - (b) the number of days in any year in respect of which one or more than one single permit may be granted in respect of the shop cannot exceed ten.

- (7) A blanket permit authorizes the opening in a parish of every shop of a description specified in the permit, on any special occasion specified in the permit.
- (8) A permit for a shop that is a vehicle authorizes its opening in any parish.

## **7 Connétable to be authority for grant of permits**

- (1) If a shop is not a vehicle, the Connétable of the parish in which the shop is situated shall be the authority for the grant, variation and revocation of any permit for the shop.
- (2) In the case of a general permit or single permit for a shop that is a vehicle, the Connétable of the parish in which at the time of the application for the permit the applicant for or holder of the permit lives or lived shall be the authority for its grant, variation and revocation.
- (3) In the case of a blanket permit for a shop that is a vehicle, the Connétable of the parish in which the holder of the permit lives at the time of the grant of the permit shall be the authority for its grant, variation and revocation.

## **8 Application for permit**

- (1) An application for a general permit or single permit for a shop shall be made by the occupier to the Connétable.
- (2) The application shall be in writing, in the approved form.
- (3) The application shall state –
  - (a) whether the application is for a general permit or single permit;
  - (b) if the application is for a single permit, the date or dates in respect of which the application is made; and
  - (c) in every case, the name of the person who will manage the shop while it is open pursuant to the permit,and shall contain such other information as the approved form specifies.
- (4) The application shall be accompanied by the application fee payable under Regulation 22(1).
- (5) The Connétable need not deal further with the application until the fee is paid.
- (6) If the application is (whether wholly or partly) for a general permit in respect of the supply of goods, the application shall also be accompanied by a plan –
  - (a) prepared, and certified as accurate, by a surveyor; and
  - (b) showing the measurements and size of the part of the retail sales area that will be used for that activity.
- (7) The plan is not required if –
  - (a) a plan that complies with paragraph (6) has already been submitted to and accepted by the Connétable; and

- (b) the occupier certifies that there has been no change in the size of the retail sales area of the shop since that earlier plan was submitted.
- (8) The plan is not required in respect of a shop that is a vehicle.

## **9 Additional information**

- (1) An applicant for the grant of a general permit or single permit shall provide such additional information as a Connétable reasonably requires in order to determine the application.
- (2) For the purpose of determining the application, the Connétable may –
  - (a) inspect the shop to which it relates; or
  - (b) authorize another person in writing to do so on the Connétable's behalf and report to the Connétable on the inspection.
- (3) A person who is authorized under paragraph (2) by the Connétable shall, if asked to do so by the applicant, show the applicant a copy of the authorization before inspecting the shop.
- (4) A Connétable who receives a report under paragraph (2) shall give a copy to the applicant, and inform the applicant that he or she may make written representations on the report to the Connétable.
- (5) In determining the application, the Connétable may take the report into consideration.
- (6) If the Connétable does so, he or she shall also take into consideration the written representations (if any) made by the applicant on the report.

## **10 Considerations in granting permits**

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

## **11 Determination of application**

- (1) On determining an application for the grant of a general permit or single permit, a Connétable shall within 21 days notify the applicant in writing of the decision.
- (2) The Connétable shall at the same time notify the applicant of the procedure by which the decision may be reviewed under Regulation 20.

## 12 Conditions of general permits

- (1) It is a condition of a general permit that if there is any change –
  - (a) in the size of the retail sales area of the shop for which the permit is granted;
  - (b) of manager of the shop; or
  - (c) of the predominant use of the shop,the permit holder shall within 7 days in writing notify the Connétable of the parish in which the shop is situated.
- (2) It is a condition of a general permit that if the permit holder ceases to be the occupier of the shop, he or she shall within 7 days in writing notify the Connétable.
- (3) It is a condition of a general permit that, whenever the shop is open pursuant to the permit, it shall be displayed in or on the shop in a conspicuous place where it can be readily seen by customers.
- (4) It is a condition of a general permit that where the shop is one that is open on weekdays as well as on Sundays, Good Friday, Liberation Day or 26th December, the commercial activities that are carried on at the shop pursuant to the permit shall be substantially the same as those carried on at the shop on weekdays.
- (5) On granting a general permit for a shop, a Connétable may impose such other conditions on the opening of the shop as he or she thinks fit.
- (6) They may include conditions –
  - (a) restricting the hours of opening of the shop;
  - (b) restricting the number and timing of wholesale and retail deliveries to or from the shop; and
  - (c) specifying arrangements that the holder of the permit is to make for parking by customers and staff of the shop.
- (7) Paragraph (6) does not limit paragraph (5).

