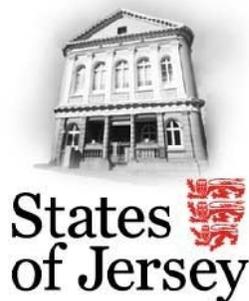


Economic Affairs Scrutiny Panel

The impact of the fulfilment industry on the local economy



Presented to the States on 30th October 2006

S.R.7/2006

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1. INTRODUCTION

1.1 The Scrutiny Panel

The Panel was constituted as follows –

Deputy G. P. Southern, Chairman
Deputy A. Breckon, Vice-Chairman
Connétable M.K. Jackson
Deputy J.A. Martin
Deputy K.C. Lewis

1.2 Review progress

This review began in February 2006, following the introduction of the Economic Development Minister's policy for the fulfilment industry, as reproduced in Section 2.1. It was suspended on the 28th March 2006 when the Chairman exercised powers under Standing Order 72 (1) and advised that his Panel had decided to undertake work on the impact of the fulfilment policy on the incorporation of Jersey Post prior to the 2nd reading of the Postal Services (Jersey) Law 2004 (Appointed Day) Act 2004.

1.3 Terms of reference

In the context of the Strategic Plan 2006 - 2011 The Economic Affairs Panel will examine the impact of the fulfilment industry on the local economy.

To review the structure and scale of the local fulfilment industry;

To consider the role of Jersey Post in the development of the industry;

To examine the labour and infrastructure demands of the industry and its impact on taxation revenues;

To examine the legal and economic aspects of current and previous policies on the fulfilment industry.

1.4 Key findings

The key findings of the review are detailed below by term of reference

To review the structure and scale of the local fulfilment industry;

The Panel was surprised to learn how little knowledge and understanding of the industry the Economic Development Department had prior to 2005.

The Panel considers that the Economic Development Minister has been over-reliant in formulating his policy on a 2005 report from Oxera, which the Panel believes seriously underestimated the actual and potential benefits to the Island of customers of the 3PS and hybrid sectors.

To consider the role of Jersey Post in the development of the industry;

The Panel has already produced an interim report (SR.2/2006) into the incorporation of Jersey Post that also deals with this subject. It is available on-line or from the States Greffe Bookshop.

Prior to the introduction of the February 2006 policy, Jersey Post had operated an intensive marketing campaign aimed at attracting brand-name UK media sales customers to its subsidiary, Offshore Solutions Limited (OSL).

The Panel considers that the previous Economic Development Committee failed to apply its policy to moderate the growth of OSL which seriously distorted the market.

The Panel believes that Offshore Solutions Limited cannot survive the Minister's policy of February 2006 without further cross-subsidy, which it believes to be anti-competitive.

To examine the labour and infrastructure demands of the industry and its impact on taxation revenues;

Due to the nature of the work, many employees of the fulfilment industry are those who would not normally be in full time employment. These include: parents who need to work around school hours and holidays; disabled people; and for some, it is a first job after a history of unemployment.

The Panel has seen no evidence that the industry is in competition for these workers with the tourism and agriculture sectors. On the contrary, the seasonal peak demand from October to December in fulfilment complements low employment demand in these industries in the winter season.

The Panel has found no evidence of a shortage of warehousing space being problematical.

To examine the legal and economic aspects of current and previous policies on the fulfilment industry.

The Panel finds that there has been both a lack of political support for, and a lack of commitment to manage the growth of, the industry on the part of successive ED committees and the current Minister.

The Panel considers that failure to control growth in 2005 was not due to any defect in policy but to a lack of will to apply that policy properly. There was thus no need for the Minister to introduce a tougher revised policy in February 2006.

The February 2006 policy will cause 13 out of 70 fulfilment companies to cease trading by February 2007. This will seriously damage revenues of the Post office subsidiary, Offshore Solutions Ltd and at least three other local companies. The Panel's view is that the Minister's actions were therefore disproportionate.

The Panel's view is that the Minister's actions have failed to remove any pressure on the island's fulfilment industry from either the UK government or UK media, but have shifted attention to Play.com and other local WCCs.

The Panel considers that the Minister has not achieved a level playing field internationally. Business turned away by the Minister has and will go to other jurisdictions such as Guernsey or Switzerland, as the Minister must have been aware at the time he changed the policy.

The Panel understands that no consultation was carried out with the industry before the February 2006 policy change. In the Panel's opinion this may have opened the government to legal challenge on the grounds of procedural legitimate expectation, for losses suffered by companies as a result of the Minister's actions.

The Panel is concerned that the position of the Regulation of Undertakings and Development (RUD) office regarding licences prior to the 2005 policy change was substantially incorrect. It is a cause for concern that: either legal advice was sought and misinterpreted; incorrect legal advice was given, or legal advice was not sought.

In the opinion of the Panel the Economic Development Minister has created an appeal procedure which is neither reasonable nor fair, as it does not allow an independent person to review decisions, without recourse to potentially expensive court action.

RECOMMENDATIONS

The Panel recommends that-

(a) the Council of Ministers should review the mechanism for appeals across all Ministries, and give consideration to introducing a code of practice in respect of appeals to ensure that they are just and fair.

The Council of Ministers should consult with the Attorney General over the '*vires*' of the same individual both taking and reviewing decisions.

(b) the Economic Development Department should centralise policy regarding the fulfilment industry under an e-commerce 'Tsar' to offer more direct political support for the industry and promote diversification through the growing e-commerce sector.

(c) the Economic Development Minister should undertake a fresh review of the fulfilment industry, to obtain a fuller and more comprehensive understanding of its current and potential role in the Island's economy.

(d) the Economic Development Minister should direct the Jersey Competition Regulatory Authority to investigate cross-subsidy between Jersey Post International Limited and Offshore Solutions Limited.

GLOSSARY

The Panel has tried to write this report as far as possible in plain English with the minimum of 'jargon'. All acronyms are spelt out in full when they first appear, but for the sake of clarity their meanings are given here.

WCCs - 'Whole Chain Companies' operate a full e-commerce service within the Island. They purchase and hold significant quantities of stock, and receive orders through websites, which they fill out of their existing stock.

3PSs - 'Third-Party Service Providers'. These are fulfilment companies that do not operate a full e-commerce service. They are paid by external operators to receive shipments of goods and to break these down into packages for posting.

Hybrid - companies which cannot be classified purely as either WCC or 3PS operators above, but combine elements of both.

OSL - Offshore Solutions Limited, a subsidiary of Jersey Post and the largest 3PS operator in Jersey.

GVA – Gross Value Added (an economic measure)

RUD / RUDL - Regulation of Undertakings and Development / Legislation. This Department is responsible for controlling labour and other resources employed by local businesses, and for issuing licences to trade.

VAT – Value Added Tax (17.5% tax on all commercial sales in the UK)

LVCR - Low Value Consignment Relief. This is an exception to VAT on shipments from outside the EU less than the value of £18. No VAT is chargeable below this level

The pre-paid VAT Scheme – a scheme agreed between UK Customs, Jersey Customs and Jersey Post which consists of arrangements for accounting for UK Import VAT on commercial consignments with a value exceeding £18 that would otherwise be chargeable on import into the UK; thereby avoiding lengthy delays in the UK.

OXERA - Oxford Economic Report Associates Limited (consultants)

FPB - Forum for Private Business (A UK pressure group campaigning against the LVCR exemption)

EGP - Economic Growth Plan (an Economic Development plan to grow and diversify the economy)

Pick and pack – The process of filling orders from central stock and packing goods to be posted to the customer

EDD- Economic Development Department, which develops and regulates the local economy

EDM - Economic Development Minister, Senator P. Ozouf, the political head of the EDD.

EDC - Economic Development Committee

2. POLICY BACKGROUND

2.1 The nature of the industry

The industry essentially centres on the dispatch of goods to meet orders received by telephone, by post (historically) but today overwhelmingly via the Internet. The provider then processes the financial transaction, traditionally by cheque but now in the case of internet order by 'PayPal', or other on-line credit mechanism. Goods are then either dispatched by post from a central stock or ordered to meet demand and then posted on to the customer in order to **fulfil** their order. Contact lenses, DVDs and CDs are an example of goods which are highly suitable for this form of retail. It is a development of the traditional mail order business which has operated from Jersey for some time, with Flying Brands (previously Flying Flowers) having existed for over 40 years.

2.2 Operators within the local industry

Businesses within the fulfilment industry have been divided by Oxera (Oxford Economic Report Associates Limited, a consultancy group) into two categories-

'Whole Chain Companies (WCCs), operate a full e-commerce service within the Island. They purchase and hold significant quantities of stock, and receive orders through websites, which they fill out of their existing stock. Orders processed are (usually) lower than £18 in value, and therefore below the Low Value Consignment Relief (LVCR) threshold. They deal directly with customers, operating an end-to end service, and take the financial risks entirely upon themselves.

'Third-Party Service Providers' (3PSs) do not operate a full e-commerce service. They are paid by external operators to receive shipments of goods and to break these down into packages which are (usually) lower than £18 in value, in order to remain below the LVCR threshold. These are then shipped through the postal service to the UK. These companies typically do not own the goods that they transport, and therefore avoid the direct financial risk of poor sales performance. Offshore Solutions Limited, the subsidiary company of Jersey Post, is a 3PS operator.

The Economic Development Department (EDD) have added a third category-

'Hybrid' companies cannot be classified purely as either of the forms of operator above, but combine elements of both.

2.3 The new policy – February 2006

This review was prompted by, and focuses on the new fulfilment policy produced in February 2006, and in particular on the need to change policy so rapidly following the policy previously announced in July 2005.

Understanding of this report will require understanding of this policy. Although lengthy, it describes in some detail the industry and its associated issues. Readers are urged to study the policy in its entirety.

The Economic Development Minister's Policy 'for the Fulfilment Industry'
14th February 2006

Introduction

1. Previous research on the nature of the fulfilment industry in the Island has thrown some light on the activity at a time when it is attracting some negative publicity which is in danger of undermining the Island's good international reputation and integrity. The negative publicity is focusing on existing UK companies that are switching the distribution of their DVDs/CD's through the Channel Islands to take advantage of the Low Value Consignment Relief (LVCR – the EU approved mechanism for VAT exemption).

2. This paper sets out a revised policy that can maximise the benefit of the fulfilment industry while at the same time not damage the Island's international reputation or integrity.

The Economic Benefits

3. There are basically two types of activity within the fulfilment sector, although a number of companies operate as a hybrid of the two activities. Whole Chain Companies (WCC) physically buy in and own the stock and sell the goods to the final customers. Third Party Service Providers (3PS) on the other hand provide logistics or distribution services to other retailers. WCC receive revenues based on the total value of sales whilst 3PS only receive revenues based on the service they provide, with the sales revenue going to the retail company.

4. The Economic Growth Plan (EGP) has two key objectives: to generate £20m additional tax revenue and to create high value jobs for local people. On purely economic growth grounds the dichotomy within the industry means that the appropriateness of the two types of activity for the Island is significantly different. The high value added per employee and significant tax contribution of WCC activity means that it is fully complementary to the EGP and therefore should be supported by the States wherever possible.

5. 3PS activity contributes less significantly to either of the two key economic growth objectives and the States should therefore be much more cautious about this type of activity. Significant growth in employment in this sector poses two questions (assuming that licences will not be granted for significant non-local labour):

Where will this labour be drawn from – the unemployed/new labour market entrants or other industries/firms?

Could the labour be put to more productive uses?

6. The answer to the first question is that while some of the existing employees might have come from the unemployed or new labour market entrants there are greater concerns that further jobs growth will start to bid up wages in this area and therefore undermine activity of all firms in the sector and possibly other sectors such as tourism.
7. The very low value added per employee of 3PS activity also suggests that the labour could be put to better use in other areas such as tourism and retail.
8. On pure EGP grounds the conclusion should be to support WCC activity but not to allow further growth in 3PS activity, where it requires significantly more labour.

Jersey's Integrity in Financial and Commercial Matters

9. The impact of the fulfilment industry does not however, stop here. EGP issues also have to be balanced with those surrounding the Island's international reputation.
10. The selling structure which is adopted by the retailer is little better than a sham. The vendor, or the vendor's parent company, and the purchaser are both located in the United Kingdom. The goods, or some of them, come from the United Kingdom, and are shipped to Jersey for a "sale" before being shipped back to the United Kingdom for delivery to the customer. Jersey's integrity in financial and commercial matters cannot but be damaged by the use of the Island as part of such a selling structure.

The policy

11. The appropriate policy (for further details see notes below) that meets both the Economic Growth Plan and protects the Island's international reputation and integrity is:
 - (i) Existing WCC should be supported, particularly those that are or have been majority beneficially owned by Jersey principals.
 - (ii) New WCC which are beneficially owned by Jersey principals will be supported.
 - (iii) With the exception of those companies trading in DVD/CD's into the UK market, high value hybrid companies should be supported, where they do not involve UK companies diverting current business through the Island.
 - (iv) There are some UK companies already operating in the DVD/CD market through 3PS. These companies should have applied for licences, and any which have not will be required to do so. Assuming that there is no ground for refusing a licence additional to those set out in this policy statement, such companies will be granted time limited licences to allow them gradually reduce and eventually to discontinue their activities.
 - (v) 3PS activities will be allowed to grow where they do not require significant additional labour and are consistent with the Economic Growth Plan.

