

STATES OF JERSEY



DRAFT REHABILITATION OF OFFENDERS (EXCEPTIONS) (AMENDMENT No. 2) (JERSEY) REGULATIONS 201- (P.104/2019): COMMENTS

**Presented to the States on 17th December 2019
by the Education and Home Affairs Scrutiny Panel**

STATES GREFFE

COMMENTS

1. The Draft Rehabilitation of Offenders (Exceptions) (Amendment No. 2) (Jersey) Regulations 201- ([P.104/2019](#)) (hereafter the “draft Regulations”) are intended to create an exception in the [Rehabilitation of Offenders \(Exceptions\) \(Jersey\) Regulations 2002](#) (the “Regulations”) in respect of Articles 3 and 10 of the [Misuse of Drugs \(General Provisions\) \(Jersey\) Order 2009](#). This would enable an Enhanced Disclosure and Barring Service (“DBS”) check to be made on any applicant seeking a licence under Article 3 to produce, supply, offer to supply or possess a controlled drug, or a licence issued under Article 10 to cultivate plants of the *genus Cannabis*.
2. The Education and Home Affairs Scrutiny Panel (hereafter “the Panel”) received a briefing on the draft Regulations on Friday 4th October 2019. The briefing provided a brief overview of the requirements for the draft Regulations and noted that Jersey had, by omission, effectively adopted a position on licence applications that was inconsistent with the United Kingdom.
3. During the briefing, the Panel raised a concern about the definition of “relationship” within the proposed Regulation 13A(2)(b)(ii) (Licensing of controlled drugs). It questioned whether this definition was confined to business relationships or whether it would be extended to family members of the applicant. It was assured at the time that this related solely to a business relationship and that it was not the intention of the draft Regulations to extend to familial relationships.
4. The [principles](#) of the draft Regulations were debated by the States Assembly on 12th November 2019. During the debate, a number of Members raised questions over how providing access to information about spent convictions would impact the outcome of any applications under the licensing scheme. Further clarity was also sought over the definition of “relationship” within the draft Regulations. The Panel considered that the response given by the Minister for Home Affairs was inconsistent with the previous definition given during the briefing, and agreed that it would call in the draft Regulations for further scrutiny under Standing Order 72(1).
5. The Panel arranged a subsequent briefing on Wednesday 4th December with the Chief Pharmacist, a Senior Legal Adviser and the Policy Principal, in order to address the following 3 points –
 - the definition of “relationship” within the draft Regulations;
 - the definition of the “*genus Cannabis*” within the draft Regulations; and
 - how the application process would operate in practice.
6. The Panel is satisfied with the additional information provided to it during the briefing and will outline the key areas discussed for the attention of Members:

DBS process

7. Generally speaking, once a conviction has become spent, the person to which it applies would not be required to disclose it. However, under the Regulations, conviction information that would be available from a DBS check can be required in certain circumstances for individuals applying for specific jobs (e.g. childcare) or licences to confirm spent and unspent convictions. The Senior Legal Adviser explained that there are 3 levels of DBS check –
 - Basic, showing only unspent convictions,
 - Standard, providing information on spent and unspent convictions, and
 - Enhanced, providing information on spent and unspent convictions and relevant police intelligence that may be held on the applicant based on their address history.
8. A DBS certificate is normally viewed as being for verification purposes on the understanding that most application processes will require the applicant to disclose criminal record information equivalent to Basic or Standard at an appropriate stage, prior to a DBS certificate being required if the application is progressed. Once criminal record information is confirmed, then a decision can be taken on whether to approve employment, or grant or reject a licence, depending on many factors, including the nature and date of the conviction, sentence, and age of the offender at that time. It is noted that, at present, under the Regulations, there is no exemption for anyone applying for a licence to supply controlled drugs or cultivate plants of the *genus Cannabis*, and therefore the information on a Standard or Enhanced DBS check cannot be required or obtained in the form of a DBS certificate.
9. The intention of the draft Regulations is to change this position and bring Jersey in line with the United Kingdom. It was explained that this was possible due to the extension to Jersey, by [Order in Council](#), of the [Police Act 1997 \(Criminal Records\) \(Jersey\) Order 2010](#), which provides for DBS checks to be undertaken in certain circumstances. The Officers explained that there is no sound policy reason for Jersey to adopt a different position to that of the UK. One particular intention for maintaining this parity would be avoiding a situation whereby an applicant that had been refused a licence in the UK might then find it materially easier to operate in Jersey.
10. Importantly, under the current Regulations, the exemptions do not currently exist, and therefore maintaining this parity is not possible.

Definition of “relationship”

11. The Panel’s main concern was that there was a lack of clarity over the definition of relationship within the report accompanying the draft Regulations, and by the Minister during his summing-up of the debate on the principles. During the briefing, the Panel questioned whether this included the family members of someone applying for a licence under the draft Regulations. It was explained that the definition of relationship within the draft Regulations is limited to someone who would be required to be named in the application process because of a material interest in the applicant company, and was not intended to go any

further than that. Under the planned licensing regime, it is expected that a material interest would be a 20% or greater interest in the company applying for a licence or at any time thereafter.

12. It was explained that this would be kept under review and could conceivably be adjusted in the future. The Panel questioned what this adjustment may look like, and an example was given that there may be a case for an incremental extension to include principal officials of an applicant company that were not necessarily shareholders. The Panel has observed that the Regulations have a link to the [Police Act 1997](#), and it is necessary for the exceptions in English and Jersey law to marry up in order for an Enhanced DBS certificate to be available. To that end, it is noted that the Police Act 1997 does not allow an extended definition of relationship that would capture family members outside the applicant company.

Definition of the *genus Cannabis*

13. The Panel questioned what is intended by reference to the *genus Cannabis* within the draft Regulations, given the taxonomic uncertainties that are often raised over the various strains. The Chief Pharmacist explained that any commercial cannabis production (including low Tetrahydrocannabinol (THC)/hemp production) would fall within the scope of the licensing regime in the future. It is noted that this is also in order to maintain parity with the United Kingdom.

Application process

14. The Panel was informed during the briefing that the application process will broadly mirror the UK licensing framework. It is noted that, at present, there are no wholesale companies supplying controlled drugs in the Island, so there is limited scope for companies that this would apply to at present, although this may change in the future. It is noted that pharmacists are exempt from this requirement and are controlled through a separate licensing regime. The Panel was, however, informed that a company such as Jersey Hemp would be required to provide Enhanced DBS certificates on the renewal of its licence and periodically thereafter.
15. The Panel was subsequently provided with additional information about the licensing framework within the UK, which can be accessed at this URL: <https://www.gov.uk/topic/business-enterprise/licensing>.

Conclusion

16. The Panel is satisfied that the issues it has discussed have been addressed, and it therefore has no further concerns ahead of the debate on the draft Regulations continuing in second reading.