

Deputy David Johnson
Chair
Economic and International Affairs Scrutiny Panel
By email

24th March 2021

Dear Deputy Johnson

Medicinal Cannabis

Thank you for your letter dated 5th March 2021 and for the opportunity to provide more details about the Government's work to diversify the rural economy through cultivation of a new high value crop, in the form of a well-regulated Jersey medicinal cannabis industry.

Below are the responses to your 24 questions.

Licences, Licence holders and the application process

1. Please can you advise how many companies are registered with a licence to cultivate and manufacture cannabis products?

Two companies are licenced to cultivate cannabis for medicinal use under the provisions of the Misuse of Drugs (Jersey) Law 1995. No company yet has a licence to manufacture a finished medicinal product under the provisions of the Medicines (Jersey) Law 1995.

2. Please can you provide lists of the various licences, along with their cost and the requirements for granting each licence, that will be required for the cultivation and manufacture of cannabis products?

Licence fees for the types of licence can be found at [Misuse of Drugs Law - Licence Fees](#) . Guidance for applicants for licences is attached.

3. Would it be possible for foreign investors to circumvent the Jersey residency requirements by appointing Jersey based legal practices to make applications on their behalf?

Inward investors wishing to establish a company in Jersey which is looking to engage in a licensed activity in the cannabis/hemp sector must incorporate a Jersey Limited Company which will be subject to all relevant legislation and regulation in that respect.

By law, a non-resident individual cannot incorporate a Jersey Limited company. They must use a third party corporate service provider (for example a Class F Trust company business), with the appropriate JFSC licence, to do this on their behalf. This is a standard requirement regardless of Business sector. The third party will provide them with the necessary services in order to meet Jersey Company Law requirements eg. Directors, Company Secretary, if required.

Depending on what activity the company undertakes in the cannabis/hemp sector or what type of structure it sits in, it may additionally fall under Jersey's economic substance requirements which apply to companies with any income from the following relevant categories: Headquartering; Distribution and Service Centres; Operation of a Holding Company; Holding intangible property (Intellectual Property).

If a Jersey Limited company wishes to engage staff in Jersey, it will additionally require a business licence and any relevant staff permissions under the Control of Housing and Work (Jersey) Law 2012 and if there is a significant change in ownership of a Jersey company with share capital (through investment or sale) which reduces the aggregated shareholding of any Entitled, Licensed or Entitled for Work individuals to less than 60%, then an application must be made to Business Licensing for approval of the change.

The requirements for general financial investment in medicinal cannabis are the same as for a Jersey company operating in any other sector. There is no residency requirement,

4. Please can you advise whether a licence can be issued prior to identification of a suitable site and whether a licence can be revoked if no such site is identified?

A licence, which has to be renewed on an annual basis, cannot be issued prior to a potential site being identified and plans for the facility at that site being submitted as part of the application process. Any licence issued based on plans would explicitly prohibit the actual cultivation or processing of cannabis until the site and facilities are built and inspected and deemed to meet the necessary requirements. If the site is not developed the licence will be cancelled, or lapse at the annual renewal, and so no cultivation would be able to take place.

5. Please can you explain the rationale for the minimum 20% shareholding in businesses involved in the cultivation and manufacture of cannabis products?

This is no longer a requirement. The application guidance now requires a list of all shareholders in the applicant company.

6. Please advise why it is not a requirement for all shareholders to provide their details to ensure transparency, and why not all shareholders are named on the licence application?

See answer to question 5.

7. Please can you explain the process for assessing and granting licences, from the paper application stage to granting a licence etc...?

Once an application is received it is shared with the UK Home Office for assessment as part of the MoU with them. The Home Office revert with any questions of clarification and together with the Chief Pharmacist, arrange to undertake a joint site inspection visit and meeting with the applicants to discuss the application and their plans and test their understanding of what is involved.

The Home Office then produce a report for the Minister for Health and Social Services detailing their observations in relation to the application and confirming whether or not the application would be compliant with the provisions of the 1961 UN Single Convention on Narcotic Drugs. This report and the application are reviewed by the Minister and a decision on whether or not to grant a licence is made together with any conditions which might be attached to that licence. Going forward it is proposed that an advisory panel be established to advise the Minister for Health and Social Services in relation to applications prior to any final licencing decision being made. Terms of reference for this panel and currently being developed.

Site Security

8. Who do you envisage will determine any site security issues from both an application and enforcement perspective, and what levels of site security will be in place?

The Planning Department are not able to comment on the need for site security requirements under the licence. Advice on site security is contained in the Guidance for Applicants document (attached).

9. Can you confirm if site security will require any planning permission, and if this will be required prior to the application for a licence?

If the site security requires structures to be built, such as fencing or other barriers, these will require planning permission where they exceed 1.2 metres in height above ground level.

10. Can you confirm if businesses operating under a licence will need to have any additional record keeping requirements?

Record keeping requirements in respect of controlled substances are provided for in the Misuse of Drugs (Jersey) Law 1978. They will be expected to be able to account for every plant grown, yield of cannabis derived from every crop and use of that cannabis. The Home Office require an annual statement from each licence holder in order to inform the UK annual submission to the International Narcotics Control Board (INCB).