Notes

1. WCC are as previously defined – companies that physically buy and sell goods to final customers and receive revenues based on the total value of sales and are generally owned by locally qualified principals.
2. 3PS are as previously defined - they provide logistics or distribution services to other retailers and only receive revenues based on the service they provide, with the sales revenue going to the retail company.
3. Hybrids are fulfilment related companies that do not fit easily into either category but have a permanent establishment with some or all of their core activities in the Island such as a head office, finance, purchasing, marketing or customer service. Hybrids employ locally qualified people in high value jobs, make a significant local tax contribution and stock is owned and possibly held by the local business. Their pick and pack operations are likely to be carried out by a 3PS but could be done by the company

itself. There could also be companies that operate as both WCC and 3PS.

Implementation

For the policy to work:

The Chief Minister's department will undertake any international relations work.

The Economic Development Minister will apply RUDL in the required manner*.

Time limited consents will be issued for a maximum of 12 months from the date of this policy.

The Economic Development Minister will seek to ensure that Jersey Post will comply with this policy.

*When considering any application, the Economic Development Minister is required under the Regulation of Undertakings and Development (Jersey) Law 1973 ("RUDL") to have regard to the need to regulate and manage demand on the resources of the Island and to protect its integrity in commercial and financial matters. Furthermore, the Minister has particular regard for the Population & Immigration Policy recommendations adopted by the States in November 1997 and the States Strategic Plan 2005.

The Minister will make decisions in line with domestic legislation and policy. However, the Minister will monitor the fulfilment industry and seek to ensure that a level playing field is maintained with other jurisdictions.

2.4 Background to the February 2006 policy

All businesses operating in Jersey are licensed by the Regulation of Undertakings and Development (RUD) office, a part of the EDD. This body exists to manage Jersey's finite labour resources, and together with elements of the planning process and the housing regulations, ensure that economic growth does not have an adverse effect on the Island by generating unrestricted immigration or distorting the labour market. Senator Ozouf expressed his understanding of the role of the RUD legislation at the public hearing held on 26th July 2006-

"My responsibilities are to uphold and to regulate businesses within the scope and for the purposes that are set out in the law, and my obligations under (this is a copy of the Regulations of Undertakings law) I have to have regard to effectively 2 things. The first being the need to manage and regulate the resources of the Island; read manpower resources. ... The second thing is that under the law I have a responsibility and I quote: 'To protect the integrity of Jersey in commercial and financial matters.'" [1]

However, prior to the final quarter of 2005 companies that had no employees in the Island and occupied no floor space, like the UK-based fulfilment customers of 3PS companies, did not require the RUD office to issue them a licence. This exemption has been used by innumerable finance companies since the introduction of the RUD legislation in 1973.

2.5 The original Economic Development Committee policy – August 2005

The February 2006 policy was a significant change from the policy of the former Economic Development Committee, (EDC) which was intended to control the growth of the industry, but not to drive out existing operators. It was implemented in August 2005, and based on the philosophy that-

"On pure [economic] grounds the conclusion should be to support WCC activity but not to allow further growth in 3PS activity, where it requires significantly more labour." [2]

This required the Economic Development Department to ensure that-

"3PS activities with UK companies should be held at current levels and no new UK companies should be allowed to operate through Jersey based 3PS. Where possible those high profile UK companies already operating through Jersey

should be prevented from expanding and where possible their activities through Jersey should be reduced. 3PS activities with Jersey companies will be allowed to grow where they do not require significant additional labour and are consistent with the Economic Growth Plan.^[3] [Panel's emphasis].

The Committee at that time believed that this policy of applying Regulation of Undertakings and Development legislation (RUDL) to the 3PSs represented an effective method of control of the industry. If the Department refused to grant a licence for any additional staff, the 3PSs would not be able to take on any extra business nor to expand the volume of current business from UK retailers.

If the UK customers of the 3PSs wished to expand, then they would have to assist the 3PSs in investing in automating their operations. This would have the effect of increasing the value to the Island per worker in line with the objectives of the 2005 Economic Growth Plan, which states that-

"The emphasis is on allowing market forces to drive efficiency improvements in the Jersey economy and to support the international competitiveness of the Island ... productivity (the amount produced per person in the Island) improvement across the economy must be the policy goal. This means improved productivity across financial services, retail, tourism, fulfilment and agriculture and every other sector of the economy currently with a presence in the Island and any that locates here in the future.^[4] [Panel's emphasis]

2.6 Basis for the policies

The Panel has learned that prior to 2005 no organisation had a clear idea of how large the fulfilment industry actually was. The Jersey Financial Services Commission (JFSC), which holds information on all companies operating in Jersey, does not record fulfilment companies as a separate category, but includes them as 'retailers', and so cannot determine how many there are. The information held by the Economic Development Department prior to 2005 was based on applications for staff under the RUD legislation, and thus only counted 3PS and WCC operations but did not count the number of customers of each 3PS.

As late as 30th March 2005 letters were still being sent by the EDD to UK customers of a local 3PSs, which read-

"On the basis that [company name] will not be conducting any business in the Island, that it will not occupy any floor space or have any employees, and that fulfilment services will be supplied by Jersey Post logistics, it is confirmed that

no application for a licence is required at this time.”

Prior to 2005 membership of the Customs and Immigration Department Pre-paid VAT Scheme was voluntary, and therefore it was not a comprehensive register.

The Panel was surprised to learn how little knowledge and understanding of the industry the Economic Development Department had prior to 2005.

3. THE GROWTH OF THE FULFILMENT INDUSTRY

3.1 The growth of European e-commerce

The e-commerce market in Europe is growing at tremendous speed. In 2004, approximately €40 billion (€40,000,000,000) was spent on-line, estimated to rise to approximately €100 billion by 2008. The total on-line expenditure of the UK has been estimated by the Royal Mail as rising to approximately £40 billion by 2010, representing 15% of total UK sales of all goods.

The market for entertainment media in the UK is also sizable. In 2004, the UK accounted for around 20% of the total retail market in Europe for DVDs and CDs, with almost 200 million units shipped.

Of approximately one billion units of DVDs and CDs physically shipped into or around Europe in 2004 to meet the demands of this market, approximately 20 million were from Jersey.

With such growth in UK on-line sales and UK DVD and CD sales, it is apparent that any company that can establish itself retailing these media by e-commerce is likely to make significant returns. Given the limited locations from which goods can be shipped into this market without incurring Value Added Tax (VAT), the growth in the local fulfilment economy is understandable.

3.2 Low-value consignment relief (LVCR)

It has been claimed that logistical excellence and reasonable pricing are the reasons that so many e-commerce companies are located in Jersey. However, local fulfilment companies incur high rental and labour costs, and in the case of UK businesses distributing from Jersey, could operate from any part of the UK mainland. It is therefore a reasonable assumption that one of the factors which make Jersey attractive to these companies is the LVCR situation.

The Channel Islands relationship with the EU is defined within Protocol 3 of the UK's Treaty of Accession; Jersey is part of the Customs Territory of the EU but is not part of the fiscal territory. Jersey exporters take advantage of a tax relief on goods under £18 and import them to EU countries without paying sales tax.^[5]

Therefore Jersey-based businesses have a 17.5% cost advantage over their UK based counterparts. In the case of some goods, this advantage outweighs the costs of shipping, postage, repacking and the higher labour and storage costs found in Jersey.

Jersey is in competition with numerous other offshore and non-EU jurisdictions for a share of this lucrative industry. The most active challengers are Switzerland, Guernsey, and Hong Kong. Competition is fierce in this industry as there are few barriers to non-EU States entering the market.

3.3 The pre-paid VAT scheme

The LVCR exemption results in a drop in VAT revenue to the UK government from all non-EU sources of around £85 million (in 2004). This is balanced by the fact that Jersey has made considerable efforts to ensure that VAT is collected on non-exempt items, by introducing the pre-paid VAT scheme.

This scheme was set up by Her Majesty's Revenue and Customs (HMRC) to collect and pass to the UK Government VAT on items over the £18 LVCR limit. Approximately a quarter of the consignments (by value) that leave the Island for the UK are over the £18 threshold, and therefore eligible to VAT. The scheme is operated mainly at Jersey's expense, and remitted to the UK approximately £9.3 million in the twelve months ending 30th April 2006. This scheme also allows items posted into the UK to avoid being held in UK clearing houses, and allows for considerably faster delivery. This makes Jersey a more attractive location for fulfilment. Jersey Post funds the employment of an officer, part of whose function is to conduct compliance checks within the operation of the scheme.

3.4 The growth of e-commerce in Jersey

Early in the development of UK e-commerce, Jersey-based Play.com established themselves as leading players in the DVD and CD sector. Whilst larger UK retailers could compete with their price advantage thanks to their economies of scale, smaller UK retailers often could not.

Some UK companies started to arrive in the Island as early as 2003. More recently, even greater competitive forces have led the larger UK e-retailers to seek a move to Jersey to share in the benefit of LVCR. Jersey is considered to be one of the most desirable locations due to its non-EU status and excellent communication links with the UK.

Although the assurance that newly arrived companies did not need licences was not a major factor in their decisions, specific statements to that effect gave some of these companies an expectation that they could not be affected by the RUD office. Their arrival generated several local companies, both large and small, to undertake operations such as packing for these companies. The local companies invested heavily in premises, leases, staffing, and other significant outlay.

This sector of the local economy has experienced spectacular growth in recent years, and postings have doubled in volume between 2003 and 2005 from 17.6 million to 35.2 million (estimated). Before the recent changes in policy it had been estimated that total postings could have again doubled in volume between 2005 and 2008, although constraints on available resources (warehousing and labour) could have limited this.

As a result of this growth, the EDC, in late 2004 commissioned a study of the industry by the Statistics Unit. These figures formed the basis of a report from a consultant group, Oxera, in 2005. The Oxera analysis of costs and benefit of the fulfilment industry to the Island was produced in 2005^[6]. Oxera concluded that the total 'Gross Value Added' (GVA) of the fulfilment industry in 2004 was 1.2% of Jersey's economic base, or about £38 million^[7].

GVA is a measure of economic value, defined as-

'compensation of employees (including earnings, bonuses, and employer contribution to social security and pensions), and gross operating surplus (i.e., gross profits).'
While GVA does not capture non-monetary contributions of an industry to the wider economy (e.g., beneficial or harmful effects on the environment), the higher GVA is a useful indicator of greater value to the economy^[8].'

A study carried out by the Statistics Unit, and repeated by Oxera in April 2005, states that there is a considerable difference between the value to the Island of the WCCs compared to the 3PS companies. The industry employed approximately 600 people in 2004, mostly in the WCC companies. The GVA per employee for WCC employees in 2004 was second only to the finance industry at £101,000 per person, while the figure for 3PS employees was £24,000, with only the hospitality industry providing less GVA per person. 95% of these employees were locally-qualified, with non-local workers usually occupying positions that could not be filled locally.

At the time of the change in policy in February 2006, there were 5 companies in Jersey operating 3PS services for UK retailers, 3 of which were mentioned in the Statistics report of 2005. The report states that they employed approximately 200 people, mostly in elementary roles such as packing, but also in managerial, administrative and technical roles. WCCs employed approximately 400 according to the same report.

There is good evidence that many employees of the fulfilment industry are those who may otherwise not be in full time employment. These include parents who need to work flexibly around school hours and holidays, as well as people with disabilities. This is due to the nature of much of the employment, which is basic packaging that can be undertaken for a few hours a

day by a large number of people.

Due to the nature of the work, many employees of the fulfilment industry are those who would not normally be in full time employment. These include: parents who need to work around school hours and holidays; people with disabilities; and for some, it is a first job after a history of unemployment.

This work is also predominantly seasonal, as business for fulfilment companies peaks before Christmas. Therefore large numbers of temporary workers are employed from October to December. Rather than compete with the agriculture and tourism industries for staff, the fulfilment industry compliments them by employing part-time staff for some of the winter season.

Concerns have been expressed that unless a significant investment in automation is made by an operator, the industry is both labour and space intensive. In particular, Oxera has expressed reservations that were it to continue to grow as was previously predicted, it would employ large numbers of people generating wage inflation which could affect the tourism and agriculture industries.

The Panel has seen no evidence that the industry is in competition for workers with the tourism and agriculture sectors. On the contrary, the seasonal peak demand from October to December in fulfilment complements low employment demand in these industries in the winter season.

In discussing the potential expansion of the industry, and demand for sufficient warehouse space, Oxera stated -

While it is likely that sufficient land is available for the growth of the industry, the expansion may only be possible if the Jersey Planning Department ensures that sufficient land is reclassified as building land for commercial purposes (or allows the redevelopment of existing buildings). If the planning processes fail to ensure that demand matches supply, the growth of the industry may be restricted, and, depending on the overall demand for commercial building land, inflationary pressures may arise.” [9]

The Panel notes that the Planning Department have recently given change of use to a substantial volume of industrial sheds which would be eminently suitable for fulfilment.

The Panel has found no evidence of a shortage of warehousing space being problematical.

3.5 Offshore Solutions Limited

A primary driver in the growth of the industry has been the early growth in sales of both locally and UK owned on-island WCCs. This in turn led to the relocation of UK on-line retailers to Jersey who sought to compete on an equal footing. Jersey Post established itself as a major service provider to the fulfilment industry, through its wholly-owned subsidiary company Offshore Solutions Limited (OSL), which acts as a 3PS.

Jersey Post provides dedicated services for the industry including discount bulk package rates for large-volume mail users, and an officer part of whose function is to carry out compliance checks within the pre-paid VAT scheme in order to avoid the delay of packets in customs houses in the UK. These services also previously included the provision of high-capacity processing and packing facilities based near the harbour. OSL has developed a sizable pick and pack operation based at Rue des Prés trading estate. Following the decision by the States to approve P104/2005 on 20th July 2005, it has taken over two 21-year leases at a combined annual rental of almost £350,000 to expire in December 2008 and June 2016.

