

**REGULATION OF UNDERTAKINGS AND DEVELOPMENT (JERSEY) LAW 1973, AS AMENDED: POLICY
STATEMENT**

**Presented to the States on 26th October 1999
by the Finance and Economics Committee**



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REGULATION OF UNDERTAKINGS AND DEVELOPMENT (JERSEY) LAW 1973, AS AMENDED

POLICY STATEMENT

1. This Policy Statement supersedes the Policy Statement published on 10th November 1998 as R.C.48/98.
2. The Finance and Economics Committee is responsible for administering the Regulation of Undertakings and Development (Jersey) Law 1973, as amended. In doing so, the Committee is required under Article 5 of the Law to have regard to the need to regulate and manage demand on the resources of the Island, and to protect the integrity of the Island in commercial and financial matters.
3. The Committee, in applying the Law, will have regard for the States' Strategic Policy objectives set out in the Strategic Policy Review 1995 "2000 and Beyond". In doing so, the Committee will have particular regard for the Population and Immigration Policy recommendations adopted by the States on November 4th/5th 1997.
4. The following propositions adopted by the States in connection with the Population and Immigration Policy will have a direct bearing on the response of the Committee to individual applications for a licence under the Law -
 - The Finance and Economics Committee be requested to take the necessary steps to tighten up the application of the Regulations of Undertakings and Development Law, including the reintroduction of the requirement that all increases in staff numbers will be subject to licence. This will enable the Finance and Economics Committee to regulate further the level and type of business activity in accordance with the Population Policy and other Strategic Policy objectives.
 - The Finance and Economics Committee be requested to enter into discussion with the finance industry organisations on the opportunities for the relocation of higher labour demand activities whilst at all times recognising the need to sustain full employment for all residentially qualified employees, and, at the same time, to ensure that finance industry organisations encourage locally trained personnel to take up senior positions thereby reducing the need for "(j)" category consent.
 - The Finance and Economics Committee be requested to enter into discussions with business organisations generally on what initiatives they will be undertaking to limit the demand for labour including agreeing training/employment contracts with individual firms.
 - The States accept the philosophy that the effective use of manpower is stimulated by competition and discouraged by protectionism while recognising that in a small isolated community some form of protection will be required.
5. The Committee will also continue to have regard for the following objectives taken from the Strategic Policy Review 1995, which objectives were adopted by the States in September of that year;
 - to ensure the full employment of the resident population and the full development of their skill potential;
 - to encourage the balanced and diversified development of the economy in such a way as to limit its vulnerability to external shocks and changes in market climate;
 - to encourage a level of business activity sufficient to achieve a standard of living for Island residents that is comparable with that enjoyed in neighbouring countries;
 - to encourage business activity at a level and of a nature that serves to enhance and not detract from the natural and built in environment;
 - to exercise the minimum of States control over business activities consistent with the strategies in the Strategic Policy Review 1995;
 - to improve the competitiveness of the Island's industries by promoting goods and services that offer good value for money;
 - to sustain an efficient and cost-competitive local construction industry;

- to keep the rate of cost inflation down to a level that compares favourably with the average for the European Union;
- to help small businesses establish firmer foundations from which to build and take advantage of market opportunities both within and without the Island.

6. The Committee's Policy will be to continue to encourage the further development of the Island's role as an international finance centre, and generally to pursue a policy of encouraging business growth in a selective, pragmatic and sympathetic way. In doing so, the Committee will have particular regard for the Strategic Policy objectives for the main sectors of the economy as set out in the 1995 Strategic Policy Review. The Committee also will have regard for the following statement of policy included in para. 1.37 of the of the 1997 Strategic Policy Review and Action Plan "The [Policy and Resources] Committee is of the view that early action should be taken to reduce the demand for labour in the Island. In doing so, however, the Committee would wish to emphasise most strongly that what it is seeking to achieve is continued business growth, and a continued contribution to the revenues of the States and the incomes of Island residents, without the employment or population growth that has occurred in the past." The overall business objective is "business growth without population growth".

