

STATES OF JERSEY



DRAFT SHOPS (REGULATION OF OPENING) (AMENDMENT) (JERSEY) REGULATIONS 201- (P.93/2019): COMMENTS (P.93/2019 Com.(2)) – COMMENTS

**Presented to the States on 21st October 2019
by the Minister for Economic Development, Tourism, Sport and Culture**

STATES GREFFE

COMMENTS

I thank the Panel for their comments, which I received on Friday 18th October. I have submitted these comments at the earliest opportunity. I felt it was important to respond formally to the points they raise, which focus on the following two areas.

Employment market

First, and regarding my assessment of the employment market, I note that this position is reflected in the [Jersey Labour Market Report for June 2019](#). This records that we now have broadly 930 companies in the wholesale and retail sector, offering 7,270 jobs. Importantly, this is down 110 on the year before and maintains the trend of recent years. Notwithstanding the fall in job numbers, the 'Jobs in Jersey' website is currently showing over 70 vacancies in the wholesale and retail sector. That number has remained high for some months now.

I am asked to monitor this sector and react to any concerns raised by employees, in conjunction with Ministerial colleagues. I am more than happy to repeat that commitment *and* to clarify that I fully intend for that monitoring to include the effects of these incremental Sunday opening changes across the industry.

The theory that some existing employees might not be given any choice around the days and hours they work has not, to date, been borne out in practice. Industry feedback indicates that some retailers are surveying their staff to identify demand to work Sundays¹ before advertising to fill any gaps. By way of example, Waitrose has already indicated that it will be creating new jobs and is looking to create bespoke Sunday opportunities to attract staff who want a limited number of hours per week. Other premises have indicated that they will elect not to open.

In Jersey, children under 16 years of age have significant working protections already from the [Children \(Regulation of Employment\) \(Jersey\) Order 2011](#), which was made under Article 48 of the [Children \(Jersey\) Law 2002](#). Retail stores do not hire children under 15, and rarely hire 15 year-olds. The majority of young employees are 16+. Age discrimination laws in Jersey actually mean that 16+ students get the same pay and opportunities for training as 18 and 21 year-olds, even though they typically work in very small contracts of 4 or 8 hours and have no key holding responsibility as they are not 18.

Jersey Business have reported extremely strong demand from students for weekend positions. This has been expressed during the past month at school careers events, where young people were supported by their parents. They greatly value this first step into the world of employment as an important part of their child's development. Weekend work develops a first sense of self-reliance, team building, friendships with older people other than their peer group, and develops confidence. It is also an added advantage in both university applications and building lifelong customer service skills. Schools have asked Jersey Business to set up direct links with retailers to meet the demand.

¹ Next is amongst those understood to be surveying existing employees at present.

Impact on children and families

Putting children first is indeed one of the 5 strategic priorities contained in the [Common Strategic Policy](#). That is why the Government already has an extensive policy pipeline, with a strong focus on policy and associated legislation that puts children first.

As with many other policy proposals, context and proportionality are 2 key factors that have influenced the consideration of child and family impact resulting from this proposal. In this regard, I applied a risk-based approach that took into account a range of factors, including the issues and threats facing our important bricks and mortar retail stores. I concluded that the risk of lost job opportunities over the medium to longer term for those in the retail industry, and the economic and social impact that might have on family units over time was, on balance, a greater risk than the risk of disrupting family life by allowing some additional – but tightly restricted – retail trading on a Sunday and some other special days.

In her feedback to the Panel, the Children's Commissioner accepts that Sunday trading *'is not an area where children have approached us with any concerns'*. That is a particularly important point to note, given that widespread Sunday trading in Jersey is already a reality.

Small and medium-sized supermarkets are already open across the Island on Sundays, often for 10 hours or more. Petrol stations of various sizes are operating. Superdrug, which recently opened in King Street, St. Helier, has opened regularly on a Sunday since late August and can continue to do so, irrespective of whether these amending Regulations are adopted². St. Peter's Garden Centre does not open on a Sunday, but its restaurant trades, as do the majority of other hospitality businesses across the Island (including pubs, beach cafés, restaurants, hotels and visitor attractions), which employ more Island residents than the limited number of shops that would be affected by these draft Regulations, and which look after the tourists who regularly ask *Visit Jersey* why the shops are shut on Sundays. We know that a number of those hospitality businesses employ persons under the age of 18 and that those people gain valuable employment experience from those job opportunities.

It is important to remember that these amending Regulations would allow for a maximum of approximately 30 additional sites to open regularly for not more than 6 hours on Sundays if they choose to do so. In my view, that is a measured and incremental change allowing business, not Government, to determine how they run their businesses.

Two of the businesses expected to respond to these draft Regulations are Waitrose and the Co-op, the latter already having a number of smaller shops that open under the existing Regulations.