## 13 Conditions of single permits

- (1) On granting a single permit for a shop, a Connétable may impose such conditions on the opening of the shop as he or she thinks fit.
- (2) They may include any conditions described in any of paragraphs (1), (2), (3), (4) and (6) of Regulation 12 (other than the condition to which Regulation 12(1)(a) refers).
- (3) Paragraph (2) does not limit paragraph (1).

## 14 Issue of general permit or single permit

On granting a general permit or single permit, a Connétable shall issue the permit in the approved form to the applicant.



**15 Blanket permits**

- (1) A Connétable of a parish may, by notice published in the Jersey Gazette, grant a blanket permit in respect of any special occasion for all shops situated in the parish that are of any kinds specified in the notice.
- (2) It is a condition of a blanket permit that where a shop is one that is open on weekdays as well as on a Sunday, the commercial activities that are carried on at the shop pursuant to the permit shall be substantially the same as those carried on at the shop on weekdays.
- (3) In granting a blanket permit, the Connétable may impose such other conditions on the opening of shops as he or she thinks fit.
- (4) They may include any conditions described in any of paragraphs (1), (2), (3), (4) and (6) of Regulation 12 (other than the condition to which Regulation 12(1)(a) refers).
- (5) Paragraph (4) does not limit paragraph (3).

**16 Variation of general permit or single permit**

- (1) Subject to the other provisions of these Regulations, a Connétable may vary a general permit or single permit, either on the application in writing of the permit holder or on the Connétable's own initiative.
- (2) If the Connétable proposes to refuse to grant a permit holder's application, or proposes to vary a permit on the Connétable's own initiative, the Connétable shall give the holder notice in writing of his or her intention to do so.
- (3) The notice shall –
  - (a) specify the grounds on which the Connétable proposes to refuse to grant the permit holder's application, or proposes to vary the permit on the Connétable's own initiative, as the case may require; and
  - (b) inform the holder that he or she may make written representations to the Connétable, as to the latter's proposal, within 21 days or within such further time as the Connétable allows.
- (4) If the Connétable is required by paragraph (2) to give notice to the permit holder, the Connétable shall in deciding whether or not to proceed –
  - (a) to refuse to grant the holder's application; or
  - (b) to vary the permit on the Connétable's own initiative,take into consideration any written representations so made.
- (5) On deciding whether or not to vary the permit, the Connétable shall within 21 days notify the permit holder in writing of the decision.
- (6) The Connétable shall at the same time notify the permit holder of the procedure by which the decision may be reviewed under Regulation 20.

**17 Permits that cease to have effect if holder ceases to occupy shop**

A general permit or single permit shall cease to have effect on the permit holder's ceasing to be the occupier of the shop for which it is granted.

**18 Revocation of general permit or single permit**

- (1) A Connétable may revoke a general permit or single permit in any of the following cases –
  - (a) if, in the case of a general permit, the shop no longer fulfils the requirements for the grant of such a permit;
  - (b) if any condition of the permit has been contravened;
  - (c) if the permit holder has been convicted of any offence under the Law or under these Regulations (whether or not in respect of the shop to which the permit relates);
  - (d) if the Connétable thinks fit to revoke the permit, having regard to any disturbance of the peace or tranquillity of any neighbourhood, or of any nuisance to residents, resulting from the opening of the shop on the days and at the times authorized by the permit.
- (2) If a Connétable proposes to revoke a permit, the Connétable shall give the permit holder notice in writing of his or her intention to do so.
- (3) The notice shall –
  - (a) specify the grounds on which the Connétable proposes to revoke the permit; and
  - (b) inform the permit holder that the holder may make written representations to the Connétable, as to the latter's proposal, within 21 days or within such further time as the Connétable allows.
- (4) The Connétable shall, in deciding whether or not to proceed to revoke the permit, take into consideration any written representations so made.
- (5) The Connétable shall within 21 days notify the permit holder in writing of the decision.
- (6) The notification under paragraph (5) shall inform the permit holder of the procedure by which the decision may be reviewed under Regulation 20.

