

# STATES OF JERSEY



Jersey

## **DRAFT SHOPS (REGULATION OF OPENING) (AMENDMENT) (JERSEY) REGULATIONS 201-**

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**Lodged au Greffe on 6th September 2019  
by the Minister for Economic Development, Tourism, Sport and Culture**

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**STATES GREFFE**



## REPORT

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The Draft Shops (Regulation of Opening) (Amendment) (Jersey) Regulations 201- (“the draft Regulations”) provide a mechanism for shops with a retail sales area in excess of 700 square metres to trade for a period not exceeding 6 hours on Sundays throughout the year and on Good Friday and Liberation Day. They also clarify the rules affecting shops that sell road fuel.

### Background

Prior to 2011, Sunday trading (and trading on Good Friday, Liberation Day and Christmas Day) was regulated under the [Shops \(Sunday Trading\) \(Jersey\) Law 1960](#). It did so by restricting the type of goods that could be sold and via a parish-administered permit system.

By the turn of the Millennium, the goods-based method of regulation was becoming unsustainable. Whereas food shops and newsagents needed a permit to open on a Sunday, hairdressers and laundrettes did not. A permit could authorise newspaper and magazine sales on a Sunday but not DVD movies. When, in 2007, the States adopted an amendment to allow all shops to sell cut flowers, one States Member asked why the clause did not seem to allow for the sale of small potted plants as an alternative.

The [Shops \(Regulation of Opening and Deliveries\) \(Jersey\) Law 2010](#), (“the 2010 Law”) together with its subordinate legislation, the [Shops \(Regulation of Opening\) \(Jersey\) Regulations 2011](#) (“the 2011 Regulations”) retained the efficient parish-based system of administration, but established a new framework for the regulation of trading on Sundays and on other specified days, i.e. –

- (a) Good Friday
- (b) Liberation Day
- (c) Christmas Day, and
- (d) 26th December (‘Boxing Day’).

Easter Sunday was not specified. As such, it is treated in the same way as other Sundays.

Goods-based restrictions were replaced by a new control based on the size of the retail sales area within a shop. The definition of shop was drawn broadly, so as to include car-boot sales, car dealers and cinemas, as well as the more conventional supermarkets and retail stores. Those with a retail sales area of 700 m.<sup>2</sup> or less (small shops) were given scope to open on most days of the year, whereas those with a larger retail sales area (large shops) were only permitted to open on up to 9 Sundays per annum.<sup>1</sup> This limitation<sup>2</sup> was introduced in recognition of the greater potential for large shops to generate nuisance impact or other disruption in the locality.

At the time of introduction, it was estimated that somewhere in the region of 30 shops would be classified as large shops with a retail sales area above the 700 m.<sup>2</sup> limit. The remainder would either be eligible for the general permit and therefore in a position to open on most days (with the exception of Christmas Day), or would be entirely exempt from the provisions of the 2010 Law. In 2014, the States were asked to sanction a trial that would have relaxed the restrictions on large shops for an 18-month period ([P.76/2014](#) refers). This proposition was rejected.

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<sup>1</sup> N.B. it was also possible for a large shop to use a single permit to open on Good Friday and/or Liberation Day, but not on Christmas Day or Boxing Day.

<sup>2</sup> Originally proposed as 500 m.<sup>2</sup>

In August 2015, the then Minister for Economic Development made an Order declaring a further 2 Sundays before Christmas as special occasions, thereby increasing to 11 the number of Sundays and other specified days on which larger shops could open each year.<sup>3</sup>

### The current position

The 2010 Law and 2011 Regulations remain in force today. They prohibit shops from opening on Sundays and on the other specified days unless –

- (a) the shop falls within an exempt category; or
- (b) the occupier of the shop has obtained a permit from the relevant Connétable that authorises opening.

The list of exempt categories of shops is found at Schedule 1 of the 2011 Regulations.