11. What levels of due diligence will be carried out on persons operating a licence or employees of persons operating a licence?

As per the application guidance, enhanced DBS checks will be required for the following individuals:

- Managing Director or person in charge of the company
- Person responsible for the security of the premises to be licensed
- Person responsible for legal compliance and regulatory affairs at the site relevant to the application
- Person responsible for witnessing the destruction of controlled drugs for the site relevant to the application (this cannot be the same person that is responsible for legal and regularity compliance).

12. How will monitoring and enforcement measures be funded and resourced?

These will be funded mainly from licence fees, which will facilitate the engagement of additional support for the Chief Pharmacist.

13. In the absence of specific provisions relating to the taxation of profits from cannabis cultivation, how will this impact the future tax liability of applicants?

At this stage there is no product being produced commercially. The Revenue Policy Development Board, chaired by the Chief Minister, is due to meet on 30th March and cannabis industry taxation is anticipated to be an agenda item.

14. Will applicants be able to offset the capital costs of converting premises into facilities for processing cannabis, against future income?

To be determined. Please see answer to Q13 above.

Site Planning and Environmental Considerations

15. Can you confirm if agricultural sites considered for a licence require prior planning permission that accounts for potential light pollution, noise pollution or unwanted smells prior to commencing cannabis cultivation and manufacture?

The cultivation of medicinal cannabis is the same, in planning terms, as any other form of produce. It is an agricultural activity and planning permission is not required to use existing agricultural land or buildings. The making of cannabis products, however, is not an agricultural activity; rather it is an industrial, pharmaceutical or chemical process. Separate planning permission would be required if this is proposed on agricultural land. Additionally, an Environmental Impact Assessment may well be required for this stage.

16. Can you advise what dialogue you have had with the Minister for the Environment, to ensure that applicants are aware of any planning obligations which must be fulfilled prior to commencing cultivation of cannabis?

Officers from the Economy Department and Infrastructure, Housing and Environment (IHE) (responsible for regulation) have frequently liaised on the requirements for planning permission. However, it is for the licensee to approach Planning for the appropriate permissions.

17. Are you aware of any risks from existing planning obligations, that may negatively impact businesses cultivating and manufacturing cannabis products?

Each site will have its own conditions and restrictions. These can only be clarified when a licensee approaches IHE (Regulation) with the proposed site in question.

18. Can you advise why production sites are required to be located away from schools or other childcare facilities?

We believe that this may be a reference to an Environmental Health requirement in place in the UK, not in Jersey.

Memorandum of Understanding – Home Office

19. Could you explain whether local companies, under the Memorandum of Understanding (MOU), will require a Home Office Licence to cultivate and process cannabis, and if so, at what cost?

No Home Office licence is required. All necessary licences are issued by the Minister for Health and Social Services in accordance with Jersey legislation. Costs associated with the Home Office review of applications, site visit and preparation of the report for the Minister for Health and Social Services will be payable by the applicant in accordance with the Misuse of Drugs (Licence Fees) (Jersey) Order 2020. These costs are currently set at £2,500 per application.

20. Could you advise to what extent the UK Drug and Firearms Licensing Unit (DFLU) will be involved in the oversight, monitoring and consultation of cannabis cultivation and processing in Jersey, and what costs might this incur for local businesses and/or the Jersey taxpayer?

As described in the answer to questions 7, 10 and 19. There will be no cost to the Jersey tax payer.

21. Could you confirm if you are considering issuing provisional licences, similar to Alcohol Licensing, for businesses wishing to cultivate and process cannabis products?

Provisional licences will not be issued. Conditional licences which prevent actual cultivation may be issued in advance of facilities being developed with the restriction on cultivation being lifted once the facilities are complete and are inspected and deemed to meet the necessary requirements.

Memorandum of Understanding – DFLU

22. Could you explain how the MOU will operate in practise, in respect of relations between the DFLU and the Jersey Cannabis Agency?

There is a long-standing working relationship between the Head of the DFLU and the Chief Pharmacist around issues relating to controlled drugs. When an application is received by the Chief Pharmacist this will initiate the involvement of the DFLU in the process of reviewing the application and subsequently providing a report for the Minister for Health and Social Services in relation to that application.

23. Could you advise what obligations will be placed on the relevant Jersey authorities and the DFLU under the MOU?

The MoU is a confidential document that rests with the Chief Pharmacist and the Minister for Health and Social Services.

24. Could you provide details about the cost implications of the MOU and any means of redress for local businesses wishing to appeal a decision on costs?

The only cost implication in relation to the MoU would be to the applicants and this is currently set at £2,500 per application as described in the answer to question 19. Applicants will be made aware of these costs, as well as the fees stipulated by the Misuse of Drugs (Licence Fees) (Jersey) Order 2020, before they formally submit an application. Applicants will therefore be fully aware of any fees in association with their licence application and licences are only issued on payment of the necessary fees.

I hope that this letter provides the Panel with the required level of information.

Yours sincerely,



Senator Lyndon Farnham
Deputy Chief Minister | Minister for Economic Development, Tourism, Sport and Culture
+44 (0)1534 440628 l.farnham@gov.je