Part II of the Law

7. Definition of locally qualified and licence requirements

Persons falling into the following categories are considered to be locally qualified as that term is used in connection with the Regulation of Undertakings and Development Law -

- (i) residentially qualified persons falling within any of the Housing Regulations excluding Regulation (l) (re associations) and Regulation (m) (re religious bodies);
- (ii) persons resident for the whole of the past consecutive five years;
- (iii) the spouses of (i) or (ii) above;
- (iv) the children under 18 years (or if students under 25 years) of those in (i), (ii) or (iii) above.

Under Part II of the Law a licence is required by a person -

- (a) commencing a new undertaking;
- (b) increasing the number of persons engaged in an undertaking.

8. In recent years a licence has not been required if the persons engaged were locally qualified. The position now is that a licence is required whether or not the persons engaged are locally qualified.

9. Previously a licence also was not required if a person was engaged to fill a position which had previously been occupied but had been vacant for a period not exceeding 12 months immediately preceding the engagement. The situation now is that this exemption has been replaced by an exemption from the need to obtain a licence to fill a vacancy only where the position is to be filled by a person who is locally qualified, and where the position to be filled has been vacant for a period not exceeding six months immediately preceding the engagement.

10. Public sector: The States decided, in June 1999, to bring the public sector within the scope of the Regulation of Undertakings and Development Law, albeit on a voluntary basis, and it is anticipated that the new arrangements will become effective in October 1999.

11. Seasonal staff: Where staff are engaged for only a specific period in any one year, a licence application will be required for the taking on of staff each year. However, the Committee will be prepared to grant a licence on request, in advance of the period of recruitment, which licence will permit vacancies to be filled over a period of years, without recourse to the Committee each year, so long as the total number of staff to be engaged does not exceed the number engaged for the equivalent period in the year in which the licence is granted.

12. This arrangement should be of assistance mainly to the Agricultural and Tourism Industries, but other sectors that have periodic staff requirements from year to year will also be able to take advantage of the arrangement. It is proposed that the licence issued would be valid for up to three years.

13. Construction industry: In respect of the engagement of staff by the construction industry, the Committee will consider granting a licence for the engagement of persons who are not residentially qualified or who have not been ordinarily resident in the Island for a period of five years or more immediately preceding their engagement on an individual contract basis.

14. Temporary workers: The employment of a temporary worker to cover for existing staff who are sick, on holiday, on maternity leave etc. does not require a licence, as in these cases a vacancy will not be considered to have been created. When temporary staff are required to cover for a short-term requirement (e.g. issuing promotional literature) application can be made well in advance. Whenever a temporary appointment requirement arises at short notice (e.g. a permanent employee fails to take up a job offer) the Office of the Chief Adviser, with the benefit of delegated powers from the Committee, will be able to respond to requests immediately.

15. The Committee has introduced a number of policy changes to assist the recruitment agencies in coping with the recent changes to the Law, as outlined below -

- (a) Temps who are residentially qualified or have five years' residence can be used to cover vacancies (where the

vacancy has been outstanding for less than six months) without the need to obtain a licence.

- (b) Temps who are residentially qualified or have five years' residence can be used to cover additional posts, where the employer has permission to fill such posts without the need to obtain a licence (i.e. they can benefit from the consent granted - unless that consent had been person-specific).
- (c) Where employers have a specific short-term need which can be identified in advance (e.g. project work) they can apply for a licence to take in local or non-local staff. If granted, a licence could be used to employ staff from a recruitment agency.
- (d) Where an employer is faced with a short-term need because of staff turnover, temps can be used for up to ten days without the need to obtain a licence, providing the temp agency informs the Regulations Office of this.
- (e) Where an employer has a three-year agreement which includes the employment of a proportion of non-local staff, non-local temps can be employed without the need to obtain a licence, providing the terms of the agreement are honoured.
- (f) Where an employer has a short-term requirement for a person who has skills/experience which are clearly recognised as being in severely short supply in the local labour market (e.g. trust officers) a non-local temp can be employed for up to eight weeks, if the person concerned has been continuously resident in the Island since before 1st November 1996. This concession, however, is subject to licence.
- (g) Where an employer has permission to take on additional non-local staff, non-local temps can be engaged to cover the period until permanent appointments have been made.

16. Working from home: The exemption from the requirement to hold a licence which had previously applied to undertakings carried on by a person with specified residential qualifications from his/her principal place of residence, on his/her own account and without any employees no longer applies in respect of new undertakings. However, persons who have carried on an undertaking pursuant to this exemption prior to the commencement of the Regulations will not be required to obtain a licence, and will be able to continue to benefit from the previous exemption provision, so long as the circumstances relating to that undertaking remained unchanged.

