

STATES OF JERSEY



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

**Presented to the States on 18th October 2019
by the Economic and International Affairs Scrutiny Panel**

STATES GREFFE

COMMENTS

[P.93/2019](#) – “Draft Shops (Regulation of Opening) (Amendment) (Jersey) Regulations 201-” (the “draft Regulations”) was lodged on 6th September 2019 by the Minister for Economic Development, Tourism, Sport and Culture. The Panel received a briefing from the Minister and the Policy Principal on 7th October.

The draft Regulations

The draft Regulations provide shops with a retail sales area (in excess of 700 square metres) the ability to trade on Sundays throughout the year. The trade period must not exceed 6 hours and must be within the period of 10 a.m. – 4 p.m. These restrictions are as a result of a consumer survey (commissioned by the Department and undertaken by the research agency ‘4insight’), which found that the working population preferred 10 a.m. – 4 p.m. year-round opening.

The draft Regulations create a new Restricted Hours Permit, which will allow large shops to open on all Sundays, Good Friday and Liberation Day only (and within the specified opening times mentioned above). Included within the permit is a provision confirming that road fuel sales on Sunday, Good Friday and on Liberation Day may be permitted beyond the specified opening period of 10 a.m. – 4 p.m.

The draft Regulations maintain the current general permit (which is mainly granted to small shops) and the single permit (which is granted to shops of any size, but which only authorises opening on a single Sunday, Good Friday and/or Liberation Day). The draft Regulations call to remove blanket permits by the end of 2019, which currently authorise any shops to open on Sundays that have been designated by the Minister as special occasions.

Scrutiny Report: Retail in Jersey

The Panel presented its [report](#) on Retail in Jersey (S.R.18/2018) on 21st December 2018. During the review, it was evident that Sunday trading remained a contentious topic, with some retailers supporting opening on a Sunday, whilst others were opposed. The Jersey Retail Association explained that some of the retailers currently prohibited from opening had data suggesting that the ability to open on Sundays would increase their sales and contribution to the economy. Other retailers in this category were opposed to opening on a Sunday, citing either religious beliefs or a reluctance to move away from family time and values.

The Panel considered the feedback it received, and on balance was generally supportive of the principle that the decision of whether to open on a Sunday should be made by the retailer. The Panel [recommended](#) –

When the Minister for Economic Development brings forward proposals to deregulate Sunday trading, appropriate protections for staff in terms of religious beliefs and adequate days in lieu should be included. The effects on out of town convenience stores, should also be monitored (recommendation 14).

When the Panel met the Minister on 7th October, he explained that safeguards in relation to employees had been considered during the development of the draft Regulations. However, it was not thought to be the right approach to add any specific provision in

the draft Regulations. He explained to the Panel that it was currently an “employee’s market” and, therefore, it was likely that employers would be motivated to respond to the needs of their existing employees or else risk losing staff.

The Panel accepts this but, however, believes that the situation should be monitored by the Minister so that he may react to any concerns raised by employees. In that regard, the Panel welcomed the Minister’s [response](#) to its recommendation above which states –

The Minister intends to continue working with the Minister for Social Security, and the Council of Ministers as a whole, to ensure that employment legislation provides all Island workers with appropriate religious, working hours and rest day protections.

The Panel welcomes this collaborative approach. The Panel notes, however, that the Minister has not indicated any intention to monitor the effects of Sunday opening on out-of-town convenience stores.

Impact on children

Putting children first is one of the 5 strategic priorities contained in the [Common Strategic Policy](#). It says that the Government of Jersey will put children first “*by protecting and supporting children, by improving their educational outcomes and by involving and engaging children in decisions that affect their everyday lives*”. During a [Quarterly Hearing](#) with the Minister in July 2019, the Panel asked whether any consideration was given to families and children in the development of the proposals –

Senator K.L. Moore:

“Putting children first is one of your strategic priorities, so what consideration was given to families and children in taking this decision?”

Minister for Economic Development, Tourism, Sport and Culture:

“I would think promoting the interests of the consumer, we are trying to give consumers more choice. We are trying to provide more things to do at the weekend, not just for Islanders but for holidaymakers as well. In addition to that we have seen a significant improvement in the protection of employee through improved employment legislation and we have family friendly legislation on the rise. I think that is going to continue to evolve over the years ahead. So we have not said: “How does this impact on children?” unless any of my officers can correct me on that. We have not done that. We have looked it as a broad-brush approach. That is something that the new ... like I say, we are still in the new world of how we protect children. Many of us are signed up to our own charter of what we want to do for children but I think that is going to take a bit of time for us all to get into the habit of putting these issues at the heart of these sort of policies. I think without having said we have not done any specific work on how it would affect children, I am confident that Islanders will benefit from this.”

The Assistant Minister for Economic Development, Tourism, Sport and Culture then commented –

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

“... I can think of one particular store – they have had is that staff are prepared to work weekends because they value the time to take off during the week so they can be with their families. It is a double-edged sword to some people. But I think we need to review it maybe after a year and see what effect it is having on family life because I think that is going to be one of the major concerns that States Members might have around supporting Sunday trading, and making sure that employees’ rights are properly protected.”

The Panel is concerned that, should the deregulation of Sunday trading be implemented, some employees might not be given any choice around the days and hours they work. There might be a pressure for employees to accept hours on a Sunday, particularly as most employees within the retail industry are on lower incomes (in June 2019 the [average weekly earnings](#) for wholesale and retail was £520 compared to £1,050 per week in financial services). For those with children, this could impact on the amount of time they are able to spend together as a family.

The Panel asked the Children’s Commissioner for her views on whether the proposals were likely to have impact on children –

Children’s Commissioner:

We have sought advice from child rights specialists and as far as we know there is no research on Sunday trading and human rights issues. It is not an area where children have approached us with any concerns. However, I would like to make the following observations:

- *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?*
- *Have the Panel considered the impact on European Convention Human Rights Article 8: Right to respect for private and family life and home?*
- *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.*

The above observations were only received by the Panel on the same day as the deadline for submitting Comments. It is evident from the exchange with the Minister during the Quarterly Hearing that children were not considered when the proposals were developed.

It is the Government's responsibility to ensure these issues are dealt with in advance of lodging proposals. The Panel will be pleased to swiftly review the Minister's response following consideration of the effects of these proposals on children.

Conclusion

The Panel remains generally supportive of the Sunday opening proposals. However, it is noted that the Children's Commissioner raises some significant issues which should be subject to due consideration by the Minister. Given the Government's commitment to putting children first, the Panel recommends that the Minister defers these proposals until the questions raised by the Commissioner have been answered.