Before the introduction of the February 2006 policy, OSL had substantially grown its business. This provided additional revenue for Jersey Post. OSL claimed to be an 'incubator' for the development of the 3PS section of the industry, as business, contacts, and staff 'trickled down' into other developing 3PS businesses.

OSL's business model was heavily geared towards encouraging 'branded retailers' to operate through Jersey, and therefore through itself and Jersey Post. Almost 20% of its business was from large UK retailers, and this was set to grow. It assumed that many new start-ups would fail, and that the large UK retailers would be best placed to rapidly develop a fulfilment operation. It concentrated on companies operating into the UK market, selling DVDs and CDs which at that time had the largest growth potential. This was seen as the easiest method to obtain more pick and pack custom for OSL, thereby driving up overseas postings through Jersey Post, and increasing stamp revenue.

Prior to the introduction of the February 2006 policy, Jersey Post had operated an intensive marketing campaign aimed at attracting brand-name UK media sales customers to its subsidiary, OSL.

The amount of revenue that stamp revenue on outgoing fulfilment packets generated was addressed by Mr. J. Pinel Managing Director of Jersey Post, at a public hearing on 5th April 2006-

“...fulfilment profits account for almost all of our [£3-3.8 million] profit. Fulfilment profits are used at the moment to fund the loss-making areas of Jersey Post, which includes the retail network, [and] the sub-post office network.”^[19]

Following consultation with EDC, Jersey Post wrote to some 17 potential UK customers to break off discussions about relocation to Jersey. However, OSL already had arrangements with a number of brand-named suppliers and in order to facilitate growth, had been granted a licence for substantial additional employment. This demonstrates a lack of control over the activities of Jersey Post on the part of EDC. This left OSL badly exposed to the consequences of the February 2006 policy change.

The Panel considers that the previous Economic Development Committee failed to apply its policy to moderate the growth of OSL which seriously distorted the market.

4. POLICY ANALYSIS

4.1 The Oxera report

As noted above, the policies have been based primarily on a report from Oxera, itself based on figures gathered by the Statistics Unit of the Chief Minister's Department. This report was intended to show the extent of the fulfilment industry, and has therefore been used to calculate the effects of policy change on this area on the Island's economy.

The Panel believes that this report has significantly underestimated the economic effects of the policy changes. The original Statistics Unit work was survey-based, and gave a snapshot of the industry in early 2005, based on 2004 data. The Panel believes that this was competent work by the Statistics Unit, but the scope of the data was not sufficiently wide or deep to justify the use to which Oxera have put it.

The Oxera report separates the industry in to the three elements discussed above, WCCs, 3PSs, and Hybrids. It suggests that WCCs are of significant benefit to the Island, Hybrids less so, and 3PSs least of all. This is based on a simplistic calculation of '(wages x staff) + profit = value'.

This assumption, combined with perceived reputational damage to the Island, has been the basis for the current attempts to stop local 3PSs from servicing UK retailers.

Senator Ozouf was quite open about the economic targeting of the policy-

"We've done calculations on the value to the Island of 3PSs versus WCCs ... the GVA per full-time employee of a 3PS was £24,000 per employee. By comparison, the whole chain company, if you like the examples that I cited – and these are 2004 figures – was £101,000."^[21]

The report fails to account for the secondary employment that 3PSs generate. The Panel has received a submission from a contractor and supplier of specialist warehouse fittings for mail order businesses in Jersey and Guernsey. It lists the sub-contractors employed to refit premises for a single local 3PS. These include-

Cleaning Services

Architects

| | |
|---|--|
| Air conditioning installation and maintenance | Scaffolders |
| Excavation | Steel Fixers |
| Industrial shutter and door installation | Builders and building material suppliers |
| Carpenters | Haulage |
| Forklift providers | Glassfitters |
| Drilling services | Flooring installation |
| Removals | Storage rental |
| Roof maintenance | Structural engineers |
| Skip hire | Welders |
| Plumbing services | Pest Controllers |

None of this potential secondary economic activity is acc

Due to rapid growth in the industry and the arrival of significant UK operators after the report was produced, any report based on 2004 data should be treated with caution. There has been significant expansion in the industry since the report's benchmarking points were set.

A survey of the 13 companies given sunset licences shows that five UK retailers have set up in the Island between the time the 2004 data was collected and the February 2006 policy. Those companies who have supplied growth plans reveal unsurprisingly that profit levels are low or non-existent for at least the first two years of operation. This is to be expected from start-up companies as they establish themselves in the market. The Oxera report makes no allowance for this, thereby seriously underestimating the GVA potential of the UK customers in local 3PSs. This was acknowledged in the Statistics Unit report-

“Given the fast moving nature of this sector at present new companies have emerged in late 2004/early 2005. Data for these companies are not available, but as start-ups they will be relatively small in 2004.”^[22]

The Oxera report also fails to quantify the benefits of 3PS services to Jersey Post, through the stamp revenue on the huge volume of postings that leave the Island. The value of fulfilment to shipping companies is also not quantified. These companies benefit as containers used to deliver goods to the Island that would normally be returned to the UK empty can be filled with outgoing fulfilment consignments.

The study also pays insufficient weight to the 'hybrid' category, which appears to contain anything that cannot easily be classified as a WCC or 3PS. While this may be sufficient for a statistical analysis, it does not account for the fact that there is enormous diversity in this group. Some Hybrids are of considerable value to the Island, such as those operated by the Basel

Trust. The managing director of that Group, Mrs. J. Coward, has informed the Panel that-

“We are aware that the Oxera Report originally commissioned on the subject of fulfilment was flawed because of some very basic misunderstandings of how international business operates. Despite this, the report continues to be referred back to.”

Elsewhere in her submission she says-

“We currently administer more than forty companies who trade their goods over the Internet. Some are UK owned, some with beneficial owners resident in the US, Far East and Europe ... We recognised this e-commerce business as being likely to grow significantly as the global market place expands through internet trading. We took advice from leading tax consultants in this area, ensured that our regulators were comfortable with the line of business, and ensured that our IT systems were able to accommodate businesses which require sophisticated tracking and payment systems. Our success to date has meant a new source of growth for our Company, as a result of which we have employed 8 new members of staff.”

This level of secondary activity must produce significant benefits for the economy which seem to have been ignored in the Oxera analysis.

The Panel considers that the Economic Development Minister has been over-reliant in formulating his policy on a 2005 report from Oxera, which the Panel believes seriously underestimated the actual and potential benefits to the Island of customers of the 3PS and hybrid sectors.

4.2 Operation of the August 2005 policy

The Panel has considered the justification for the February 2006 policy, and questions why it was necessary to change the policy at all. The expansion of the activities of overseas retailers could have been curtailed or growth restricted by the control of licences to employ staff within the 3PS sector. As the overseas retailers could not have employed staff in Jersey themselves without becoming liable to licensing, limiting the growth of 3PS staff would have been an effective ‘lever’ with which to control them.

Had the 3PSs chosen to install automation instead of employing more staff (which some have done anyway), this would have increased the GVA value of those companies per head and resolved the Minister's concerns noted above that the 3PSs were of low value to the Island. As Oxera states-

"The highest GVA ... is likely to be partly attributable to economies of scale and the wider use of automation technology".^[23]

Although the August 2005 policy was intended to stop the growth of 3PS business, it was not applied with any degree of consistency. Senator Ozouf commented-

"What clearly happened, and you will be aware of this, is there was one decision of the former EDC which the President dissented from in respect of an expansion of fulfilment in Jersey. I think it is fair to say that that led to a substantial expansion of the activity that was carried out in Jersey, outwith Regulation of Undertakings licence approval. There is a disconnect between the policy that the Committee had agreed and an individual Regulation of Undertakings licence which the Panel will be aware of."^[24]

The decision to which he is referring to is understood to be the decision of the former the Economic Development Committee, made under the auspices of the August 2005 policy, to permit a local 3PS to hire an additional 100 staff. Given the limited labour market in the Island, this was clearly highly distorting to the economy.

Had the August 2005 policy been implemented consistently, it would have been possible to limit, if not eliminate, any further demands on the resources of the Island without having to resort to the February 2006 Policy imposing such draconian measures as shutting down overseas operators and thereby putting at risk hitherto successful local businesses.

The Panel considers that failure to control growth in 2005 was not due to any defect in policy but to a lack of will to apply that policy properly. There was thus no need for the Minister to introduce a tougher revised policy in February 2006.

4.3 Confusion around licensing policy

The Panel understands that at some point after July 2005, the Economic Development Department received legal advice that an interpretation of the Regulation of Undertakings and Development (Jersey) Law 1973 would allow the licensing of the customers of local 3PSs. The Panel assumes that this change was justified on the grounds that since the customers of 3PS were trading under the LVCR exemption, they were *de facto* conducting their trade in Jersey.

In late 2005, those customers were informed by letter that they were required to apply for licences to trade. At the 26th July hearing, Deputy Southern questioned the Minister as to this change in interpretation.

Deputy Southern commented-

*“one is drawn to the assumption that either-
the advice previously was incorrect, or
the interpretation of the advice previously was incorrect, or
that the advice was not sought previously.*

There seems to be those 3 options. If you are saying the situation now is they do require a RUD and you are happy that that is correct, then presumably one of those 3 situations must have been previously extant?”^[26]

The Minister responded that –

“It is difficult for me to comment on the decision-making ... of previous political administrations and particularly the previous EDC (Economic Development Committee), and I make no criticism of the officials within the Regulation of Undertakings Department.”^[27]

The Panel is unable to determine which of the situations occurred as it is unable to gain access to the legal advice.

The Minister also noted, in respect of the reason that these companies had received conflicting information based on a shifting interpretation of the Regulation of Undertakings and Development (Jersey) Law 1973-

“I take responsibility for, the departments that I am in charge of and I take responsibility for the fact that under previous administrations, letters were sent out to that effect [that 3PS customers need not be licensed].

The Panel is concerned that the position of the Regulation of Undertakings and Development (RUD) office regarding licences prior to the 2005 policy change was substantially incorrect. It is a cause for concern that either-

- (a) legal advice was sought and misinterpreted;**
- (b) incorrect legal advice was given; or**
- (c) legal advice was not sought.**

4.4 The effect of the February 2006 policy on customers of 3PSs

Having been instructed to do so, the UK companies applied to the RUD office for licences to trade from late 2005. The replies to those companies which operated out of the UK, and those which were concerned with the importation of DVDs and CDs to the UK were, without exception, negative.

Thirteen companies received 'time-limited' licences valid for one year. They were sent a letter from the RUD office which read in part-

"In proceeding under Article 6 (2), the Minister has considered whether the actions of your company in using the Island to avoid paying VAT in the United Kingdom is or is not always detrimental to Jersey's integrity in financial and commercial matters. The Minister is concerned that Jersey is being used as part of a selling structure which is a complete sham, inasmuch as the purchaser and the parent company of vendor are both located in the United Kingdom, and even the goods, or some of them, are transferred to Jersey from the United Kingdom for the sole purpose of being the subject of a token sale in Jersey before being shipped back to the United Kingdom and delivered to the purchaser. [Panel emphasis]

The Panel believes that the Minister's use of the terms 'complete sham' and 'token sale' has serious consequences.

The letters conclude-

The Minister has concluded that the activities are detrimental to that integrity and in the absence of any special circumstances the Minister proposes to adopt as a general rule a policy that such applications are refused. However, the Minister has taken into consideration that your company has established a business in the Island in good faith, albeit without a trading licence and is prepared to issue a time limited period of grace within which to wind down your

company's operations and discontinue them altogether. Accordingly, a twelve month non-renewable time limited consent has been issued."

This put companies, which had in some cases been trading through Jersey for several years, in the position of being instructed to dismantle their operations, and effectively stop doing business with the Island within a year.

Despite the fact that some companies did not apply immediately for a licence, and that these applications can take a considerable time to process, all time-limited refusals were issued with a termination date of February 2007, regardless of when the company involved had been notified. This resulted in a number of companies receiving considerably less than twelve months notice.

One company was less fortunate, and was instructed that it would not be granted even a time-limited licence. The commercial activities that it was undertaking, and which it had been assured were permitted as they were outside the scope of the Regulation of Undertakings and Development (Jersey) Law 1973 were therefore now illegal, effective immediately.

This policy has had a direct impact only on UK overseas companies trading DVDs and CDs into the UK. As a result of the time-limited licenses and refusals, these operators have begun to withdraw from the market, and will be gone by February 2007. This has affected all of the locally owned and run 3PSs, and is causing enormous damage to some of those companies which have found that the Economic Development Department had literally outlawed their customers. These companies had invested heavily in staff, leases, development of premises, and equipment to service their clients.

The February 2006 policy will cause 13 out of 70 fulfilment companies to cease trading by February 2007. This will seriously damage revenues of the Post office subsidiary, Offshore Solutions Ltd and at least three other local companies. The Panels view is that the Minister's actions were therefore disproportionate.

The Panel's understanding is that one company, OSL, will have lost the majority of its customers, producing a significant loss of revenue in 2007. Since it has yet to contribute a profit from its fulfilment activities to its parent company, Jersey Post, but does contribute through its mailing volumes to Jersey Post's profits, it has effectively been the recipient of a cross subsidy. It is almost certain that it will again not be profitable in 2007. Now that Jersey Post is incorporated and subject to regulation by the JCRA the Panel believes that such cross-subsidy is liable to be declared anti-competitive and stopped by the JCRA. Jersey Post has informed the Panel that OSL has reviewed its pricing structures to ensure cross subsidies do not occur in the

future.

