

STATES OF JERSEY



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

**Presented to the States on 1st April 2003
by the Economic Development Committee**

STATES GREFFE

**REGULATION OF UNDERTAKINGS AND DEVELOPMENT (JERSEY) LAW 1973, AS AMENDED
POLICY STATEMENT (WITH EFFECT FROM MARCH 2003)**

1. **This Policy Statement supersedes the Policy Statements issued by the Industries Committee dated 26th October 1999 and 16th May 2001.**
2. Following States agreement to a States' Reform: Reorganization of Committees (Transitional Arrangements) (Jersey) Act 2002, the Economic Development Committee is now 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 continue to 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 continue to have a direct bearing on the response of the Committee to individual applications for a licence under the Law –
 - the 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 Committee to regulate further the level and type of business activity in accordance with the Population Policy and other Strategic Policy objectives;
 - the 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 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 to 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 paragraph 1.37 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 5 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. Prior to June 1998, a licence 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 6 months immediately preceding the engagement.

9. **Public Sector:** The States decided in June 1999 to apply the principles of the Regulation of Undertakings and Development Law to the public sector, albeit on a voluntary basis.
10. **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.
11. 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.
12. **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 5 years or more immediately preceding their engagement on an individual contract basis.
13. **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 Officers, with the benefit of delegated powers from the Committee, will be able to respond to requests immediately.
14. 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 5 years' residence can be used to cover vacancies (where the vacancy has been outstanding for less than 6 months) without the need to obtain a licence.
 - (b) Temps who are residentially qualified or have 5 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 10 days without the need to obtain a licence providing the temp agency informs the Regulations Office of this.
 - (e) Where an employer has a 3-year joint licence 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 permission to take on additional non-local staff, non-local temps can be engaged to cover the period until permanent appointments have been made.

15. **Working from home:** The exemption from the requirement to hold a licence which had prior to June 1998 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 remain unchanged.
16. **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 and the general well being of the Island, with particular regard for the population and immigration policy adopted by the States in November 1997.
17. 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**
 - (a) Engaging locally qualified staff
 - 0 – 5 staff – normally a consent under delegated powers;
 - >5 staff – refer to Committee.
 - (b) Engaging 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. **Engagement of additional staff**

(a) Locally qualified

0 – 5 staff – normally a consent under delegated powers;
>5 staff – refer to Committee.

(b) 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.

3. **Filling a vacancy caused by a person leaving**

(a) Locally qualified person(s)

Exempt within 6 months.

(b) Non-locally qualified person(s)

Normally a refusal under delegated powers unless the special circumstances outlined above apply and the undertaking concerned can provide firm evidence to show that every effort has been made to identify locally qualified persons without success.

18. **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.

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

20. **Joint staffing licences:** 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 considers individual undertaking's business objectives and reaches agreement on staffing establishments for a future period where this is in accordance with the agreed States policy objectives.

21. When proposing a joint staffing licence 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.
22. The Committee is actively encouraging all undertakings to consider entering into a joint staffing licence as outlined above.
23. **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.
24. Under the Law the Committee is also required to have regard to protecting the integrity of the Island in commercial and financial matters and has adopted the following policies –
- a consent can be expected to be granted only in circumstances where the Committee 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;
 - a consent will only be granted subject to the applicant satisfying the regulatory authorities where separate supervisory laws exist;
 - for companies in the ownership of non-residents, the owners must be institutions or partnerships of stature with an established reputation and track record.
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. **Non-local contractors:** Where a non-local contractor/sub-contractor wishes to undertake building work within the Island, the general policy of the Committee is to grant licences provided that evidence is produced that local firms have been given the opportunity to tender on a level playing field basis or that the work to be undertaken is specialist in nature and evidence is provided that the work cannot be undertaken by local firms.
27. **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.

PART III OF THE LAW

28. Under Part III of the Law no person may carry out any development of more than 1,500 square feet unless they have been granted a licence, and for agricultural buildings a licence will be required where the area is more than 10,000 square feet. ^[1]

In considering applications for development the Committee is required to have regard to the need to regulate and manage demand on the resources of the Island.

The Committee will continue to administer Part III of the Law by considering each application on its merits having regard to the States anti-inflation strategy (P.125/2000)^[2], but will seek to manage demand within the actual capacity of the industry.

If demand appears to exceed the Industry's capacity, and the Committee has evidence of inflation levels above that which would normally be expected, the Committee may, through consultation and negotiation with developers, seek to delay projects in order to reduce demand on the industry and the Island's resources.

The Committee will monitor and review consolidated quarterly data for both public and private sector demand. The Committee will seek to ensure, as far as practicable, a steady flow of major construction work.

The Committee will not normally consider a licence application until outline planning permission has been granted by the Environment and Public Services 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.

March 2003

[1]

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.

[2]

On 13th September 2000 the States adopted a proposition of the Finance and Economics Committee as follows –

“that the overall level of construction activity in Jersey, excluding small projects (less than £500,000) and civil engineering works, should be limited to approximately £120 million a year (at December 1999 prices) and accordingly during those three years –

- (i) the States capital construction programme should be limited to £60 million a year; and*
- (ii) the Industries Committee should be requested to apply Part III of the Regulation of Undertakings and Development Law 1973, as amended, to limit private sector construction to approximately the same amount.”*