17. Licensing criteria: The Committee, in applying the Law to manage the demand on the resources of the Island, will do so in respect of all sectors of the economy on a level playing field basis. In considering applications to commence an undertaking or to increase the number of persons engaged in an undertaking, the Committee will decide whether to grant or refuse a licence having regard to -

- the locally qualified status of the principals if it is proposed that the undertaking will actively trade or provide a service/services within the Island;
- the number of persons to be engaged, and the extent to which this involves employees with skills/experience readily available in the Island, and where the job opportunities to be created can be expected to be filled directly or indirectly through the recruitment and training of locally qualified people;
- the likely performance of the undertaking in terms of profitability, the contribution to tax revenues and the recruitment and training of local residents;
- the importance of the service to be rendered to local residents;
- the need to maintain a range of job opportunities for local residents;
- the need to maintain sufficient job opportunities for school leavers;
- the need to maintain competition within the Island to protect business and consumer interests;
- the need to demonstrate that what is proposed will support the policy objective of reducing the overall demand for labour or achieving business growth without an increase in the demand for labour;
- being satisfied that the hardship (other than purely financial hardship) which would be caused if a licence was not to be granted would outweigh the fact that a decision might be made which does not fall within the

bounds of established policy as outlined in this statement;

- any other factors bearing on the economic situation of the Island and the general well-being of the Island, with particular regard for the population and immigration policy adopted by the States in November 1997.

18. As a guide, the normal policy of the Committee in relation to specific one-off applications is as set out below -

1. Commencement of new undertakings with locally qualified principals

(a) *Employing locally qualified staff*

0 - 5 Staff normally a consent under delegated powers

+5 - 20 Staff refer to Committee

(b) *Employing either non-locally qualified or a mix of locally qualified/non-locally qualified staff*

Refusal under delegated powers in respect of the engagement of non-locally qualified staff unless special circumstances apply, and consent for locally qualified staff in accordance with 1(a) above. (These special circumstances relate to applications to be referred to Committee for consideration because, having regard to the need to regulate and manage the demand on the resources of the Island, there is evidence that sufficient benefits could be derived for a licence to be in the Island's overall best interests).

2. Commencement of new undertakings by non-locally qualified principals or a mix of locally qualified and non-locally qualified principals

Refusal under delegated powers unless special circumstances outlined in 1(b) apply.

3. Engagement of additional staff

(a) *Locally qualified*

0 - 5 Staff normally a consent under delegated powers

+5 - 20 Staff refer to Committee

(b) *Employing either non-locally qualified or a mix of locally qualified/non-locally qualified staff*

Refusal under delegated powers in respect of the engagement of non-locally qualified staff unless the special circumstances apply (See 1(b)), and consent for locally qualified staff in accordance with 1(a) above).

4. Filling a vacancy caused by a locally qualified person leaving

(a) *Locally qualified person(s)*

Exempt within six months.

(b) *Non-locally qualified person(s)*

Refusal under delegated powers unless the undertaking concerned -

(i) was established prior to 1st June 1998 and engages less than ten permanent staff (including working principals);

(ii) operates exclusively within either the tourism, or the agricultural, retail goods/ services, and/or health and social service sector;

and the person to be engaged has been ordinarily resident on the Island on a continuous basis since before 1st November 1996 - whereon a licence can be issued in accordance with the normal powers of delegation.

5. Filling a vacancy caused by a non-locally qualified person leaving

(a) *Locally qualified person(s)*

Exempt within six months.

(b) *Non-locally qualified person(s)*

As in 4(b) above.

19. The Committee has revised its policy (as outlined above) in respect of those small undertakings which were in existence prior to the tightening up of the Law, and who wish to increase the number of staff engaged to fill positions that have become vacant. This policy is normally to grant licences to permit such undertakings to take on people who have been continuously resident in the Island since before 1st November 1996 - provided firm evidence is made available to show that every effort has been made to identify locally qualified persons without success. This policy will allow for an extra pool of labour to be available for those undertakings experiencing the most pain at the present time, namely those small businesses within the tourism, agricultural, retail, and health/social service sectors. It is not considered that there will be any extra burden to the population pressures that presently exist as a consequence. In this respect, it must be remembered that since before 1st June 1998, control had never been exercised over the filling of vacancies.