Furthermore OSL has obtained a lease on 40,000 ft² of warehouse premises on the Rue de Pres trading estate costing just under £350,000 per annum (to rise at market rates) in the expectation of continued growth in the industry. Given the serious loss of revenue mentioned above, despite revising its business practice the Panel remains convinced that OSL will suffer as a result of its previous business strategy, which was the target of the February 2006 policy.

The Panel believes that Offshore Solutions Limited cannot survive the Minister's policy of February 2006 without further cross-subsidy, which it believes to be anti-competitive.

4.5 Level playing field

The Minister set out in his policy that one of his aims was to create a level playing field-

"The Minister will make decisions in line with domestic legislation and policy. However, the Minister will monitor the fulfilment industry and seek to ensure that a level playing field is maintained with other jurisdictions."

The Panel is unclear as to what was meant by 'level playing field'. As Mrs. Coward mentions above there is clearly no level playing field for non-local companies

The policy supports local companies but not non-local companies, and supports the sale of most products, but not DVD/CDs into the UK, although it supports DVD and CD sales to any other country in Europe. By any criterion this is not a level playing field.

Even the level playing field with Guernsey does not exist. Despite the Minister's claim to have established a joint policy agreement with Guernsey which was intended to present a united front to the pressure from the UK, the Minister is aware, and must have been aware at the time of his policy, that no workable agreement can exist.

Guernsey has no equivalent to the RUD law, and so cannot control the operation of companies in the Island. It has been claimed that a combination of housing and planning Regulations would

be sufficient control. This is demonstrably not correct, as HMV continues to trade into the UK out of Guernsey. HMV are engaged in an aggressive price-cutting war to try to obtain a bigger market share.

The Panel cannot understand how the Minister could realistically have claimed that he would establish a level playing field with other jurisdictions when it must have been clear that Guernsey could not have carried out a comparable policy.

Equally, competitive jurisdictions such as Switzerland and Hong Kong have no intention of demanding that retailers do not sell DVDs and CDs into to the UK using their services, and therefore it cannot be claimed that Jersey is on a level playing field with them either.

The Panel considers that the Minister has not achieved a level playing field internationally. Business turned away by the Minister has and will go to other jurisdictions such as Guernsey or Switzerland, as the Minister must have been aware at the time he changed the policy.

4.6 Possible actions by the UK over LVCR

The change in policy of February 2006 has been portrayed as a response to pressure from the UK government. Certainly, the following comment appeared in the annex to the 2006 budget speech-

In 1984, a VAT-free threshold on imports of small commercial consignments from outside the EU was introduced at a level of £18, as an administrative relief. The Government is aware that this provision is currently being exploited and the relief now costs the Exchequer around £85 million per year. If the relief continues to be exploited by businesses using offshore locations, the Government will consider changes to prevent this type of behaviour.^[28]

However, the Minister has repeatedly denied that the February 2006 change in policy was due to pressure from the UK government. He said at a public hearing-

“You are aware that the UK has been in contact at the highest level with the government here and we will have regard to those matters but I can say, and I will repeat, that the decisions that I made in respect of the tightening of the fulfilment and clarification of the fulfilment policies were not because of pressure. They were because I was concerned about domestic administration

and the applications of the Regulation of Undertakings Law.” [29]

The Panel accepts this denial, but understands that should the UK government wish to act, it could not simply take unilateral action to impose import duties or VAT on goods under £18 arriving from Jersey. The UK government has the following options-

- (a) The EU could abolish LVCR and replace it with some kind of flat-rate tax on goods under a certain value. The Panel is aware that this action is under consideration but that it is unlikely to occur before 2009.
- (b) The UK could amend or replace its current legislation on LVCR to take advantage of the option in the EU legislation detailed above to lower its limit to 10 Euro. [30] The Panel considers that is extremely unlikely as the cost of collection considerably outweighs the benefits.
- (c) The UK could apply for ‘derogation’ from the requirement to provide tax relief on imports of DVDs and CDs under £18. However, this would require a unanimous decision of 25 member states, and would again incur increased collection costs on these goods to the UK.

However, the probability that the UK government would act must be considered in the context of an estimation of the basic economics of the fiscal system. Various estimates have been made of VAT losses. HM Customs and Excise, in their report ‘Tackling VAT fraud’ in 2004, stated that-

“Customs estimate that the amount lost on VAT could be around £11.9 billion in 2002-03, which includes substantial non-fraud losses.” [31]

Additionally, the BBC news programme Panorama recently quoted figures from the EU ‘VAT taskforce’ (Ondersteuningscel) which suggest that the UK Treasury is losing £8.4 billion of VAT per year from fraud alone.

The estimated losses of around £80 million through LVCR pale into insignificance when placed alongside such figures. The Panel therefore believes that it is extremely unlikely in this context that the UK government will act over LVCR.

The Panel considers that the introduction of the February 2006 policy was more based on concerns about the presentation of the Island’s reputation in the media than any economic factors.

4.7 UK media coverage

The Panel considers that the actions of the Minister appear to have been taken more in response to pressure in the media than from the UK Government.

At the public hearing he stated that-

“Of course I am aware and of course I will have regard to the UK Government’s concern but I also am concerned about the Island’s reputation in the UK media and, frankly, the drubbing that we got did Jersey’s reputation no good whatsoever.”^[32]

Articles have appeared in tabloid and broadsheet newspapers in the UK. Some have been mostly factual, others have contained wild speculation concerning ‘floating warehouses’ and suggested that goods spend mere seconds in Jersey before being shipped straight back to the UK.

For the sake of completeness, the Panel would like to note at this point that these speculations are not based on fact of any kind. All goods shipped to the UK under the LVCR threshold have some form of ‘value-added’ in Jersey, at the very least being unpacked, accounted for, stored, picked out according to customer order, repackaged, transported and then shipped.

The most vociferous of the UK pressure groups is an organisation calling itself the ‘Forum for Private Business’ (FPB). Its website, hosts a discussion board on the subject of the ‘Offshore VAT Loophole’.

This has been the primary driver in bringing the matter to the attention of the UK media and government. The site contains some wild and unsupportable speculation along the lines of-

“Jersey was given £18 allowance to accommodate its flower industry.”^[33] [this is demonstrably untrue]

and

“Jersey is also enabling other countries to bypass UK and EU regulations.”^[34] [also untrue, as Jersey is using EU Regulations, not avoiding them]

More importantly, it has petitioned MPs and makes form letters to MPs constituency officers

available to visitors, calling on the government to stop the sale of DVDs and CDs to the UK under LVCR.

A typical quote from the site is-

"There is something shady, nasty and not right about this abuse of the tax system, I cannot sell certain CDs that are being sold from Jersey because I cannot compete on price. The Government needs to realise it is allowing the music industry to be destroyed in this country. The independents are on a hiding to nothing; we're being pushed off the map. All we want to do is compete on a level playing field."

The FPB initially demonstrated concern over the 'bully-boy retail giants'^[36] operating out of the Channel Islands. The Minister's policy change has removed these, prompting the FPB to state-

"On 26 June 2005, the FPB scored a significant victory of the campaign when the Jersey Government announced a crackdown on retail giants setting up on the Island. It said that, from then on, only bona fide businesses with a Jersey presence would be granted licenses to operate on the Island. The Guernsey Government is yet to make a similar commitment."^[37]

This appears to be a successful concession to the Island's critics. However, there is no evidence from the FPB that they intend to stop at this point. The website informs visitors that-

"We will be sending an open letter to the Government demanding the closure of the Channel Islands VAT loophole."

The loophole enables larger retailers to sell goods such as CDs, DVDs and certain health products without the imposition of VAT. By using this loophole, businesses such as HMV, W.H. Smith and Play.com are able to undercut traditional high street retailers, sending many smaller businesses out of business in the process."^[38]

Play.com, the Island's largest WCC, and a significant contributor to tax revenue, is specifically mentioned. HMV, who continue to trade from Guernsey into the UK, continues to be a target.

The FPB has shown no comprehension of the distinction between 3PSs and WCCs, nor any wish to differentiate between what they consider to be predatory competitors undercutting small businesses. The Minister's concession has not assisted the Island in the defence of WCCs;

rather it has given momentum to the critics who are attempting to shut the industry down in its entirety.

The Panel's view is that the Minister's actions have failed to remove any pressure on the island's fulfilment industry from either the UK government or UK media, but have shifted attention to Play.com and other local WCCs.

4.8 Missed opportunities

As early as 1999, Guernsey had recognised the value of e-commerce. A report carried out for Guernsey Telecoms by 'Analysys' consultants stated-

"If the Bailiwick fails to create an attractive environment for ecommerce, then businesses will migrate to locations where the telecoms infrastructure, ecommerce legislation and IT skills meet their requirements. The businesses that stay will struggle to compete. A vicious circle of falling revenues, skills migration and loss of confidence will send the Bailiwick spiralling down. However, if the Bailiwick moves quickly, then it can use ecommerce to underpin its sustainable development.

There is an opportunity to diversify the economy and improve productivity, breaking free of the tight constraints on its available workforce and business premises. Residents will use high-speed access to online resources to maintain and develop their skills and knowledge. The economy can enter a virtuous circle of increasing business innovation, revenue growth, and skills acquisition, as it builds a worldwide reputation for ecommerce.^[39]

Jersey, at the same time must surely have been expressing similar intentions about diversification and growth. It appears to the Panel that these words have not been translated into action. Both the previous Committee and the Minister have failed to promote the activities of the fulfilment industry.

This failure to actively promote fulfilment on a political level has left Jersey in a weak position to respond to the attacks, warranted or otherwise, from traders in the UK.

To make matters even worse the Minister has reduced his capacity to proactively promote e-commerce by his use of the terms 'sham' and 'token sale'.

The use of these terms was questioned by the Panel, to which the Minister replied-

“Now, I, with the benefit of hindsight, I accept that the actual use of the word “sham” was unfortunate”^[40]

The Panel considers the use of this term more than unfortunate. By being so direct, the Minister has committed the Island to one position only, that of agreeing with its critics that the fulfilment business is inherently “*shady, nasty and not right*”. This impression has made it impossible to defend the activities of the 3PSs. As the FPB and other lobby groups prepare to continue their attacks on the WCCs such as Play.com, who they consider just as culpable as UK retailers, the Island will find itself needing to defend these valuable contributors to the economy. This will be made considerably more difficult by the agreement of the Minister with responsibility for these companies that they are inherently doing something wrong.

The Panel finds that there has been both a lack of political support for, and a lack of commitment to manage the growth of the industry on the part of successive ED committees and the current Minister.

5. LEGAL ASPECTS

5.1 Risks posed by the policy change – the legal considerations

The Panel's attention has been drawn to a number of legal implications that result from the Minister's revised policy, and the various challenges which might be made against its implementation. Such challenges might be made on a number of different bases and the Minister himself has expressed his acceptance of the risk of a potential challenge from a major UK company over a RUD decision.

5.2 Human Rights: Protection of Property

Despite the fact that the European Convention on Human Rights ("**the Convention**") has not yet been incorporated into domestic Jersey Law, the Convention may still be relied upon in a number of circumstances and provides an ultimate remedy to an aggrieved person (including a company) that has exhausted all other remedies. The Panel is aware, however, that Ministerial actions and policies will become more susceptible to challenge once the Convention is adopted into local law as is expected later this year.

Article 1 of the first protocol to the Convention provides various protections in respect of a person's possessions which we are advised would extend so as to protect various property rights including the goodwill of a business. However, it would be permissible for the States of Jersey to interfere with such possessions in "the general interest" and in doing so would be permitted "a wide margin of appreciation."

The Panel considers that article 1 of the first protocol is engaged by virtue of the Minister's revised policy which interferes with the continued trading activities of a number of businesses in the Island such that many businesses affected will be forced to close. The Panel has already noted various justifications that have been advanced for such policy change. However, the Panel is concerned that the short period in which affected businesses are required to withdraw from operating in the Island, and in one case the business concerned was seemingly told to cease immediately, is a disproportionate response to the perceived mischiefs and ignores less draconian measures that might have otherwise been adopted. (The Panel considers these aspects in further detail below.) The Panel therefore has concerns as to the question of compliance of the Minister's revised policy with article 1 of protocol 1 of the Convention and such concerns are echoed below in the Panel's consideration of "legitimate expectation."

5.3 Human Rights: The Right Against Discrimination

In the enjoyment of the rights and freedoms set out in the Convention, article 14 prohibits discrimination on a number of specific grounds including national or social origin, birth or other status. We understand that any difference in treatment of such rights and freedoms must have an objective and reasonable justification; that is pursue a legitimate aim and have a reasonable relationship of proportionality between the means employed and the aim sought to be realized.

The Panel has not felt it necessary to look in detail at the application of article 14. However, it makes the following observations. The application of RUD legislation is reliant on a subjective judgement of what is or is not good for the Island in economic, reputational or resource terms. The Minister agreed at a public hearing on 5th April 2006, in response to Deputy Southern's comment that-

“Non-Jersey beneficially owned whole chain companies, will not be supported is the implication. That is discrimination.”

The Minister replied-

“But I have a discriminatory law. I have the Regulation and Undertakings which discriminate against some sectors of the economy to the other.... Now, that means that I must discriminate against some activities versus others. That is the nature of controlling population. It is right and appropriate that I direct manpower resources to those areas that provide the best economic return for Jersey.”^[41]

5.4 Substantive Legitimate Expectation

Further to the protection given to businesses under the European Convention on Human Rights, the Panel understands that upon the satisfaction of certain conditions the legal doctrine of substantive legitimate expectation may operate and , in particular, might be invoked by businesses in a bid to continue to trade according to the expectation originally engendered by the RUD.