**19 Reasons for decisions**

- (1) A Connétable shall state in writing the reasons for a decision by the Connétable under these Regulations –
  - (a) refusing to grant an application in the terms in which it is sought;
  - (b) imposing a condition under Regulation 12(5) or Regulation 13 in granting an application for a permit;
  - (c) varying a general permit or single permit on the Connétable's own initiative; or
  - (d) revoking a general permit or single permit.
- (2) Where the Connétable is required under paragraph (1) to give reasons for a decision, he or she shall provide a copy of the reasons –

- (a) to the applicant, in the case mentioned in either of paragraphs (1)(a) and (b); or
  - (b) to the permit holder, in the case mentioned in either of paragraphs (1)(c) and (d),
- with the notification of the decision.

## **20 Review by Comité des Connétables**

- (1) A person mentioned in Regulation 19(2) who is aggrieved by a decision to which that paragraph refers may give notice in writing to the Connétable by whom the decision is made that he or she wishes to have the decision reviewed by the Comité des Connétables.
- (2) A notice under paragraph (1) shall be given –
  - (a) within 21 days after the Connétable notifies the person of the decision and provides to the person a copy of the reasons; or
  - (b) within such further time as the Connétable allows.
- (3) Subject to paragraph (5), the Connétable shall on receiving a notice under paragraph (1) notify the Chairman of the Comité des Connétables.
- (4) Subject to paragraph (5), the Chairman of the Comité des Connétables shall then convene a panel of 3 Connétables (excluding the Connétable whose decision is the subject of the review) to review the decision.
- (5) Where the Connétable who receives a notice under paragraph (1) is the Chairman of the Comité des Connétables –
  - (a) he or she shall forthwith notify the Vice-Chairman of the Comité des Connétables; and
  - (b) the Vice-Chairman shall instead convene a panel of 3 other Connétables to review the decision.
- (6) The person seeking the review of a decision shall give the panel, and the Connétable whose decision is the subject of the review, a statement in writing of the grounds on which the review is sought.
- (7) The panel shall review the decision, and confirm, reverse or vary the decision.
- (8) On reviewing the decision, the panel shall within 21 days –
  - (a) notify the person in writing of its decision on the review, stating the reasons for the decision; and
  - (b) give a copy of the notification (including the reasons) to the Connétable whose decision has been reviewed.
- (9) The notification under paragraph (8) shall inform the person of Regulation 21 (which relates to appeals to the Royal Court).

## **21 Appeal to Royal Court**

- (1) A person who is aggrieved by a decision by a panel of the Comité des Connétables on a review under Regulation 20 may appeal against the decision to the Royal Court.

- (2) The appeal shall be brought within 28 days after the panel notifies the person in writing of the decision, or within such further time as the Royal Court allows.
- (3) On hearing the appeal, the Royal Court may confirm, reverse or vary the decision, and make such order as to costs as it thinks fit.

## **22 Fees**

- (1) The fee specified in Schedule 3 shall be payable in respect of an application for a general permit or single permit.
- (2) A fee that is payable in respect of an application shall be credited to the revenues of the parish to whose Connétable the application must be made.

## **23 Production of permit**

- (1) The holder of a general permit or single permit shall, when required to do so by or on behalf of –
  - (a) the Connétable by whom it is granted; or
  - (b) (if the shop is a vehicle) any Connétable in whose parish the vehicle is for the time being open under the permit,produce it to that Connétable or to a person who is authorized in writing for the purpose of this Regulation by that Connétable.
- (2) The holder of a permit need not comply with a requirement made under paragraph (1) by a person other than the Connétable if –
  - (a) he or she asks the person making the requirement to show the holder a copy of the authorization; and
  - (b) the other person does not do so.
- (3) The holder of a general permit or single permit shall, within 7 days after the permit ceases to have effect, deliver it to the Connétable by whom it was granted.
- (4) A permit holder who contravenes either of paragraphs (1) and (3) shall be guilty of an offence and liable to a fine of level 2 on the standard scale.