20. Exemptions - special needs, students, over normal retirement age

The States decided, at the end of June 1999, to exempt locally qualified persons from Article 1(2)(b) of the Law (increasing the number of persons engaged in an undertaking) who are -

(i) registered with or recommended by the Workwise - Supported Employment Service operated by the Employment and Social Security Committee;

(ii) school pupils/students; or

(iii) have attained the age of 65 years.

21. Applications are not therefore required in respect of the engagement of such staff, and their numbers shall not be included on quarterly manpower survey forms.

22. Financial Services Undertakings: When regard is had for the contribution to be made by an undertaking to the Island's tax revenues, the contribution looked for (whether from a full tax-paying entirety or an international business company requiring a physical presence) will be related to the number and nature of the staff required, and whether any "(j)" category housing consents are required.

23. Under the Law, the Committee is also required to have regard to protecting the integrity of the Island in

commercial and financial matters. The Committee can be expected to grant a consent only in circumstances where it is of the view that the best interests of the Island as an international finance centre would be well served by the undertaking being carried on as proposed. For financial service undertakings, where separate supervisory laws do not yet exist, the Committee has adopted the following policy.

24. Conditions to be met in respect of the commencement of financial services undertakings - (including trust companies, and general insurance brokers (for example, motor insurance, household insurance, etc. - usually on an annual basis)) -

- For companies in the ownership of non-residents, the owners must be institutions or partnerships of stature with an established reputation and track record.
- The principal persons in the Island must have appropriate professional qualifications and relevant experience. For trust companies, at least two principal persons in the Island should have recognised professional qualifications in law, accounting, banking or company administration, as well as at least five years' senior trust experience at director level.
- Whenever a firm is entrusted with, or is otherwise able to gain access to, the assets (including money) of its clients, at least three individuals, who exercise effective control and supervision of the business, are required to undertake in writing to be responsible for ensuring the affairs of the business are undertaken in a fit and proper manner. This principle is known as the "six eyes" requirement.
- Internal controls on the movement and disposition of assets should require the signature of two local principal persons with relevant experience of the business being undertaken.
- Adequate professional indemnity insurance and fidelity insurance with respect to all staff and officers must be in place, unless the parent institution is of considerable substance. The minimum aggregate cover expected is £1,000,000 for trust companies and £500,000 for insurance brokers.
- Financial resources must be sufficient. For trust companies, the minimum paid-up share capital expected is £25,000. All financial services undertakings are expected to maintain sufficient liquid capital to meet at least 13 weeks of normal running expenses, and for business of significance, higher paid-up share capital would be expected.
- An annual independent audit is to be obtained.
- All books and records of the company and its clients/trusts are to be kept in Jersey, together with sufficient books and records for its clients/trusts to enable the business to effectively discharge its statutory responsibilities, and to ensure the business knows its customers and their activities on an ongoing basis.
- Any undertaking must be able to demonstrate that it will satisfy the terms set out in the Proceeds of Crime (Jersey) Law 1998.

25. Where a financial service undertaking is concerned, the views of the Jersey Financial Services Commission will be expected to accompany any formal or "in principle" application for a licence.

26. Contractors: Where applications are received from non-local contractors/sub-contractors to undertake building work within the Island, the Committee will continue to have regard for the need to secure a viable local construction industry to support essential public and private investment, and for the fact that this viability calls for a degree of continuity of work of a varied nature. The Committee will also seek to protect the long-term employment and training of Island residents. At the same time, the Committee will continue to take into account any cost saving arising from the granting of a licence to a non-local firm.

27. The general policy of the Committee is to grant licences to non-local contractors where the work is specialist in nature and evidence is provided that the work cannot be undertaken by local firms. Licences also will be granted to non-local contractors and sub-contractors when there is a significant price advantage over local firms (currently in excess of five per cent). Before responding to such a price advantage, the Committee will require evidence that local firms have been invited to quote on a level playing field basis, and receive information on the individual quotes obtained.