For shops that do not fall within the scope of Schedule 1, the 2011 Regulations currently provide for 3 types of permit –

- a **general permit** – which may be granted to small shops and also to certain large shops that focus on service provision, but which have a small retail sales area (e.g. a cinema). A general permit may authorise opening on Sundays, Good Fridays, Liberation Day and 26th December, or any combination of those days. It cannot authorise opening on Christmas Day. The application fee is currently £50 and the permit expires on 31st December of the year of issue.
- a **single permit** – which may be granted to shops of any size, but which may only authorise opening on a single Sunday, Good Friday and/or Liberation Day. A single permit cannot authorise opening on either Christmas Day or Boxing Day. Each shop may benefit from a maximum of 5 single permits per annum. The application fee is currently £50.
- a **blanket permit** – which may authorise any shops, or shops of a specified description, to open on Sundays that have been designated by the Minister as special occasions. Such designations are made by Order. A total of 6 Sundays per annum are currently designated as special occasions via a formula set out in the [Shops \(Regulation of Opening\) \(Special Occasions\) \(Jersey\) Order 2015](#). These align with the well-established Fête dé Noué. For 2019, the relevant Sundays are –
  - 24th November
  - 1st December
  - 8th December
  - 15th December
  - 22nd December
  - 29th December.

Blanket permits are issued by the Connétables by way of a Gazette notice. Individual applications are not required and there is no application fee.

Connétables have scope to apply conditions to each and every permit to control such matters as opening hours and deliveries where necessary.

### The case for change

There is now clear evidence of demand for a change in Sunday trading policy and legislation.

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<sup>3</sup> The [Shops \(Regulation of Opening\) \(Special Occasions\) \(Jersey\) Order 2015](#)

In 2018, Growth, Housing and Environment officials commissioned consultants, *4insight*, to carry out a comprehensive retail consumer survey. *4insight* surveyed a total of 1,118 respondents<sup>4</sup> before reporting at the end of last year. Although the clear majority of respondents were Island residents, the survey included responses from 147 visitors. The survey found that 63% of respondents were in favour of Sunday trading, with the Island's working population expressing a clear preference for broad 10 a.m. – 4 p.m. opening, all year round. This view is broadly consistent with that which *Visit Jersey* has received in recent years. During 2017, *Visit Jersey* commissioned *Colliers International* to conduct an audit of tourism products and services available in Jersey and how those related to what was on offer in other, selected, geographies within the British Isles. The resulting audit indicated that tourism would benefit if a greater number of Island shops were able to open on Sundays.

It is also increasingly clear that industry stakeholders are calling for greater flexibility on opening hours. Jersey Chamber of Commerce in particular has expressed support for a relaxation of the existing rules, having reviewed developments at home, in Guernsey (which fully deregulated Sunday trading almost 4 years ago) and elsewhere, as well as online.

Sunday trading debates in the Assembly have traditionally been punctuated with the suggestion that Sunday opening pressurises retailers to compete for broadly the same quantum of consumer spend over 7 days instead of 6 – thereby increasing their costs for little, if any benefit. For many retailers, the ongoing expansion of 24/7 online shopping may be rendering that argument obsolete. With the arrival of *HelloFresh* in Jersey (in partnership with Jersey Post), that expansion has reached the point where the Island's supermarkets and other grocery stores face meaningful competition from a significant external online business for both fresh food and shelf-stable food products.

Giving all on-Island retailers the option to trade regularly on Sundays should provide them with additional scope to compete effectively with external online competition and maintain in-Island spending. These draft Regulations are intended to provide that additional scope.

Change is also needed to bring clarity to the road fuel market. The superseded Shops (Sunday Trading) (Jersey) Law 1960 allowed any business wanting to sell road fuel on a Sunday to apply for a permit. Post-2011, a number of garages have continued to trade on Sundays, notwithstanding that a small number operate with total retail sales areas that are close to or even beyond the 700 m.<sup>2</sup> restriction set by the 2011 Regulations. Anecdotal evidence collated since then tends to indicate consumer support for those larger garages being open on Sundays, on the basis that they maintain the ready availability of a necessary commodity across the Island and they aid fuel price competition. Moreover, the number of complaints from the Public regarding the opening of large garages is understood to be almost zero.