On this subject, Deputy Southern has asked the Minister-

“Can I ask you what your understanding is of a legitimate expectation to trade? You are still calling them [the 3PS customers] new companies but only new applications because the interpretation of the Regulation of Undertakings Law has been changed and that requires them to apply. For example, a company

which has been trading on this Island since 2002 has seen its business expanding, has reinvested in its business expanding, has been informed throughout that period that it does not require RUD licence and is then told, as a consequence of your changing and your tightening of the regulations, that it does require to apply for a RUD licence and is turned down and told to cease trading forthwith, ... does it have a legitimate expectation to be trading, and what do you feel about your changing the grounds on which it is operating with that sort of notice?"^[42]

The Minister's response was-

"The first thing is, is that you would understand that administrative decisions that I take can be subject to legal challenge and indeed so you will be, I hope, understanding of my -- I would not want to say anything that would prejudice any potential appeal because applicants must be able to appeal to the necessary judicial bodies in order to seek legal address if they are not content. I have issued 12 month sunset clauses on effectively the UK companies."^[43]

It is the Panel's understanding that the four conditions to be met in order for a legal challenge on the grounds of substantive legitimate expectation to succeed, are as follows-

- (a) That there be a clear and unequivocal representation made giving rise to the expectation;
- (b) that that expectation be confined to a few people, creating the character of a contract;
- (c) that the expectation be relied upon to the parties' detriment; and
- (d) that there be no overriding public interest justifying the Minister's frustration of that expectation.

Condition (a) - It might be argued that condition (a) is met in the present case as letters were sent throughout the period 2004 to 2005 to companies informing them that they would not need a licence. This was ostensibly done by way of the words "*it is confirmed that no application for a licence is required at this time.*"

However, it might also be argued that these words do not constitute a clear and unequivocal

representation that the business in question could continue operating without hindrance, due to the use of the term “*at this time*”, thereby offering no guarantee that there would be no future change in policy. Whether an application would be required at a later date is technically left open, so arguably preventing this being a clear and unequivocal representation to the effect that a licence would never be required.

Furthermore, it might be contended that there has been no change to the substance of the Regulation of Undertakings and Development (Jersey) Law 1973 and Regulations made thereunder, merely to their application in practice. If the Law properly construed requires the obtaining a licence, it is the Panel’s understanding that a previous “mistaken” view of that Law is unlikely to alter what statute has ordained should actually be done.

The Panel does not see it as necessary for it to resolve such potential arguments and merely draws attention to the fact that the matter is not clear cut.

Condition (b) - It seems to the Panel that the expectation would have been limited to overseas businesses within the fulfilment industry, which were relatively few in number and to Jersey based 3PSs. Accordingly, this condition is likely to be satisfied.

Condition (c) - The Panel has evidence from a number of local 3PSs that investment was made by overseas companies, and relationships developed with local 3PSs, representing expenditure made on the basis of an expectation that they would not require a Regulations Of Undertakings’ licence and would be permitted to trade. 3PSs also invested in leases, outfitting premises and staff. It appears beyond argument to the Panel that any such expectation as described above will have been relied upon in terms of investment of time and money.

Condition (d) – The Panel understands that any government has a wide ‘margin of appreciation’ (freedom of action) in terms of the action that it might take to protect what it sees as the general interest. However, when considering whether or not interference by government is justifiable, a balancing act is required between a number of factors. The severity of the actions of the Minister in this case is mitigated by the granting of time-limited licences of up to 12 months, though, as described above, in one particular case, without any apparent reason being given, a company was ordered to cease trading without any option for it to make alternative arrangements.

In the Panel’s opinion the treatment of local 3PSs in general, and particularly in the case of the one business forced to cease trading overnight, displays a surprising inflexibility in the policy itself or at least in its practical application. The Panel believes that the refusal of even a time limited licence raises a suspicion that the EDD did not perform its task correctly in that particular

case. The Panel's view in this respect is reinforced by the matters referred to below under the heading of "procedural legitimate expectation."

In determining the public interest in a manner that is compliant with the Convention, it must also be considered whether the Minister was limited to taking such draconian action, or if less oppressive alternative methods for restricting the growth of the fulfilment industry in Jersey were available.

The August 2005 policy, as discussed above, offered a method of controlling and limiting the operation of overseas retailers. The February 2006 policy was however the most heavy-handed option available, and superseded many more palatable measures. To the Panel, this factor would weigh heavily in the balance when considering whether or not the Minister's actions were disproportionate.

Although the February 2006 policy is potentially open to criticism on this and other bases, the Panel considers that there may have been no challenge as yet because the companies involved find it preferable to simply relocate to another non-EU jurisdiction. Nevertheless, the Panel believes that it is neither desirable nor necessary for it to reach a concluded view on such matters while they might yet be investigated by the Royal Court of Jersey or by another tribunal.

5.5 Procedural Legitimate Expectation

There may also, as a matter of law, be available protection against the disappointment of a procedural legitimate expectation; an expectation that the businesses concerned should, as a matter of fairness, have been consulted or warned of any policy change in advance and so could have had an opportunity of making their thoughts and contentions known. Further, the Panel is advised that when considering whether or not to grant a licence under the revised policy, the RUD would have been required to consider the fact that they were reversing earlier policy. Ordinarily, the Panel considers that such a consideration ordinarily might lead to the grant of a licence, even if it be time-limited.

In order to gauge whether this 'procedural legitimate expectation' has or has not been met, one would clearly first need to examine whether such consultation took place, with whom, and when. The Panel accepts that wide consultation took place over the period April to July 2005; a well-attended workshop was held on 20th April 2005 and a list of responses to the draft policy was drawn up. This process culminated in a briefing on the EDC policy for representatives from the industry in July 2005. The briefing paper prepared for this meeting clearly states-

"3PS activities with UK companies selling DVDs and CDs back to the UK should

be held at current levels and no new UK companies should be allowed to operate through Jersey based 3PS.^[44]

“The upshot is that unless you are a UK company that has diverted DVD/CD business through the Island for the purpose of avoiding VAT or are a Jersey company that facilitates UK companies to do this, you will largely be unaffected by this policy.”^[45][Panel emphasis]

It could be argued that existing companies who attended this briefing would have been left with the impression that they were to be allowed to continue to trade, but simply not to expand, and that ‘new companies’ must surely have referred to companies registered from that date (July 2005) onwards.

Although the first policy in August 2005 followed consultation with the industry, the Panel has found no evidence that any similar consultation was carried out prior to the introduction of the Minister’s policy in February 2006. It may thus be that this omission would amount to an illegal disappointment of the concerned businesses’ procedural legitimate expectations. Without seeking to determine the point, the Panel is concerned merely by the fact that such an issue exists.

The Panel understands that no consultation was carried out with the industry before the February 2006 policy change. In the Panel’s opinion this may have opened the government to legal challenge on the grounds of procedural legitimate expectation, for losses suffered by companies as a result of the Minister’s actions.

5.6 Appeals against decisions under the February 2006 policy

The Panel has also been informed of problems arising with the appeal procedure operated by the Economic Development Department. The Panel has been informed of one case where the initial decision taken by the Minister was not to grant a licence to trade, despite the fact that the company in question had been operating a fulfilment business through a local 3PS for several years.

The fulfilment company concerned arranged for a meeting to appeal against the refusal, hoping to receive a time-limited licence, and met with the Chief Officer of the Department. They were under the impression that this was to be a form of appeal, and that as a result the Assistant Minister reviewed the issues and confirmed the Minister’s original decision.

In this case, the Minister's decision appears to have been reviewed by the Assistant Minister. This appears to the Panel to be both illogical and unlikely to result in genuine review, in that the Assistant Minister is necessarily subordinate to the Minister.

The Minister has now described the appeal process within the Department as being an appeal to the Minister, based on new evidence submitted against the Minister's decision, followed by the opportunity to take the matter to the Royal Court as detailed in the Section 6 (7) of the Regulation of Undertakings and Development Law 1973.

The Panel does not feel that a situation in which the Minister reviews his own decision is reasonable. When the only further recourse is to take the matter through a potentially difficult and expensive court process, then there is no effective internal appeal mechanism, and this is against the operation of natural justice.

The Panel is also concerned that the letters accompanying the granting of time limited licences or licence refusals made no mention of the appeal process, including that it was a time-limited process. Companies in receipt of time-limited licences would have been out of time within two months. The omission of any reference to the appeal mechanism by the Department is, the Panel believes, unreasonable.

The Minister has not mentioned the process that exists under the Administrative Decisions (Review) Jersey Law 1982 as a potential remedy available. This is not, however, the Panel accepts, a completely satisfactory route: it is rarely used and cannot do more than request a Minister to revise their decision on a subject. If a Minister were to refuse to revoke his decision there would be no practical recourse to the complainant except litigation.

In the opinion of the Panel the Economic Development Minister has created an appeal procedure which is neither reasonable nor fair, as it does not allow an independent person to review decisions, without recourse to potentially expensive court action.

5.7 Access to legal advice

The Panel has experienced some considerable difficulty in determining the legal position of the Minister during this review as it has not been able to access the relevant legal advice. Confidentiality in respect of legal advice given by the Attorney General to Ministers means that advice cannot be made available, and indeed neither the Minister nor the Attorney General are allowed to reveal if advice has been sought or given.

However, Scrutiny requires that information be made readily available to permit the production of well-researched and evidence based reports. With legal advice being the exception to the usual rules on disclosure, the Panel has had to seek alternate means by which to establish the validity of some actions of the Minister. In doing so, it appears to the Panel that there can be no objection in it making some reference to legal advice that it has obtained in its own right in this Report.

The Panel however wanted sight of three aspects of legal advice that it believes were sought by the Minister in the following areas.-

- (a) What justification was provided for the requirement to license overseas retailers under RUDL and why this was not deemed necessary before;
- (b) What was the likelihoods of the UK taking action over LVCR; and
- (c) What was the probability of a legal challenge to the Economic Development Minister resulting from his change in policy.

In respect of area (a), the Panel understands that advice was sought by the Minister on this subject in 2005. It appears that the change in interpretation revolved around establishing that these UK companies were trading in Jersey. Otherwise they would be unable to participate in the pre-paid VAT scheme.

In respect of area (b), as well as being denied the Minister's advice on this subject, the Panel was unable to obtain advice from the Law Officers' Department on its own behalf. The Panel was advised to contact a UK barrister who was experienced in these matters. Given the improbability of any action on economic grounds, it was felt that legal advice would not clarify matters and that there was no need to seek it.

In respect of area (c), the Panel requested information on 9th March 2006, and again on 6th April 2006.

However, when the Panel selected a scenario and organised the appropriate data in order to put specific a question to the Law Officers' Department on 14th July 2006, it was informed that this was too close to advice that might be sought by a company intending to take action against the Minister, and advice was not supplied.

Any reference to the content of legal advice in the above chapter refers to independent external legal advice received by the Panel.

Appendix 1 - Possible UK Actions

This is an expansion of the argument laid out in Section 4.6 of the main report.

The UK cannot simply start imposing import duties or vat on goods under £18 arriving from Jersey. This would place it in breach of the regulations agreed the by EU Council of Ministers, and leave it liable to action in the European Court both in respect of the violation itself and individually from any party which felt it had lost materially by the UK's actions. This would include companies in Jersey and the UK. It is therefore extremely unlikely that unilateral action would be taken by the UK.

There are therefore three possible ways in which the UK could affect the viability of the fulfilment industry-

- (a) The least likely option in the short-term is the abolition by the EU of LVCR and its replacement with some kind of flat-rate tax on goods under a certain value. The EU has proposed a flat rate for consignments up to €50 and this is now subject to consultation. This would require alteration to Council Directive 1983/0181/EEC^[46]. It could increase the regulatory burden on customs services and would take time to implement. It would have effect Europe-wide. Priority however, is likely to be given to the introduction of the Modernised Customs Code, throughout the EU, in January 2009.
- (b) The UK could amend or replace its current legislation on LVCR to take advantage of the option in the EU legislation detailed above to lower its limit to 10 ECU (Euro)^[47]. 10 Euro is now equivalent to about £7. Were the UK willing to undertake the considerable additional costs that would be created by attempting to charge VAT at these low levels, it is likely that this would cause significant loss to the fulfilment industry, as the majority of its sale items are over this level and would therefore be liable to VAT. This would not be profitable for the UK, however, as the cost of collecting this tax (on all goods above €10 from all non-EU countries) would outweigh the receipts; or
- (c) The UK could apply for derogation from the requirement to provide relief on all goods. Article 14 (1) (d) of Council Directive 1977/388/EEC provides that Member States-

'Shall have the option of not granting exemption [to tax on goods under the LVCR value limit] where this would be liable to have a serious effect on conditions of competition'

Option (a) is unlikely to be affected by any change in policy from Jersey. The new policy

therefore would have no positive or negative effect under this scenario, except that it has lost Jersey considerable employment and revenue.

Option (b) is also unlikely. It must be remembered that the UK does not operate LCVR as a concession to importers, but that it exists as it is not cost effective to collect VAT on goods with a value under £18. The collections costs are more than the income. To lower the limit to £7 would vastly increase these collection costs, and would yield little in the way of extra revenue. It is very unlikely that the UK would take on a massive extra expense to resolve any LCVR issues.

Option (c) is a possibility, and has been applied by an EU country in the recent past. However, derogation affects a class of goods, not an individual jurisdiction. This means that if derogation were sought in respect to the importation of DVDs and CDs, it would mean that all DVDs and CDs that were imported in to the UK would be taxed at full VAT with no minimum threshold.

