

# **STATES OF JERSEY**



## **REGULATION OF UNDERTAKINGS AND DEVELOPMENT (JERSEY) LAW 1973 AND HOUSING (JERSEY) LAW 1949 IN RELATION TO 'J' CATEGORY CONSENTS ('j's): GENERAL STATEMENT OF POLICY (2008) AND PRACTICE NOTES**

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**Presented to the States on 15th July 2008  
by the Minister for Economic Development**

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**STATES GREFFE**

## REPORT

**Any trade, business or profession, whether or not carried on for profit, and wherever carried out in the Island, requires a licence before commencing or engaging additional staff.**

**Under the Housing Law, consent must be obtained before a property can be purchased or leased – consent will be issued in limited cases for essential employees ('j's').**

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### **1. Introduction**

Decisions under the Regulation of Undertakings and Development (Jersey) Law 1973 and the Housing (Jersey) Law 1949 will be made in a fair and transparent manner, and on a basis consistent with previous decisions and prevailing policy.

Your application will be dealt with in 15 working days, under normal conditions.

The Minister for Economic Development is accountable for the Regulation of Undertakings decisions, and the Minister for Housing for the 'j' category decisions.

These Ministers make decisions on applications in a co-ordinated manner, consulting each other, and the Assistant Minister, Chief Minister's Department. They do this at Migration Advisory Group, which sits approximately every 2 weeks, and which is also responsible for the direction of migration policies in Jersey.

The Population Office administers these Laws on behalf of the Ministers, with all applications processed by the same small business licensing team.

The Population Office works closely with "**Jersey Enterprise**", and both are located at Jubilee Wharf, Esplanade, St. Helier.

Businesses are encouraged to approach Jersey Enterprise, as they will offer advice and guidance on a range of matters. For more information visit [www.jersey.com/enterprise](http://www.jersey.com/enterprise), or e-mail: [enterprise@gov.je](mailto:enterprise@gov.je). On this site you will also find much more detailed information on the Policy and Regulations.

Alternatively, for specific advice on the Regulation of Undertakings and Development Law and Housing Law, e-mail the Population Office on [populationoffice@gov.je](mailto:populationoffice@gov.je), or call us on 448930, or visit us on the 3rd Floor, Jubilee Wharf.

We are open for business and are happy to hear from you direct.

In addition to this General Statement of Policy (2008) more specific guidance on the Regulation of Undertakings and Development Law, and the Housing Law as it relates to business, may be issued from time to time in the form of Practice Notes.

## **2. The objectives of the Regulation of Undertakings and Development Law**

The **Regulation of Undertakings and Development Law** requires any trade, business or profession, whether or not carried on for profit, and wherever carried out in the Island, to have a licence before commencing or engaging additional staff. Application forms are available from Jubilee Wharf, Esplanade, or on the website.

In making decisions under the Law, regard will be had to the **need to regulate and manage demand on the Island's resources**. This is generally taken to mean that the needs of economic growth are balanced against the additional demand that migration places on the Island's limited resources, including its environment.

Decisions are also made having regard to the need to **protect the financial and commercial integrity of the Island**.

The above considerations were introduced in 1988, together with a report on the criteria against which applications would be considered. These criteria have been included in various policy statements since, of which this is the latest, and supersedes the previous 2003 Policy Statement.

<b><u>The criteria against which applications will be assessed are:</u></b>
<ul style="list-style-type: none"><li>• The pressure to be placed on the Island's resources;</li><li>• The need to maintain a balanced and prosperous economy;</li><li>• The need to maintain a range of job and training opportunities for local residents and school-leavers, including apprentices, those over normal working age, and people in supported and special employment schemes;</li><li>• The importance of the service rendered to local residents;</li><li>• The track record of the undertaking in terms of profitability, and its contribution to tax revenues.</li></ul>



The Minister shall also have regard to the provisions of the Competition (Jersey) Law 2005 and the decisions and directions of the Jersey Competition Regulatory Authority, and as far as possible, to wider objectives, with a particular emphasis on encouraging environmental responsibility as a key element of managing demand on resources.