## **24 Transitional provisions and saving**

- (1) Where, immediately before the commencement of the present Law, a transaction is excepted under Article 3 of the 1960 Law from the prohibition of the opening of a shop for the serving of customers on a Sunday, the shop shall in respect of the transactions to which the exception relates be exempt from the prohibition in Article 2(1) of the present Law.
- (2) An exemption under paragraph (1) shall cease to have effect on the expiry of the period of 3 months immediately following the commencement of Article 2(1) of the present Law.

- (3) Where a permit granted under Article 4 of the 1960 Law is in force immediately before the commencement of Article 2(1) of the present Law it shall on the commencement of the present Law remain in force according to its tenor.
- (4) A permit to which paragraph (3) applies shall continue in force (whether or not it has been granted for more than 10 days), as if it were a single permit granted under these Regulations, until it expires according to its tenor or is sooner revoked under a ground specified in any of subparagraphs (b), (c) and (d) of Regulation 18(1).

## **25 Citation and commencement**

- (1) These Regulations may be cited as the Shops (Regulation of Opening) (Jersey) Regulations 201-.
- (2) These Regulations shall come into force on the same day as the Shops (Regulation of Opening and Deliveries) (Jersey) Law 2010<sup>4</sup>.

**SCHEDULE 1**

(Regulation 3(1))

**EXEMPTIONS FROM THE REQUIREMENT FOR A PERMIT**

1. A shop that is open during permitted hours pursuant to an on-licence granted under the Licensing (Jersey) Law 1974<sup>5</sup>.
2. A shop that is registered premises within the meaning of the Places of Refreshment (Jersey) Law 1967<sup>6</sup> (that is to say, it is registered as a place of refreshment under that Law) and is open pursuant to a permit granted under Article 13(4) of that Law.
3. A shop that is registered under Article 74 of the Medicines (Jersey) Law 1995<sup>7</sup>, and is open only for the sale of medicines and other medicinal products and medical and surgical apparatus, appliances, instruments and supplies.
4. A shop that is open for the transaction of a business within the Port of St. Helier or Jersey Airport.
5. A shop that is open for the transaction on the foreshore of any business carried on under a concession granted by the Minister for Economic Development.
6. Premises whose predominant use is as a sports or other recreational facility (for example, a golf course or tennis court).
7. A shop that is a bank and is open pursuant to an Order made under Article 4 of the Public Holidays and Bank Holidays (Jersey) Law 1951<sup>8</sup>.
8. A service for the provision of the public transport of passengers, goods or freight by land, sea or air.
9. A cab service, within the meaning of Article 1(1) of the Motor Traffic (Jersey) Law 1935<sup>9</sup>.
10. A tourist amenity, facility or attraction that does not undertake the supply of goods.

**SCHEDULE 2**

(Regulation 6(4))

**SHOPS WHOSE RETAIL SALES AREAS EXCEED 500 SQUARE METRES**

**Part 1 – Shops to which this Part applies**

A shop whose retail sales area exceeds 500 square metres, if –

- (a) the predominant use of the shop is the supply of goods otherwise than incidentally to the provision of some other service; and
- (b) it is not a shop described in Part 2.

**Part 2 – Shops to which Part 1 does not apply**

A tourist amenity, facility or attraction in which the part of the retail sales area that is used for the supply of goods does not exceed 500 square metres.

**SCHEDULE 3**

(Regulation 22(1))

**FEES**

For filing an application for a general permit or single permit – £50



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- <sup>1</sup> *L.21/2010*
  - <sup>2</sup> *L.21/2010*
  - <sup>3</sup> *chapter 05.775*
  - <sup>4</sup> *L.21/2010*
  - <sup>5</sup> *chapter 11.450*
  - <sup>6</sup> *chapter 11.600*
  - <sup>7</sup> *chapter 20.625*
  - <sup>8</sup> *chapter 15.560*
  - <sup>9</sup> *chapter 25.200*