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<sup>4</sup> This figure was verified following data cleaning. The survey had originally attracted 1,261 responses.

## Specific proposals

These draft Regulations –

- (a) create a new Restricted Hours Permit, which will allow large shops to open on all ordinary Sundays, Good Friday and Liberation Day only, and within the period 10:00 hrs. – 16:00 hrs. inclusive. For the avoidance of doubt, this new permit will not allow large shops to open on either Christmas Day or 26th December, notwithstanding that either of those latter dates could fall on a Sunday. Restricted Hours Permits will be available on an annual basis. They would be valid until 31st December each year, as is the case with the General Permit that is already available to smaller shops;
- (b) include within the Restricted Hours Permit a provision confirming that road fuel sales (of any type – including electric charging points) on any Sunday, Good Friday and on Liberation Day may be permitted beyond the 10 a.m. – 4 p.m. limitation on other retail activity on large shop sites;<sup>5</sup>
- (c) delete the blanket permit with effect from 31st December 2019;
- (d) delete the requirement for the applicants for a general permit to submit a certified plan declaring their retail sales area;
- (e) increase the cost of general and single permit applications to £60 in accordance with the Retail Price Index increase since the permit was originally introduced;
- (f) set the fee for a restricted hours permit application at £120.

Regarding (b) above, it is worthy of note that these draft Regulations use the term ‘*fuel or other source of power for motor vehicles*,’ so as to allow for a potential increase in electric charging-point provision, and potentially other more environmentally sustainable road fuel options in future years.

With the exception of (c) above, each of these changes would come into force 7 days after the Regulations are adopted. As these Regulations will not be debated until the final quarter of 2019, and that removing the blanket permit in 2019 would create an administrative burden for the parishes and for large shops in the run-up to Christmas, it is thought appropriate to retain the blanket permit for one more festive season.

Deletion of the requirement for general permit applicants to submit a certified plan (see (d) above) would enact a red tape reduction proposal that was first suggested in 2014 as part of [P.76/2014](#).

At present, the occupiers of any small shop that wishes to apply for a general permit must supply a certified floorplan to demonstrate that their retail sales area is no larger than 700 m.<sup>2</sup>, in accordance with Regulation 8 of the 2011 Regulations. Those certified plans are an additional cost to the affected shop occupiers. Connétables and/or their officials are understood to have faced a number of cases where they were bound to demand that the applicant obtain and submit a certified plan, notwithstanding that the relevant new shop unit was known to be well below 700 m.<sup>2</sup> Given that Regulation 9 of the 2011 Regulations already allows a Connétable to demand such a plan in marginal cases, it is considered reasonable to dispense with this obligation.

The remainder of the Regulations would be unchanged, save for some editorial revisions that are intended to make the Regulations easier to read. No substantive changes are proposed regarding the existing general permit, other than the deletion of the mandatory floor plan requirement.

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<sup>5</sup> The sale of limited quantities of secondary goods at a petrol station forecourt would not be constrained by the 10 a.m. to 4 p.m. limitation either.

The factors to be considered by a Connétable when determining an application for a restricted hours permit will be similar to those for the general permit; i.e. the peace and tranquillity of the neighbourhood, and the avoidance of nuisance to residents on the times and dates of opening. Given that all shops with a retail sales area above 700 m.<sup>2</sup> will have restricted opening hours relative to smaller shops, the scope for impact on the locality will have already been mitigated to some extent. A Connétable may nevertheless assess such factors as the delivery and warehousing facilities at a shop, and consider whether these are such that conditions restricting deliveries might be required.

Application fees continue to be set at a level that should be sufficient to cover the cost of administering the application. These draft Regulations will cause the cost of a general permit to rise to £60 (an increase aligned with the rate of inflation since 2011, when the permit was introduced). Occupiers of large shops that apply for the new Restricted Hours Permit will be charged £120.