This could take effect across a class of goods, so the UK could remove the relief limit on all imports of DVDs and CDs, for instance, from all non-EU countries. This would affect the most widespread sector of the local fulfilment industry, but also cause administrative costs for the UK as it would have to charge VAT on all non-EU imports of DVDs and CDs at a level which costs more to collect than the receipts.

A derogation as above has been used by a Member State in the past. In March 2005 Denmark, concerned about the VAT loss from the importation of 'magazines and periodicals', applied to the EU Commission for approval for permission to end relief on these goods. The request was then passed to members States for comment, before being approved by the Commission (which has the power to lodge an objection) and voted upon in the EU Council. The derogation was agreed unanimously (as such measures are required to be), and Denmark now imposes its full VAT on all imports of magazines, etc.

Therefore if the UK could command the unanimous support of the EU council, it could seriously affect the local industry. The industry has shown considerable ability to diversify, however, and it is likely that the operators would to an extent be able to move into other area such as non-prescription medicine, contact lenses, etc. There is a limit to the number of goods for which the UK could apply for derogation, as the costs would mount with each product included.

It is these threats to Jersey's international reputation and the industry that have been the motive force behind the new policy. However, in order to judge whether the new policy was justified, the likelihood of these actions must be examined.

The effects of all of these options would therefore be the same if the UK was attempting

to resolve VAT loss on imports under LVCR issues from anywhere, the Channel Islands, Switzerland, Hong Kong, or any other jurisdiction that was importing DVDs and CDs.

The policy seeks to remove UK retailers from Jersey, who will simply relocate. If they relocate and continue their operations, the likelihood of UK action that would affect Jersey is just as high as if they had remained trading in the Island.

The policy does not change the likelihood of UK action or its effect on Jersey.

Appendix 2 – Key Evidence

This evidence is central to the understanding of the report and so copies are included in full-

1 The Economic Development Committee's Policy for the Fulfilment Industry – August 2005

Introduction

1. New research on the nature of the fulfilment industry in Jersey has thrown some light on the activity at a time when it is attracting considerable negative publicity in the UK. This negative publicity is in danger of undermining the Island's good international reputation and at the same time increasing the likelihood that the UK will act to curtail all or part of the activity.

2. This paper sets out a policy that can maximise the benefit of the fulfilment industry to Jersey while at the same time not damage the Island's international reputation or prompt the UK to take action that will be detrimental to the Jersey economy.

The economic benefits

3. There are basically two types of activity within the fulfilment sector, although a number of companies operate as a hybrid of the two activities. Whole Chain Companies (WCC) physically buy in and own the stock of DVDs, CDs etc and sell the goods to the final customers. Third Party Service Providers (3PS) on the other hand provide logistics or distribution services to other retailers. WCC receive revenues based on the total value of sales whilst 3PS only receive revenues based on the service they provide, with the sales revenue going to the retail company.

4. The results of the survey conducted by the Statistics Unit highlighted a number of key issues about the economic contribution of the industry to the Island and the difference between the two types of activity:

The industry is estimated to have contributed around 1.5% of all Gross Value Added (GVA) in 2004 and although significant growth is expected in 2005 and 2006 it is still a very small part of the Island economy. 90% of this GVA was from WCC.

_ In 2004 employment in the sector amounted to 517 full time equivalent (FTE), 95% of whom are locally qualified, with a seasonal peak of about 845 staff. WCC employed nearly 70% of these people. Employment was expected to grow by 253 jobs in 2005 and 365 in 2006, with the majority of growth by 3PS.

_ The sector handled well over 20 million orders in 2004, an increase of 7 million on 2003. 80% of these orders were handled by WCC companies.

_ GVA per FTE was £78,000 for the whole sector in 2004, which equates to about £75,000 in 2003 prices. This is slightly higher than the average of £69,000 for the economy as whole in 2003. However, for WCC it was £101,000 – the second highest to finance (£139,000) and nearly 50% higher than the next highest sector. 3PS amounts to £24,000, lower than agriculture (£29,000) and only marginally higher than the lowest in the economy - tourism (£23,000).

_ The vast majority of tax paid by the sector (excluding the contribution of fulfilment to Jersey Post) comes from WCC and the big players in particular.

Fulfilment and economic growth

5. The Economic Growth Plan (EGP) has two key objectives: to generate £20m additional tax revenue and to create high value jobs for local people. On purely economic growth grounds the

dichotomy within the industry means that the appropriateness of the two types of activity for Jersey is significantly different. The high value added per employee and significant tax contribution of WCC activity means that it is fully complementary to the EGP and therefore should be supported by the States wherever possible. 6. 3PS activity does not contribute significantly to either of the two key economic growth objectives and the States should therefore be much more cautious about this type of activity. The significant growth in employment in this sector expected in the next two years poses two questions (assuming that RUDL licences will not be granted for significant non-local labour):

_ Where will this labour be drawn from – the unemployed/new labour market entrants or other industries/firms?

_ Could the labour be put to more productive uses?

7. The answer to the first question is that while some of the existing employees might have come from the unemployed or new labour market entrants there are greater concerns that further jobs growth will start to bid up wages in this area and therefore undermine activity of all firms in the sector and possibly other sectors such as tourism.

8. The very low value added per employee of 3PS activity also suggests that the labour could be put to better use. Ongoing work of the EGP has still to examine the scope for growth in other areas such as tourism and retail and allowing 3PS activity to continue to expand at the expected rate, absorbing significant labour could undermine the scope for growth in other sectors.

9. On pure EGP grounds the conclusion should be to support WCC activity but not to allow further growth in 3PS activity, where it requires significantly more labour.

10. The impact of the fulfilment industry does not however, stop here. EGP issues also have to be balanced with those surrounding Jersey's international reputation.

International issues

11. The primary concern is that the extensive negative publicity in the UK covering the fulfilment industry in the Island is damaging the international reputation of Jersey. The negative publicity is focusing on existing UK companies that are switching the distribution of their DVDs, CDs etc through Jersey to take advantage of the Low Value Consignment Relief (LVCR – the EU approved mechanism for VAT exemption) and the associated loss of tax revenue for the UK (and to some extent the unlevel playing field it creates for UK small businesses). This could have negative consequences for the Island if the UK took action that curtailed all the fulfilment activity in Jersey and any damage to the international reputation of the Island will have negative consequences for key industries such as finance and other export related business.

12. If the UK decides that it is in its best interests to stop UK companies from taking advantage of LVCR then it probably has two options:

_ Use its own VAT anti-avoidance legislation to require UK companies to pay VAT on this type of activity.

_ Obtain a derogation from the EU that means that LVCR no longer applies to certain goods or perhaps even that the value of the relief is lowered (effectively ruling out the scope for such activity on DVDs and CDs).

13. If the UK decides to act then the first option is clearly preferable from Jersey's perspective. This would only stop UK based companies from taking advantage of LVCR and would therefore allow Jersey owned WCC activity to continue. It is believed that the UK is only likely to use this route if it

decides to take action and thinks that companies like Tesco and Asda will not be able to get around such legislation by setting up for example, Jersey based companies. The policy outlined below would provide assurances to the UK that this would not be allowed to happen. 14. If the UK chooses to go down the derogation route then that will be the one that is most harmful to Jersey. It will effectively mean that most of the fulfilment activity will leave the Island (WCC and 3PS) and that which remains will be significantly less profitable. This route is likely to be the UK's last resort given that it involves going through the European Commission and that the UK would incur collection costs on any of the activity that did not migrate to the UK.

15. The way forward on the international front is clearly to establish what the UK's concerns are and their likely course of action. This is being done by the Policy and Resources Committee through the Department of Constitutional Affairs and a meeting has already been arranged with the UK Treasury. This policy is based on the assumption that the UK will want to act to contain the activity. If subsequent investigation shows that this is not the UK's stance or the UK's position changes over time then

management of the fulfilment industry will revert back to the EGP criteria outlined in the previous section.

The policy

16. The appropriate policy (for further details see notes below) that meets both the Economic Growth Plan and protects the Island's international reputation is:

(i) WCC should be supported, particularly those that are Jersey owned. Where WCC are or become foreign owned they will be assessed on their economic contribution relative to the economic conditions of the time.

(ii) High value hybrid fulfilment companies should be supported, where they do not involve UK companies diverting current business through Jersey.

(iii) Low value hybrids should be supported on the basis of their economic contribution relative to the economic conditions of the time and where they do not involve UK companies diverting current business through Jersey.

(iv) 3PS activities with UK companies should be held at current levels and no new UK companies should be allowed to operate through Jersey based 3PS. Where possible those high profile UK companies already operating through Jersey should be prevented from expanding and where possible their activities through Jersey should be reduced. 3PS activities with Jersey companies will be allowed to grow where they do not require significant additional labour and are consistent with the Economic Growth Plan.

17. To be successful this policy will need to be supported by Guernsey, although the UK's response will need to be considered if Guernsey takes a different approach.

18. This policy will also have to be communicated to the UK so that they recognise the difference in nature and economic contribution of the different types of industry. Also to reassure them that Jersey is both willing and able to contain certain types of fulfilment activities. If the UK is allowed to make policy in a vacuum and it is unaware of these facts then it could take a stricter line than is necessary and one that is most damaging to the Jersey economy.

Notes on the detail

19. WCC are as previously defined – companies that physically buy and sell goods to final customers and receive revenues based on the total value of sales. It would become foreign owned if more than 50% of the company was owned by non-Jersey residents.

20. Hybrids are fulfilment related companies that do not fit easily into either category but have some or all of their core activities in Jersey such as a head office, finance, purchasing or customer service. Their pick and pack operations are likely to be carried out by a 3PS but could be done by the company itself. They could also be companies that operate as both WCC and 3PS.

21. High value hybrids are companies that meet the following criteria: _ They have a permanent establishment in Jersey employing 10+ local people in high value jobs with core business activities in Jersey. This establishment is not an offshore centre for a UK based company.

_ The company makes a significant Jersey tax contribution (>£150k).

22. Low value hybrids are companies that meet the following criteria:

_ They have a permanent establishment in Jersey employing <10 local people which carries out some core business activities in Jersey. This establishment is not an offshore centre for a UK based company.

_ The company makes a minor Jersey tax contribution (<£150k).

23. 3PS are as previously defined - they provide logistics or distribution services to other retailers and only receive revenues based on the service they provide, with the sales revenue going to the retail company. The focus of the policy is 3PS activity with UK companies particularly DVDs and CDs. Where 3PS activities are concerned with other goods or other EU countries decisions will be based on the potential reputational damage of such activities. It may be that in time, concern also spreads to other goods or other countries if there is a repetition of the type of growth experienced with the UK.

Implementation

24. For the policy to work it will need to be jointly applied by three key States Committees and 3PS. In particular the approach by the relevant parties should be:

_ The Policy and Resources Committee to undertake the international relations work with the UK and Guernsey.

_ The Economic Development Committee to apply RUDL in the required manner.

_ The Economic Development Committee to ask Environment and Public Services Committee to agree to apply planning regulations in a manner that is consistent with the policy.

_ 3PS to act in a manner in keeping with this policy and that protects the integrity of the Island in commercial and financial matters in accordance with their RUDL licence.

2 (i) Forum for Private Business response to February 2006 policy

The FPB has claimed that the announcement by the Jersey Government that it is to crackdown on retail giants exploiting its VAT status does not go far enough.

Currently fighting a campaign to close the loophole which allows retail giants to sell CDs and DVDs online to the UK VAT free, the FPB said the Jersey Government has to be clearer on how its policy would work.

"If Jersey is serious about this crackdown, and it has made similar claims before, it has to state when the retail giants will have to leave,' said the FPB's Chief Executive Nick Goulding."That is the true proof of a crackdown. However, although this announcement is a tremendous step forward, providing it happens, much of the problem will remain as businesses based in Jersey, like Play.com, will still be able to exploit the loophole.

"Furthermore, there has been no commitment from the Guernsey Government to stop the practice happening there and HMV is reportedly selling 100,000 CDs a week to the UK from Guernsey." Mr Goulding said unless the UK Government acted against the loophole, high street shops would continue to be fatally undermined.

"The FPB again makes a plea to the Chancellor and his Paymaster General Dawn Primarolo, who we know is taking a close interest in this, to act decisively at the budget,' he said."Failure to do so will result in independent music shops, opticians and health food suppliers going bust."

The Jersey Government's announcement has been triggered by publicity generated by the FPB's campaign. Last week the acclaimed author Nick Hornby backed the FPB's campaign against the tax dodge. And, in Mid February, it was widely reported that one of the main recommendations of the All Party Parliamentary Small Shops Group report was for the Government to 'close the Jersey VAT loophole'.

2(ii) Forum for Private Business MPs letter (after February 2006 policy)

Dear (MP's name),

Andy Love MP, Chair of the All-Party Parliamentary Small Business Group (APPSBG), has today put forward an Early Day Motion (EDM) to close the Channel Islands VAT loophole (see below). This loophole allows large retailers to achieve an unfair 17.5% price advantage by selling products through their Channel Islands-based websites into the UK without charging VAT.

The Forum of Private Business (FPB) urges you, as members of the APPSBG, to support Mr Love's EDM and help to level the playing field for the UK's smaller businesses.

Click on www.fpb.org/vatloophole to read more about our campaign on this issue.