## **3. The Regulation of Undertakings and Development Law licence**

A licence to commence or to engage staff, if required, may be issued with reference to the above criteria.

The licence to employ staff will usually be in the form of a joint staffing licence, for a defined period, usually 3 years, which will include a specified number of staff who can be engaged – **some of whom may be non-locally qualified**.

<b>Persons are deemed locally qualified if they are –</b>
<ul style="list-style-type: none"><li>(i) Residentially qualified for housing purposes, including being a 'j' category essential employee;</li><li>(ii) Have been resident for the whole of the past consecutive 5 years;</li></ul>

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| (iii) A spouse of (i) or (ii) above;   |
| (iv) A child under 18 years (or if students under 25 years) of those in (i) (ii) or (iii) above. |

Once granted a licence, an undertaking is free to manage staff numbers within the terms of that licence. An undertaking is also free to apply for additional staff at any time. Prior to the expiry of a licence, staffing requirements will be reviewed and a new staffing licence may be issued.

In making licence decisions, business plans and financial details will be requested, as will evidence of investment in training local residents. Your application will be processed more quickly if this information is supplied with the application form.

Reference will also be had to previous relevant decisions, in particular, those taken in relation to similar businesses. This will be done to ensure decisions are fair and consistent, and that businesses operate, as a general principle, on a **level playing field** with their competitors. In doing this, the Minister for Economic Development will nevertheless be mindful that each case presents its own unique range of facts and matters to consider.

Conditions may also be placed on a licence. In particular, conditions are likely to be applied to maximise the use of the local workforce – which may include conditions around the training and recruitment of local school leavers and apprentices, those over normal working age, or those on supported employment schemes.

**Exemptions:** An undertaking does not need a licence to engage persons deemed locally qualified if those persons are –

- (i) on supported employment schemes operated by the Social Security Department, or the Jersey Employment Trust, or any other public body;
- (ii) school pupils and students in full time education;
- (iii) over 65.

#### **4. ‘j’ category essential employees**

The objective of the **Housing Law** is to prevent further aggravation of the housing shortage by controlling the ability to purchase or lease accommodation.

A ‘j’ category consent enables an employee to purchase a property through a company in their own right, or lease accommodation in their employer’s name, and to remain in occupation in that accommodation so long as they continue to hold a position to which a ‘j’ category licence has been granted. Without this consent, an employee can only enter into lodging arrangements, unless they have their own ‘housing qualifications’.

A ‘j’ consent will only be granted where it can be demonstrated that a person is essentially employed and consent can, **in the best interest of the community**, be justified. ‘j’ category consents are strictly limited, and form a very small proportion of the workforce.

The main criteria against which each ‘j’ application are considered are –

- (i) the contribution made to the Island by the employer – e.g. in terms of tax revenues, service provided, etc.;
- (ii) the significance of the post in question to the achievement of that contribution;
- (iii) the track record of the employer in the recruitment and training of local people;
- (iv) evidence that there is not a satisfactory local candidate for the post in question.

Decisions will be consistent and have reference to comparable businesses, and will bear in mind the duty of the Minister for Housing to prevent further aggravation of the housing shortage.

The 'j' provision is a recruitment tool, designed to assist employers with recruitment where no satisfactory local person is available. It is not a retention tool, nor an entitlement for having gained a certain professional position. As such, **existing employees will not be granted 'j' consent**, except where some small discretion is exercised as follows –

- where an employee has been part of a extensive training programme where it would be slightly unfair to point to some distant and different recruitment decision; or
- where retention of a specific skill would have disproportionate effect on the business, which for these purposes is taken to include –
  - where a business has a sizeably lower number of 'j's as a proportion of total employees than a comparable business and is in danger of losing some existing key personnel;
  - where a business has a significantly disproportionately low number of 'j's vis-à-vis its overall size and contribution to the Island;
  - very senior posts.