When the trial deregulation was proposed in 2014, the suggestion was that applications from large shops should incur a £250 fee, on the basis that applications for permission to open large shops would normally require greater consideration of the scope for impact on their localities. The proposal for 2019 is to mitigate this burden on parish administrations by requiring applicants seeking a Restricted Hours Permit to submit an operating statement as part of their application. This will need to explain how the occupier of the shop intends to mitigate the risk of nuisance or disturbance being caused.

The rules on determination and issuing procedure, and regarding rights of review/appeal against a decision of a Connétable in respect of a Restricted Hours Permit would be identical to those for the General Permit.

### **Employment Law considerations**

During the course of the 2014 debate on a proposed Sunday trading trial, some States Members expressed concern that changes were being proposed in the absence of an amendment to the [Employment \(Jersey\) Law 2003](#) to provide a retail worker ‘opt-out’ provision, such as that which applies in England and Wales.

Consideration has been given to the concept of a retail worker opt-out in 2019. Such a provision is not thought to be the right approach at this time for the following reasons –

- (a) Retailers have for some time been facing a relatively tight employment market. In these circumstances, employers should be motivated to consult and respond to the needs of their existing employees regarding Sunday working, or risk losing good staff to other employers.
- (b) Sunday working is already a reality in a large number of small shops. There has not been a call to impose an opt-out on smaller businesses that are already employing staff on Sundays. An opt-out that applies to the approximately 30 larger businesses only would be difficult to justify on policy grounds.
- (c) Applying a family-friendly opt-out to the retail industry, whilst denying employees working in a range of other important economic sectors a comparable opt-out right, seems less than equitable.
- (d) While Sunday has a recognised status for Christians (and Christianity is known to be the dominant religion in Jersey)<sup>6</sup>, other religions with a presence in Jersey attach significance to days other than Sunday.
- (e) Competition from 24/7 external online retail is significant. A retail opt-out would be a further constraint for on-Island retailers and affect their scope to

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<sup>6</sup> The [2018 Jersey Opinions and Lifestyle Survey Report](#) records that 47% of adults regard themselves as having a religion, and that 96% of adults with a religion state their religion as Christianity or a denomination of Christianity.

address that challenge. In turn, it may ultimately affect the number of jobs available in the retail sector in the medium to longer term.

### **Financial and manpower implications**

There are no direct financial or other resource implications arising from the adoption of these Regulations. It is anticipated that the administrative workload for the parishes will be broadly similar to current levels (i.e. a probable decrease in receipt of single permit applications and cessation of the need to administer the blanket permit, but with an additional number of applications for the new restricted hours permit). The administrative overhead arising from the restricted hours permit will be monitored through the remainder of 2019 and 2020.

There will be a need to update the existing Sunday trading guidance and application forms published by the parishes. Government will make officer support available in September and October 2019 to assist the parishes with this work, and to assist stakeholders with their understanding of the new rules.



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## EXPLANATORY NOTE

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The Draft Shops (Regulation of Opening) (Amendment) (Jersey) Regulations 201-, if passed, will amend the Shops (Regulation of Opening) (Jersey) Regulations 2011 (the “2011 Regulations”) to introduce a new restricted-hours permit; this new permit would allow any shop (including a shop with a retail sales area of over 700 m<sup>2</sup>) to open from 10 a.m. to 4 p.m. on Sundays and on certain holidays. The Regulations also remove the power to grant blanket permits.

*Regulation 1* is an interpretation provision clarifying that references to a Regulation or Schedule by number only is a reference to the Regulation or Schedule in the 2011 Regulations.

*Regulation 2* makes minor amendments to the definitions provision of the 2011 Regulations.

*Regulation 3* removes the power of the Minister for Economic Development, Tourism, Sport and Culture to designate days as special occasions. This power, related to blanket permits, will not be necessary once the power to grant blanket permits is removed.

*Regulation 4* creates a new type of permit, the restricted-hours permit. The restricted-hours permit authorises a shop to open on Sundays and certain holidays from 10 a.m. to 4 p.m.; it also authorises an area of a shop ordinarily used for the retail sale of fuel or other source of power to open at any time on those days.

*Regulation 5* deletes a provision of the 2011 Regulations that relates to blanket permits.