28. Staffing agreements: The Committee is prepared to consider an individual undertaking's business objectives and reach agreement on future staffing, where this is in accordance with the overall population policy objectives, no matter what size of undertaking. In response to the "flexible" and "pragmatic" approach that it is required to take, the Committee must have information on the whole circumstances of an undertaking if it is to assess how that undertaking should be treated. The Committee therefore (and as originally outlined in its policy statement of 1st June 1998) considers individual undertakings' business objectives and reaches agreement on staffing establishments for a future period where this is in accordance with the agreed States' policy objectives.
29. When proposing agreements the Committee, in accordance with its normal policy, does not restrict the number of additional locally qualified staff to be engaged in a future period if these are within reasonable limits and are consistent with clearly stated business objectives. However, it only allows a degree of additional non-locally qualified staffing in specific circumstances. Certainly, if the percentage of locally qualified staff is only average or is below average in comparison with the experience shown by undertakings within the sector concerned, and/or the increase in non-locally qualified staff appears excessive, the Committee will either reduce the number of such staff in any future proposed agreement, and/or impose targets to improve the percentage of locally qualified staff over time. This will apply to all undertakings, no matter what size.
30. The Finance and Economics Committee is actively encouraging all undertakings to consider entering into staffing agreements as outlined above.
31. General: Where the Committee has delegated certain decisions to its Officers, applications can be dealt with under the delegated powers, and in these cases the time that elapses before a licence application is dealt with can be particularly short.
32. The Committee has decided as a matter of policy that, in future, where an overseas undertaking sets up in the Island by the acquisition of an existing undertaking and is therefore not subject to licence in respect of the commencement of a new undertaking, any subsequent application for additional or replacement staff, whether locally qualified or not, will be considered as if the application was in respect of a new undertaking by a non-resident company, rather than by an existing local undertaking.

Part III of the Law

33. Under Part III of the Law, no person may carry out any development of more than 1,500 square feet (139 square metres) unless he or she has been granted a licence, and for agricultural buildings a licence will be required where the area is more than 10,000 square feet (929 square metres). (Note: Where a development includes a number of dwelling units, each of which is 1,500 square feet (139 square metres) or less, a licence is required if the total area to be developed is greater than 1,500 square feet (139 square metres) in floor area, whether the individual dwelling units form a block of flats or terrace, are semi-detached or joined by a garage or are detached).
34. In considering applications for development, the Committee is required to have regard for the current economic climate, and evidence of inflationary cost pressures arising from an overheated economy, in deciding whether to grant a licence for development.
35. With particular regard for the States population and immigration policy the Committee, having consulted with representatives of the construction industry, has reviewed its policy and has decided that for the present it will not advocate the control of private sector building work by the prioritisation of development licence applications. However, insofar as the Regulation of Undertakings and Development Law is concerned with the "management of demand on the resources of the Island", the Committee has entered into discussions with the Tourism, Housing, and Planning and Environment Committees to come forward with an effective and co-ordinated policy aimed at protecting the long-term future of the Island's tourism industry by preventing the undue loss of tourist facilities. Furthermore, the Committee supports the revised policy of the Housing Committee (which will assist in reducing the demand for social or low cost housing) that residential accommodation to be provided from what was formerly commercial floor space should be limited in occupancy to those persons qualifying under Housing Regulations "a-h".
36. The Committee has accepted the view of the construction industry and related professional bodies that the control of building work in the private sector should be in response to the general lowering of the heat in the economy, rather than any attempt to control directly the level of private building work.
37. The Committee is also of the view that as the engagement of additional staff and the filling of vacancies by non-locally qualified persons is subject to licence under Part II of the Law, adequate controls can be exercised over the

construction industry in the future. The Committee, however, reserves the right to return to a policy of restricting the amount of building work in the private sector by prioritising the issue of licences, should there be evidence that there is a need to do so.

38. As a rule, the Committee will not consider a licence application until outline planning permission has been granted by the Planning and Environment Committee. The Committee believes that it is more appropriate to consider formal applications for a licence under Part III of the Law when there is a reasonable prospect of the project being commenced within the given timescale. However, applicants involved in major expenditure on preparing plans for the Planning and Environment Committee can obtain an in-principle view from the Finance and Economics Committee. Applicants are also reminded that “development” for the purposes of Part III of the Regulation of Undertakings and Development Law has the same meaning as for the Island’s Planning Law and includes the demolition of a property.

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