Yours sincerely,

Victoria Carson
Campaigns Manager
Forum of Private Business
2668
VAT ON CDS AND DVDS
Mr Andrew Love
Bob Russell

9:10:06*

That this House notes with concern the estimated £80 million or more of VAT lost to HM Treasury each year as a result of the use by major retailers in the UK, and elsewhere, of the Channel Islands as a location for selling CDs and DVDs ordered on the internet and previously imported into those locations from the UK for the specific purpose of returning them to customers in the UK without VAT being charged; believes that this practice undermines the credibility of the UK's VAT system, and the viability of the UK's independent music stores, all of whom are accountable for VAT on the sales that they make; threatens the livelihoods of the several thousand people who work in those stores and creates an environment in which compliance with the taxation laws of this country is seen as an optional exercise; and calls on HM Treasury to take the necessary steps to curtail this activity, including making application to the European Union to reduce the value of goods which may be imported without VAT being charged to £7 from the current limit of £18.

2(iii) Forum for Private Business Open letter to the UK government (after February 2006 policy) with 130 Signatories

We the undersigned wish to draw your attention to loophole exploited by retailers nominally based in the Channel Islands to avoid payment of VAT on goods sold into the UK.

There is clear evidence showing that UK goods are purchased on the UK mainland by UK based buying teams, from UK based suppliers and shipped to the Channel Islands with the express intent to avoid the payment of VAT on the goods when re-imported into the mainland UK.

Sales of these UK products distributed via the Channel Islands are collected by the Chart Information Network for the purposes of collating the weekly UK Charts, which further emphasizes the UK nature of this trade.

In some cases the retailers exploiting this loophole are UK high street names with no obvious ties to the Channel Islands other than to avoid VAT; in others they are Channel Island based vehicles with UK based management, buying and marketing teams.

Many of these retailers are council members of the UK trade association, BARD, which leads to a potential conflict of interest regarding making government aware of the dramatic impact this activity is having on our businesses.

It is clear that this loophole is acknowledged by the relevant authorities.

It is less clear what action they propose to take. Retailers who benefit from this VAT advantage are seeing huge rises in turnover on product sold via the Channel Islands at the expense of the UK high street.

With trade going offshore as a result of this unequal VAT position, UK independent music retailers are facing virtual extinction with stores closing every week and UK jobs being lost.

We are therefore seeking action from the Government to address this inequality and create a level playing field for all businesses in advance of the peak-trading season.

3(i) Letter to UK retailers – no licence required

From: [REDACTED] Page: 2/2 Date: 30/03/2005 14:19:15

Regulation of Undertakings & Development

Economic Development
PO Box 843, Cyril Le Marquand House
St Helier, Jersey, JE4 0UT
Telephone: 01534 603710
Fax: 01534 603720
E-Mail: regunds@gov.je

Our Ref: [REDACTED]
30th March 2005

[REDACTED]

Dear [REDACTED]
[REDACTED]

I refer to your facsimile letters dated 11th and 18th March 2005, and to your e-mail received today, concerning Part II of the Regulation of Undertakings and Development (Jersey) Law, 1973, as amended, with particular reference to the requirement for an undertakings licence by the above named company.

Article 2 of the Regulation of Undertakings and Development (Jersey) Law, 1973 requires that any person (or a body corporate) "commencing a new undertaking" or "increasing the number of persons engaged in an undertaking", must firstly obtain a licence so to do. The definition of an undertaking is "any trade, business or profession whether or not carried on for profit".

The current policy of the Economic Development Committee, as reflected in the Regulation of Undertakings and Development (Jersey) Regulations 1978 as amended, is normally to grant licences to persons who possess residential qualifications, or who have been resident in the Island for the whole of the past consecutive five years, immediately preceding their engagement. However, with non-resident persons or undertakings, the Committee's policy is to grant a licence provided that it is clearly in the Island's best interests – for example, if a particular activity is specialist and is not currently being provided for, or if there are expected to be significant advantages and, generally, where locally qualified staff only are to be engaged.

On the basis that [REDACTED] will not be conducting any business in the Island, that it will not occupy any floor space or have any employees, and that fulfillment services will be provided by Jersey Post Logistics, it is confirmed that no application for a licence is required at this time.

I trust that this information is of assistance to you.

Yours sincerely



Senior Regulation of Undertakings & Development Law Officer

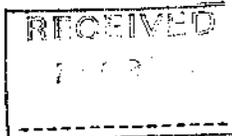
States of Jersey 

3(ii) Letter to UK retailers – 12 month limited licence

Population Office

P.O. Box 843, Jubilee Wharf
24 Esplanade, St Helier
Jersey, JE4 0UT
Tel: +44 (0)1534 448930
Fax: +44 (0)1534 448936

States 
of Jersey



24 April 2006

[Redacted]

Our ref: [Redacted]

Dear [Redacted]

[Redacted]

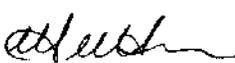
I refer to the application submitted by [Redacted] under Part II of the Regulation of Undertakings and Development (Jersey) Law, 1973 as amended, on 4 April 2006 in relation to the commencement of a DVD/CD internet sales and distribution undertaking.

When deciding whether or not to grant a licence, or whether or not to impose conditions, the Minister is required by Article 6 (2) of the law to have regard to inter alia the need to protect the integrity of Jersey in commercial and financial matters.

In proceeding under Article 6 (2) the Minister has considered whether the actions of [Redacted] in using the Island to enable your customers to avoid paying VAT in the United Kingdom is or is not always detrimental to Jersey's integrity in financial and commercial matters. The Minister is concerned that Jersey is being used as part of a selling structure which is a complete sham, inasmuch as the purchaser and the parent company of vendor are both located in the United Kingdom, and even the goods, or some of them, are transferred to Jersey from the United Kingdom for the sole purpose of being the subject of a token sale in Jersey before being shipped back to the United Kingdom and delivered to the purchaser.

The Minister has concluded that the activities are detrimental to that integrity and in the absence of any special circumstances, the Minister has adopted as a general rule a policy that such applications are refused. However, the Minister has taken into consideration that [Redacted] has established a presence in the Island in good faith, albeit without a trading licence and is prepared to issue a time limited period of grace within which to wind down its operations and discontinue them altogether. Accordingly, a non-renewable time limited consent for the period to 28 February 2007 has been issued.

Yours sincerely


[Redacted]

Senior Regulation of Undertakings and Development Law Officer

3(iii) Letter to UK retailers - immediate licence refusal

[REDACTED]

Population Office

P.O. Box 843, Jubilee Wharf
24 Esplanade, St Helier
Jersey, JE4 0UT
Tel: +44 (0)1534 448930
Fax: +44 (0)1534 448936



24 May 2006

[REDACTED]

Our ref: [REDACTED]

Dear [REDACTED]

I refer to the application dated 18 April, 2006 submitted by [REDACTED] under Part II of the Regulation of Undertakings and Development (Jersey) Law, 1973, as amended, for permission to commence a dvd/cd internet sales and distribution undertaking.

When deciding whether or not to grant a licence, or whether or not to impose conditions, the Minister is required by Article 6 (2) of the Law to have regard to inter alia the need to manage demand on the resources of the Island and to protect its integrity in commercial and financial matters.

The Minister is concerned that Jersey is being used as part of a selling structure which is a complete sham, inasmuch as the purchaser and the parent company of vendor are both located in the United Kingdom, and even the goods, or some of them are transferred to Jersey from the United Kingdom for the sole purpose of being the subject of a token sale in Jersey before being shipped back to the United Kingdom and delivered to the purchaser.

The Minister has concluded that the activities are detrimental to that integrity and in the absence of any special circumstances, the Minister has adopted as a general rule a policy that such applications are refused. In accordance with this policy the application for the commencement of the undertaking has been refused.

A copy of the published fulfillment policy is attached for your information, together with the formal notification of refusal.

Yours sincerely

Director, Regulatory Services

Enc

[REDACTED]

4(i) Lease of former Jackson's Garage site by Offshore Solutions Limited (P.)

STATES OF JERSEY

Units 1 and 2, L'Avenue Le Bas, La Rue des Pres Trading Estate: reassignment of leases

**Lodged au Greffe on 7th June 2005
by the Committee for Postal Administration**

STATES GREFFE

PROPOSITION

THE STATES are asked to decide whether they are of opinion –

(a) to approve the assignment of a 21 year lease, expiring on 30th June 2016, currently between Mrs. P. Parrington-Jackson as lessor and Jackson's Garage Limited as lessee to the Committee for Postal Administration, in respect of Unit 1, 46 L'Avenue Le Bas, Rue des Pres Trading Estate, St. Saviour, Jersey of approximately 21,539 square feet at a passing rent of £199,144 per annum (provided that the assignor has agreed to providing 2 months rent free immediately following assignment of the lease) and with rent reviews every 3 years to the greater of market value or the Jersey Cost of Living and with the next review being due on 1st July 2007;

(b) to approve the assignment of a 21 year lease, expiring on 31st December 2009, currently between Mrs. P. Parrington-Jackson as lessor and St. Helier Garages Limited as lessee to the Committee for Postal Administration, in respect of Unit 2, 46 L'Avenue Le Bas, Rue des Pres Trading Estate, St. Saviour, Jersey of approximately 18,232 square feet at a passing rent of £150,000 per annum (provided that the assignor has agreed to providing 2 months rent free immediately following assignment of the lease) and with rent reviews every 3 years to the greater of open market value or the Jersey Cost of Living and with the next review being due on 1st January 2006;

(c) to authorise Jersey the Committee for Postal Administration, to pay –

(i) the rents as they become due;

(ii) stamp duty amounting to approximately £18,000 relating to the registration with the Royal Court of the assignment of the lease in respect of Unit 1, 46 L'Avenue Le Bas, Rue des Pres Trading Estate, St. Saviour, Jersey; and

(iii) stamp duty amounting to approximately £4,500 relating to the registration with the Royal Court of the assignment of the lease in respect of Unit 2, 46 L'Avenue Le Bas, Rue des Pres Trading Estate, St. Saviour, Jersey; and

(d) to authorise the Attorney General and the Greffier of the States to pass the necessary contracts on behalf of the Public.

COMMITTEE FOR POSTAL ADMINISTRATION

Note: The Finance and Economics Committee's comments are to follow.

REPORT

Jersey Post is currently experiencing rapid growth of its fulfilment operations, and it has a requirement to take on up to 40,000 square feet of warehousing accommodation to meet contracts which have been secured (subject to contract).

This significant business diversification is also seen as the key driver of profitability over the next few years as a producing other benefits to the Island's economy as a whole in terms of –

- new employment opportunities including some high value jobs;
- north/south sea transport links; and
- new tax revenues.

In particular, Jersey Post has secured its largest fulfilment contract to date subject to suitable premises being sourced. The potential benefit to Jersey Post is significant with the volume of items processed for this customer forecast to reach 5 million items for 2005 and up 8 million items for 2006 (based on the client's projected forecasts for United Kingdom sales only). In addition, this particular client offers the opportunity for Jersey Post's fulfilment business to expand into new markets within Europe which could see up to double the number of items processed (again based on the client's projected sales).

Warehouse accommodation has already been taken on at Rue du Port Elizabeth. This accommodation is being used to its full capacity and, whilst there are long-term opportunities for expansion in this location, they will not meet the shorter term requirements brought about by the imminent new business which Jersey Post's fulfilment business has secured. However, it is likely that Jersey Post would still require additional space at this location for its growing logistics operation.

In addition, Jersey Post has investigated the possibility of further developing its premises at Postal Headquarters, Rue des Pres. However, this option is not viable given both the impact such development would have on existing operations and the lack of space available at the site.

It is Jersey Post's view that, at this time, there are no other large-scale individual industrial buildings of sufficient size within the Island of Jersey which meet the immediate requirements of Jersey Post's fulfilment business. Whilst Jersey Post has been working with Sarre & Co. to identify suitable sites, the only alternative options are agricultural sheds which require permission for change of use and which are too small or poorly located for Jersey Post's requirements.

There are significant advantages of securing the site represented by Units 1 and 2, 4-6 L'Avenue Le Bas. These include: its availability, the close proximity to Postal Headquarters, suitable access for large vehicles, the provision of car parking, and the securing of Jersey Post's fulfilment business expansion needs for 2005 on one site.

The details of the leases for each of Units 1 and 2, 4-6 L'Avenue Le Bas, Rue des Pres Trading Estate, St. Saviour, Jersey are in summary as follows–

Unit 1, 4-6 L'Avenue Le Bas, Rue des Pres Trading Estate, St. Saviour, Jersey:

(a) a 21 year fully repairing and insuring lease from 1st July 1995 to expire on 30th June 2016

(b) the property consists of –

- (i) a ground-floor internal workshop of approximately 11,063 square feet;
- (ii) a ground-floor showroom and offices of approximately 7,274 square feet;
- (iii) first-floor offices of approximately 549 square feet;
- (iv) first-floor storage of approximately 2,653 square feet; and

- (v) an external yard area providing parking.

-
Unit 2, 4-6 L' Avenue Le Bas, Rue des Pres Trading Estate, St. Saviour, Jersey:

(a) a 21 year fully repairing and insuring lease from 1st January 1988 to expire on 31st December 2009

(b) the property consists of –

- (i) two large bays of open plan warehousing with ancillary offices and extensive, fully fitted out showrooms to the front of the premises being an approximate gross internal area of 18,232 square feet; and
(ii) an external yard area providing parking and access to the site.

Notes:

(a) In order to secure the current leases, Jersey Post has been required by the existing lease-holder to enter into a licence agreement in respect of the premises. This allows limited occupancy and prevents the leaseholder from offering either property to any other party for a period of 15 weeks. If the leases are not assigned to Jersey Post by 3rd July 2005, then Jersey Post is obliged to reimburse the lease holder £100,000, representing 15 weeks' rent, together with a fee of £30,000 for the exclusive negotiating period. It is Jersey Post's expectation that the revenue from business conducted from the premises during the period of the Licence Agreement, regardless of the States' decision on this Report and Proposition, will cover these costs.