*Regulation 6* repeals the requirement in the 2011 Regulations that an application for a general permit in respect of the supply of goods be accompanied by a certified plan of the shop’s retail sales area.

*Regulations 7, 9 and 10* insert references to the new restricted-hours permit into various provisions of the 2011 Regulations.

*Regulation 8* repeals the power to grant blanket permits.

*Regulation 11* deletes a spent transitional provision.

*Regulation 12* deletes Schedule 2 of the 2011 Regulations, as the substance of that Schedule has been incorporated (under *Regulation 4*) into the main text of the 2011 Regulations.

*Regulation 13* raises the fee for filing an application for a general permit or single permit from £50 to £60, and sets the fee for filing an application for a restricted-hours permit at £120.

*Regulation 14* repeals the Shops (Regulation of Opening) (Special Occasions) (Jersey) Order 2015, the Order under which days were designated as special occasions. This Order, related to blanket permits, will not be necessary once the power to grant blanket permits is removed.

*Regulation 15* provides that existing blanket permits continue to have effect until the end of 2019.

*Regulation 16* sets out the name by which these Regulations may be cited and brings the Regulations into force on the 7th day after the day on which they are made.





Jersey

## **DRAFT SHOPS (REGULATION OF OPENING) (AMENDMENT) (JERSEY) REGULATIONS 201-**

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## **DRAFT SHOPS (REGULATION OF OPENING) (AMENDMENT) (JERSEY) REGULATIONS 201-**

*Made* [date to be inserted]

*Coming into force* [date to be inserted]

**THE STATES** make these Regulations under Article 4 of the Shops (Regulation of Opening and Deliveries) (Jersey) Law 2010<sup>1</sup> –

### **1 Interpretation**

In these Regulations, a reference to a Regulation or Schedule by number only is, unless otherwise indicated, to the Regulation or Schedule of the same number in the Shops (Regulation of Opening) (Jersey) Regulations 2011<sup>2</sup>.

### **2 Regulation 1 (interpretation) amended**

In Regulation 1 –

- (a) before “In these Regulations” there is inserted “(1)”;
- (b) the definitions “blanket permit”, “general permit”, “1960 Law”, “permit” and “single permit” are deleted;
- (c) in the definition “Law”, for “, and “the present Law”, mean” there is substituted “means”;
- (d) after the definition “weekday” there is inserted –

“(2) A reference in these Regulations to a permit, without further qualification, is a reference to any permit that may be granted under these Regulations.”.

### **3 Regulation 4 (special occasions) deleted**

Regulation 4 is deleted.

### **4 Regulation 6 (types of permit) substituted**

For Regulation 6 there is substituted –

**“6 Types of permit**

The following permits may be granted under these Regulations –

- (a) a general permit;
- (b) a restricted-hours permit;
- (c) a single permit.

**6A General permit**

- (1) A general permit may be granted only in respect of –
  - (a) a shop that has a retail sales area of no more than 700 square metres;
  - (b) a shop that is a tourist amenity, facility or attraction, if the part of the shop’s retail sales area that is used for the supply of goods is no more than 700 square metres; or
  - (c) any other shop, if the supply of goods in the shop’s retail sales area is incidental to the provision of some other service.
- (2) A general permit authorises the opening of a shop on the following days –
  - (a) every Sunday, other than a Sunday that is also Christmas Day;
  - (b) Good Friday;
  - (c) Liberation Day;
  - (d) 26th December.
- (3) A general permit remains in force until the end of the 31st day of December in the year in which it is granted, unless it ceases to have effect under Regulation 17 or is revoked under Regulation 18.