#### **5. The length of a 'j' category consent**

The following policies are adopted in relation to the length of a consent –

- all posts which meet the 'j' category consent criteria, where the employer is well established, and which require extensive knowledge and experience, will be granted an unlimited 'j' category consent on commencement;
- all posts which meet the 'j' category consent criteria, and are required for a specific purpose or time limited period, or where the employer is a new start up, be granted a time limited 'j' category consent.

#### **6. Manpower Returns**

Every 6 months, all undertakings are required to complete and provide a manpower return detailing their actual manpower, and vacancies.

This information enables the Population Office to confirm compliance with the licence conditions imposed, and provides valuable employment information for the Island. This information also forms the basis for the annual population estimate for Jersey. This information is important.

Failure to complete the manpower return, or a breach in licence conditions identified may result in prosecution – albeit the Population Office aims to work with businesses as far as possible in resolving issues.

#### **7. Requests for re-consideration**

Should an applicant consider a decision unreasonable, or have additional relevant evidence to support their application, the Ministers will normally be prepared to reconsider a decision, as set out in the published appeal statement.

## **8. Confidentiality**

We will only request the information required to process the application, and will only use that information to process the application. All information supplied will be treated in the strictest confidence, subject to any statutory obligations.

**Information will be processed in accordance with the Data Protection Registration of the Population Office.**

## Practice Notes

### issued under the General Statement of Policy in relation to:

#### **Regulation of Undertakings and Development (Jersey) Law 1973 ('RUDL')**

#### **Practice Note: Delegated Decisions – Regulation of Undertakings and Development (Jersey) Law 1973 ('RUDL')**

This guidance sets out the criteria that enable the Population Office to determine RUDL applications without recourse to the **Minister for Economic Development**.

The delegated functions as approved by the Minister for Economic Development provide the Population Office with authority to grant a licence either unconditionally or subject to such conditions as considered appropriate or, to refuse to grant a licence, except where the application relates to more than 5 permanent non-locally qualified staff, and/or more than 15 permanent locally qualified staff (the purpose of this provision being to reserve for the Minister all sizeable staffing decisions). In addition, as a matter of normal practice, those applications that are considered to fall within the below (i) – (v) parameters will also be referred to the Minister for determination.

- (i) The application is a request for reconsideration in accordance with the published “decision-making and appeals process” document.
- (ii) The application is for a new undertaking the ownership of which would be non-locally resident or partially non-locally resident – excluding those businesses regulated by the Jersey Financial Services Commission that will pay 10% tax – where the impact and prominence is more than minor. For the purposes of this provision, changes of beneficial ownership will be treated as an application for the commencement of a new undertaking.
- (iii) Applications without precedent and/or those that may be of concern in relation to the Island’s financial and commercial integrity and reputation.
- (iv) The application is requesting non-locally qualified staff, and is deemed by officers as a marginal decision in that the request is not significantly outside of industry norms, or some strong business case has been made as to why the application requires staffing significantly outside of industry norms.

Where applications are referred to the Minister under the above parameters, the Minister will make decisions having considered the advice of officers, and as a matter of normal practice, having considered the advice of the Migration Advisory Group, being the Minister for Housing, and the Assistant Minister, Chief Minister’s Department.

Each application and case is different – as such, some judgement will be applied when having reference to the above criteria, nor should the above criteria be considered an exhaustive list of those instances where referral to the Minister may take place.

A full list of all decisions taken under delegated powers and not referred to Ministers under the above guidelines will be presented to Ministers for information on a monthly basis.

Should an applicant consider a decision unreasonable, or have additional relevant evidence to support their application, the Minister will normally be prepared to reconsider a decision, as set out in the published “decision-making and appeals process”.

**June 2008**

### **Practice Note: Temporary Workers**

Temporary staff should be covered within an undertaking's staffing licence. The only exceptions to this relate to –

- (a) The employment of a temporary worker to cover for existing staff who are sick, on holiday, on maternity leave, etc. In these cases, a vacancy will not be considered to have been created, and as such, the temporary member of staff does not count toward the overall staffing licence allocation.
- (b) The engagement of a temporary worker above the licensed quota to enable training of a new staff member in the event of staff turnover, for up to 15 days, does not count toward your overall staffing licence allocation.