The Co-op is currently believed to employ 25 persons under the age of 18, which equates to less than 4% of its total workforce in Jersey. Almost all of those work part-time, and approximately half work on Sundays at present.

Waitrose currently employs 66 people under the age of 18 across its 3 shops, which is just under 18% of its total number of Jersey employees. On the occasions that they have

² The Parish of St. Helier advises that its retail sales area is below 700 square metres.

been open on a Sunday, they tend to operate with a higher percentage of under-18 workers, which can be approximately 50%. The company tends to experience higher demand for Sunday working against Saturday from its younger employees.

I accept that some retail employees with families in those and other businesses may want to accept working hours on a Sunday, particularly if their employers choose to offer supplemented rates of pay to attract staff, as I understand at least some are actively considering.³ Employees with children may appreciate having the option to have a partner or other family members look after the children, instead of having to pay for childcare that can be quite expensive in Jersey.

Other businesses, including those that sell cars, carpets and furniture, can sometimes be less labour-intensive than the major supermarkets, and tend to be less likely to employ children.

I am aware of some opposition to these draft Regulations in some quarters, including at least one States Member who would appear to want to prevent all shops under 700 square metres from trading on a Sunday, on the basis that doing so would be better for children and families. The logical extension of that position would be to shut down hospitality businesses, public bus services and other industries on the same day. In the event that those calls were forthcoming and such a policy implemented, I anticipate that the resulting economic impact and consequent job losses of such action would be catastrophic, and would detrimentally impact all family units economically and socially.

The findings of the major consumer survey conducted on my behalf during 2018 by '4insight' identified significant demand for broad Sunday opening across a wide range of age groups, including among persons aged 16–25. It identified some desire to see town retail evolve to increase its event / entertainment offering and become a more attractive venue for families to spend time in together. That is something I have tasked the forthcoming Retail Development Strategy with addressing.

Addressing the comments of the Children's Commissioner directly:

- Have the Panel considered the impact on young people who are in school and working in a part-time job? Would working on a Sunday have a detrimental impact on them and would there be changes to the [Children \(Regulation of Employment\) \(Jersey\) Order 2011](#) to protect those children?

This Order falls within the remit of the Minister for Children and Housing. I do not believe any changes would be required, but would be happy to work with the Minister should it be deemed necessary to review that legislation. The review would be on working on a Sunday, accepting the point that Jersey already permits Sunday trading across the majority of retail and hospitality sector and all other sectors of the economy.

- Have the Panel considered the impact on ECHR Article 8 Right to respect for private and family life and home?

Again, this point is in reference to Sunday trading more generally. There has been no evidence, in this or other jurisdictions with similar Sunday trading legislation that I am aware of, that would suggest any impact on ECHR Article 8. As the Commissioner

³ Source: Jersey Retail Association.

states in her comments, 'It is not an area where children have approached us with any concerns'. As the majority of large shops in the EU are able to open on Sundays, it is extremely unlikely therefore that this would contravene EHCR Article 8.

- Have the Panel consulted with children and young people? UNCRC Article 12 says that children and young people have the human right to have opinions and for these opinions to matter. It says that the opinions of children and young people should be considered when people make decisions about things that involve them, and they shouldn't be dismissed out of hand on the grounds of age. It also says children and young people should be given the information they need to make good decisions.

This has not been raised as an issue for concern by children and young people. However, I am prepared to work with the Commissioner should she decide to conduct a survey to determine the views of children and young people on Sunday trading generally. The results of such a survey could be used to inform future considerations regarding whether businesses across the Island should retain the flexibility to open on Sundays.

Conclusion

To summarise, I have lodged these proposals in response to clear demand from consumers and from industry. I have done so because I want to maintain and enhance the Island's retail offering, and give it every reasonable chance to flourish in the face of ever-increasing challenges from the off-Island, Internet-based competition that does not provide local jobs and the associated economic benefit for Island residents and their families.

However much I respect the views of those who might regret the passing of more peaceful Sundays, both the Government and the Assembly will, I am sure, acknowledge that times, and society, have changed. The States Assembly appeared to form a view on that point in 2011, when it amended the Government's own proposals and increased the size limit on a small shop by 40% to 700 square metres, thus allowing many more shops to open regularly on Sundays than otherwise would have. More recently, the Government responded to Sunday demand by increasing the weekend hours of its own household recycling facility at La Collette, which is staffed by our own public sector workforce.

I maintain that these draft Regulations will prove to be positive for Jersey families and for the Island's community and economy as a whole.

Statement under Standing Order 37A [Presentation of comment relating to a proposition]

These comments were submitted to the States Greffe after the noon deadline as set out in Standing Order 37A because the queries from the Scrutiny Panel were received on Friday 18th October, and there was therefore not enough time to prepare a response for presentation to the States in the usual timescale.