**6B Restricted-hours permit**

- (1) A restricted-hours permit authorises the opening of a shop at any time between 10:00 and 16:00 hours on the following days –
  - (a) every Sunday, other than a Sunday that is also Christmas Day or 26th December;
  - (b) Good Friday;
  - (c) Liberation Day.
- (2) A restricted-hours permit also authorises the opening, at any time (including beyond the time between 10:00 to 16:00 hours) on the days set out in paragraphs (1)(a) to (c), of an area of a shop, where the area –
  - (a) is ordinarily used for the retail sale of fuel, or of other source of power, for motor vehicles (and may also be used incidentally for the supply of other goods); and
  - (b) is no more than 700 square metres.
- (3) A restricted-hours permit remains in force until the end of the 31st day of December in the year in which it is granted, unless it

ceases to have effect under Regulation 17 or is revoked under Regulation 18.

#### **6C Single permit**

- (1) A single permit authorises the opening of a shop on any date specified in the permit.
- (2) However, a single permit may not authorise the opening of a shop on Christmas Day, on 26th December or on more than 5 dates in a calendar year.

#### **6D Permit for vehicle**

A permit for a shop that is a vehicle authorises its opening in any parish.”.

### **5 Regulation 7(3) deleted**

Regulation 7(3) is deleted.

### **6 Regulation 8 (application for permit) amended**

- (1) In Regulation 8(3)(a), for “general permit” there is substituted “general permit, restricted-hours permit”.
- (2) Paragraphs (6) to (8) of Regulation 8 are deleted.

### **7 Regulation 12 (conditions of general permits) amended**

- (1) In the heading of Regulation 12, after “general permits” there is inserted “and restricted-hours permits”.
- (2) In Regulation 12 for “general permit”, wherever it occurs, there is substituted “general permit or restricted-hours permit”.
- (3) In Regulation 12(4), before “26th December” there is inserted “(in the case of a general permit)”.

### **8 Regulation 15 (blanket permits) deleted**

Regulation 15 is deleted.

### **9 Regulation 22 (fees) amended**

In Regulation 22(1) –

- (a) before “fee” there is inserted “applicable”;
- (b) for “general permit” there is substituted “general permit, restricted-hours permit”.

## **10 Miscellaneous amendments**

In the following provisions, for “general permit or single permit”, wherever it appears, there is substituted “permit” –

- (a) Regulation 7(2);
- (b) Regulation 8(1);
- (c) Regulation 9(1);
- (d) Regulation 11(1);
- (e) Regulation 14 (including its heading);
- (f) the heading of Regulation 16 and Regulation 16(1);
- (g) Regulation 17;
- (h) Regulation 18 (including its heading);
- (i) Regulation 19(1)(c) and (d);
- (j) Regulation 23(1) and (3).

## **11 Regulation 24 (transitional provisions and saving) deleted**

Regulation 24 is deleted.

## **12 Schedule 2 (shops whose retail sales areas exceed 700 square metres) deleted**

Schedule 2 is deleted.

## **13 Schedule 3 (fees) amended**

In Schedule 3 –

- (a) for “£50” there is substituted “£60”;
- (b) below the entry for a general permit or single permit there is inserted “For filing an application for a restricted-hours permit – £120”.

## **14 Shops (Regulation of Opening) (Special Occasions) (Jersey) Order 2015 repealed**

The Shops (Regulation of Opening) (Special Occasions) (Jersey) Order 2015<sup>3</sup> is repealed.

## **15 Blanket permits continue to have effect**

- (1) Despite any other provision of these Regulations, a blanket permit described in paragraph (2) continues to have effect in accordance with its terms until the end of the 2019 calendar year.
- (2) Paragraph (1) applies to every blanket permit that –
  - (a) was issued under the Shops (Regulation of Opening) (Jersey) Regulations 2011<sup>4</sup>, as those Regulations read immediately before these Regulations come into force; and



(b) was in force immediately before these Regulations come into force.

## **16 Citation and commencement**

These Regulations may be cited as the Shops (Regulation of Opening) (Amendment) (Jersey) Regulations 201- and come into force on the 7th day after the day on which they are made.

## ENDNOTES

### Table of Endnote References

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<i>1</i>	<i>chapter 05.775</i>
<i>2</i>	<i>chapter 05.775.50</i>
<i>3</i>	<i>R&amp;O.96/2015 (chapter 05.775.60)</i>
<i>4</i>	<i>chapter 05.775.50</i>