In all other circumstances, the engagement of temporary staff, whether supplied by a recruitment agency or otherwise, requires a licence, and should capacity not exist within the current staffing licence, an application should be made.

**June 2008**

### **Practice Note: Seasonal Staff**

Where seasonal staff are engaged for only a specific period in any one year, a staffing licence is required, and specific provision in the staffing licence may be included for the required period.

This provision historically has operated to mainly assist the Agricultural and Tourism industries, but is available for other undertakings which have seasonal requirements.

**June 2008**

### **Practice Note: 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.

**As such, a licence is required for the commencement of an undertaking, whether operated from home or otherwise.**

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.

**June 2008**

## **Practice Note: Public Sector**

The States by Regulations in 1978 exempted from the Regulation of Undertakings and Developments Law “any undertaking carried on by or on behalf of the Crown, the States, or any administration of the States, or any parochial authority.”

In 1999, it was agreed, despite being legally exempt, that the Public Sector would adopt voluntarily the principles of the Law.

**June 2008**

### **Practice Note: Construction Industry**

The Minister is keen to maintain an efficient and competitive local construction industry, and also to maintain a range of job opportunities for local residents, in particular, as in other industries, the Minister is keen to promote training and apprenticeships.

A construction business is treated as any other business, other than in respect of the additional ability to obtain a “contract licence” as well as a standard staffing licence. A “contract licence” may be granted in recognition of the nature of the construction industry, in particular, its potential volatility. A “contract licence” enables the business to take on additional temporary staff for the duration of the specific contract applied for.

**These licences may be granted should the Minister be satisfied that efforts have been made to identify suitable locally qualified individuals.**

**June 2008**

### **Practice Note: Non-Local Contractors**

Where a non-local contractor/sub-contractor wishes to undertake work within the Island, the general policy of the Minister 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.

**June 2008**

### **Practice Note: Development Licences**

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.<sup>[1]</sup>

In considering applications for development the Minister is required to have regard to the need to regulate and manage demand on the resources of the Island, and relevant States decisions and policies.

An application will not normally be considered until planning permission has been granted.

“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.

**June 2008**

## **Practice Note: Environmental Considerations**

In issuing a licence under the Law, a range of factors will be considered, and each case judged on its own merits.

The Minister for Economic Development in making decisions has regard to “the need to regulate and manage demand on the Island’s resources”, and in doing this, properly, has regard to the impact a business has on the environment of Jersey as it requires more staff, in particular, more non-locally qualified staff and a level of migration.

As such, the extent to which a business seeks to minimise its environmental footprint may be taken into consideration when applications are being evaluated, enabling the Minister to take a more favourable approach.

Such considerations include, but are not limited to, car-sharing and travel initiatives which reduce congestion on Jersey’s roads, or more efficient practices which reduce demand for energy and local resources from businesses.

In particular, the Minister will have regard to good practices consistent with the “**ECO-ACTIVE BUSINESS**” initiative, an accreditation scheme for Jersey providing a framework for local business to assist them in having a positive impact on the environment in five key areas –

- Waste
- Water
- Energy
- Procurement
- Transport

ECO-ACTIVE BUSINESS is free to join and applicable to all types and sizes of business – existing members include international businesses and sole traders. Full details of this initiative are available at [www.eco-active.je](http://www.eco-active.je) .

**Environmental considerations represent one factor taken into consideration by the Minister when making a licensing decision.**

“Jersey Enterprise”, a branch of the Economic Development Department, would be happy, and indeed are very keen to assist businesses in further enhancing their environmental credentials and can help, with more information on their services available at [www.jersey.com/enterprise](http://www.jersey.com/enterprise) .

**June 2008**

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<sup>[1]</sup> *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.*