(b) Whilst the terms of the leases are that they are fully insuring and repairing leases, a survey was undertaken on the premises in June 2004 by Reynolds Chartered Surveyors and Jersey Post has required that all significant matters identified in that survey will have been rectified by the existing lessees prior to any assignment of the respective leases.

(c) When the land on which the premises have been built were sold to the owner in 1974, a restriction on the use of the land was imposed. The consent of the Environment and Public Services Committee will therefore be required for the premises to be used by Jersey Post for the fulfilment business.

(d) The consent of the owner shall also be sought to ensure that no grounds exist for it to object to the proposed use.

(e) Jersey Post has been advised that consent under the Island Planning (Jersey) Law 1964 for change of use is not required.

Appendix 3 - Other Evidence

Public Hearings

The following witnesses attended a public hearing with the Panel on 26th July 2006–

Senator P. Ozouf, Economic Development Minister
Mr. D. Peedle, Economic Advisor

A transcript of this hearing is available on the Scrutiny website.

The Panel also drew evidence from hearings conducted for their report on ‘the impact of the fulfilment industry on the incorporation of Jersey Post’ (SR.2/2006).

The following witnesses attended these hearings on 5th April and 5th May 2006-

Senator T.A. Le Sueur, Treasury and Resources Minister, accompanied by Mr. R. Bell, Head of Corporate Financial Strategy Division.

Senator P.F.C. Ozouf, Economic Development Minister and Connétable G.W. Fisher, Assistant Minister, accompanied by Mr. M. King, Chief Executive Officer and Mr. W. Gallichan, Director of Regulatory Services.

Deputy P. Ryan, Chairman, Corporate Services Scrutiny Panel (in his capacity as a previous President of the Committee for Postal Administration).

Mr. R. Syvret, Proprietor of Andium Limited, Consultants to the Economic Development Department, the Treasury and Resources Department, and

Mr. J. Pinel, Chief Executive of Jersey Post.

Mr. I. Ridgeway, Finance Director of Jersey Post, accompanied by Connétable Fisher and Mr. J. Pinel.

Mr. W. Brown, Executive Director of the Jersey Competition Regulatory Authority, accompanied by Mr. P. Hamilton and Mr. C. Webb.

Mr. M. Hamon and Mr. L. Sampson, Communication Workers Union.

Full verbatim transcripts of the public hearings are available on the Scrutiny website at www.statesassembly.gov.je.

Reports and documentation

The Panel considered the following documents which are available on the Scrutiny website-

Policy for the fulfilment industry – (February 2006 – included in report)

Oxera Report - What is the contribution of the fulfilment industry to Jersey's economy?

Benefits of the fulfilment industry to Jersey explanation of the types of companies involved

Letters seeking information about Fulfilment Companies 10th March 2006 – from the Panel

Regulation of Undertakings and Development (Jersey) Law 1973

Regulation of Undertakings and Development (Jersey) Regulations 1978

Information from RUDL office on transfer of licence or new licence upon change of beneficial ownership 12th June 2006 and subsequent letter to the Minister 13/06/06

Notes from a site visit to Postal HQ on 2nd March 2006

PowerPoint presentation given to Panel at Postal Headquarters 2nd March 2006

Notes on UK Import VAT Accounting Scheme 23rd February 2006

Application form for UK Import VAT Accounting Scheme

VAT on E-Commerce - part III the risks to import VAT on goods ordered over the internet from outside the EU

VAT 'loophole wins reprieve advert from Guernsey Press dated 1st June 2006

Statement by Gordon Brown re VAT-free threshold

Hansard Commons on LVCR 25 October 2005

Offshore e-tailing tax efficient solutions for a competitive edge article from International Financial Centres Yearbook

Forum for Private Business - Offshore VAT Loophole form and comments
Article from the Guardian 18th June 200

Forum for Private Business - Impact of the offshore VAT loophole submission to HM Treasury by independent retailers November 2005 submission.

Forum for Private Business website postings - various dates

National Audit Office - HM Revenue & Customs VAT on e-commerce Additional Background info

National Audit Office - HM Revenue & Customs VAT on e-commerce

Questions in the States to the Minister from Chairman dated 14th March 2006

Letter from Minister to Chairman dated 6th April 2006 definition of fulfilment companies

Letter to Guernsey Post dated 10th May response dated 31st March

Letter to Guernsey Commerce and Employment dated 10th May response dated 16th March

Letter forwarded from 'Moviemail' confirming licence not required (used with permission)

Letter forwarded from 'Moviemail' issuing 12-month licence (used with permission)

Guernsey Fulfilment Policy

Guernsey Post Fulfilment Postal charges

Foreshore - discuss impact of new policy

JEP articles on fulfilment 18th, 24th July 2006

Jersey Legislation

The Panel considered legislation which is available from the States Greffe or:
www.jerseylegalinfo.je

Draft Postal Services (Jersey) Law 2004

Competition (Jersey) Law 2005

Regulation of Undertakings and Development (Jersey) Law 1973

Regulation of Undertakings and Development (Jersey) Regulations 1978

EU Legislation

This EU legislation and documents is available from the 'CONSLEG' service at-
www.europa.eu.int/scadplus/leg/en/s10000.htm

Council Regulation (EEC) No. 918/83 – setting up a community system of reliefs from customs duty (as amended)

Sixth Council Directive of 17th May 1977 - on the harmonisation of the laws of Members States relating to turnover taxes – Common system of value added tax: uniform basis of assessment (as amended) (77/388/EEC)

Council Directive 83/181 of 28th March 1983 – determining the scope of Article 14 (1) (d) of Directive 77/388/EEC as regards exemption from value added tax on the final importation of certain goods (as amended)

52004PC0856 – Proposal for a Council Decision authorising Denmark to apply a measure derogating from Article 14 (1) (d) of the Sixth Directive 77/388/EEC on the harmonisation of the laws of the Member States relating to turnover taxes

UK Legislation

The UK legislation is available at-

www.opsi.gov.uk/si/si1995/Uksi_19953222_en_1.htm

Statutory Instruments – 1984 No. 746 - VALUE ADDED TAX - The Value Added Tax (Imported Goods) Relief Order 1984

The Panel considered the following documents which remain confidential-

Fulfilment Business Strategy - review by Consultants entitled 'Company Growth' - Jersey Post

The Fulfilment Sector in Jersey - report from the Statistics Unit

emails confirming the consolation process used by Stats Unit

Strategic Options for Fulfilment - Jersey Post Board Meeting

List of companies operating in Jersey under the UK Import VAT Accounting Scheme

Letters issued by the RUDL office advising of time limited consent or requirement for licences (RUDL Office copies)

List of companies given time limited licence

Applications under RUD Law refusing licence or change of beneficial ownership

Background information on two refusals for change of beneficial ownership and private meeting with one company owner

Letter of refusal for change in beneficial ownership for local company

Minutes of a meeting with the Minister dated 22.06.06 - RUDL File Access

Notes from a confidential meeting with Mr B Jones

Postage rates for 2006 fulfilment companies

Confidential update from OSL 17/7/06

Clarification of percentages from OSL 26th July 2006 - email correspondence

E-mail to HM Attorney General - questions on Regulation of Undertakings legislation

HM Attorney General response 16th March 2006

Letter to HM Attorney General 6th April further questions re Regulation of Undertakings legislation

HM Attorney General response 8th May 2006

Letter to HM Attorney General 14th July 2006 re drafted questions

E-mail response from HM Attorney General 24th July 2006

Letter to HM Attorney General

Letters dated 26th May 2006 sent to WCC, 3PS and time limited consent Fulfilment Companies

Letter to Senator Ozouf - invitation to hearing 26/7/06

File 2 - Regulation of Undertaking and Development Private and e-mail from Comptroller of Income Tax re tax position of a company

Letter to Chief Minister dated 14th February 06 re Low Value Consignment Relief

Confidential Committee Acts:

Acts of the Economic Development Committee

Act No. B7 of 3rd September 2003
Act No. B9 of 1st October 2003
Act No. B6 of 1st December 2004
Act No. B8 of 30th June 2005

Acts of the Policy and Resources Committee

Act No. B1 of 13th May 2005
Act No. B2 of 3rd October 2005

[1] Transcript of Public Hearing dated 26th July 2006, page 3

[2] Economic Development Committee - 'Policy For The Fulfilment Industry' (August 2005), Section 9

[3] Economic Development Committee - 'Policy For The Fulfilment Industry' (August 2005), Section 16(iv)

[4] Economic Growth Plan, 2005, page 4

[5] The fulfilment industry is essentially built around one provision within the (then) European Economic Community's Council Regulation No. 918/83 (as amended), which set up a 'Community system of reliefs from customs duty'. The relevant provision, (Article 27) states that:

'Subject to Article 28, any consignments made up of goods of negligible value from a third country to a consignee in the Community shall be admitted free of import duties.'

'Goods of negligible value' means goods the intrinsic value of which does not exceed a total of ECU 22 [now 22 Euro, defined as £18] per consignment.'

This means that except for the goods mentioned in Article 28 (Alcohol, perfumes and tobacco) any goods of reasonable value and small enough to be posted can be sold from a base in Jersey to a customer in the UK VAT free, as Jersey is not a member of the European Union (EU, previously the EEC). This exemption to VAT is called 'Low-Value Consignment Relief (LVCR).

[6] Entitled 'What is the contribution of the fulfilment industry to Jersey economy? – An economic growth plan sectoral study' dated 12th April 2006, available online through www.gov.je – 'Oxera 2006'.

[7] At 2003 prices

[8] From Oxera 2006.

[9] From Oxera 2006, p12

[10] Transcript of Public Hearing dated 26th July 2006, page 3

[11] Economic Development Committee - 'Policy For The Fulfilment Industry' (August 2005), Section 9

[12] Economic Development Committee - 'Policy For The Fulfilment Industry' (August 2005), Section 16(iv)

[13] Economic Growth Plan, 2005, page 4

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[15] Amended by Article 22 of Council Directive 88/331/EEC of 13 June 1988.

[16] Entitled 'What is the contribution of the fulfilment industry to Jersey economy? – An economic growth plan sectoral study' dated 12th April 2006, available online through www.gov.je – 'Oxera 2006'.

[17] At 2003 prices

[18] From Oxera 2006.

[19] Mr. J Pinel, Public Hearing 5th April 2006, Section 2.2

[20] Figures quoted by Mr. J. Healey, a UK Treasury Minister

[21] Transcript of Public Hearing dates 26th July 2006, page 8

[22] Statistics Unit report 2005, p1

[23] From Oxera 2006 p16

[24] Transcript of Public Hearing dates 26th July 2006, page 9

[25] Transcript of Public Hearing dates 26th July 2006, page 13

[26] Transcript of Public Hearing dates 26th July 2006, page 5

[27] Transcript of Public Hearing dates 26th July 2006, page 5

[28] Section 5.107 of the UK's Budget Report 2006 – full text available at www.hm-treasury.gov.uk

[29] Transcript of Public Hearing dates 26th July 2006, page 13

[30] The UK could amend or replace the Value Added Tax (Imported Goods) Relief (Amendment) Order 1984, as amended by the Value Added Tax (Imported Goods) Relief (Amendment) Order 1995, which currently sets the level of relief at £18.

[31] HM Customs and Excise – 'Tackling VAT fraud' – 2003 figures

[32] Transcript of Public Hearing dates 26th July 2006, page 13

[33] Posted by Prem Sikka, Professor of Accounting, University of Essex

[34] Posted by Prem Sikka, Professor of Accounting, University of Essex

[35] Transcript of Public Hearing dates 26th July 2006, page 13

[36] FPB site - www.fpb.co.uk/YcFcBT0.html

[37] FPB site - www.fpb.co.uk/YWQYFFBo-NrIRw.html

[38] FPB site - www.fpb.co.uk/YRL4569o-NrIRw.html

[39] The Bailiwick of Guernsey and the Global Telecoms Revolution – Analysis consultants, page ii

[40] Transcript of Public Hearing dated 26th July 2006, page 14

[41] Transcript of Public Hearing dated 5th April 2006, page 58

[42] Transcript of Public Hearing dates 26th July 2006, page 17

[43] Transcript of Public Hearing dates 26th July 2006, page 17

[\[44\]](#) From 'Notes for Fulfilment Industry Briefing' (EDC paper) – page 1

[\[45\]](#) From 'Notes for Fulfilment Industry Briefing' (EDC paper) – page 2

[\[46\]](#) This determines the scope of Article 14 (1) d of Directive 77/388/EEC, as regard exemption from VAT on the final importation of goods. The relevant Provision of 1983/0181/EEC was last amended by Council Directive 88/331/EEC of 13th June 1988.

[\[47\]](#) The UK could amend or replace the Value Added Tax (Imported Goods) Relief (Amendment) Order 1984, as amended by the Value Added Tax (Imported Goods) Relief (Amendment) Order 1995, which currently sets the level of relief at £18.

[\[48\]](#) Transcript of Public Hearing dated 5th April 2006, page 58

[\[49\]](#) Transcript of Public Hearing dates 26th July 2006, page 17

[\[50\]](#) Transcript of Public Hearing dates 26th July 2006, page 17

[\[51\]](#) From 'Notes for Fulfilment Industry Briefing' (EDC paper) – page 1

[\[52\]](#) From 'Notes for Fulfilment Industry Briefing' (EDC paper) – page 2