

7th May 2021

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

Dear Deputy Johnson,

### **Medicinal Cannabis review**

Thank you for your letter dated 23rd April 2021. Please find below the answers to your questions, which I hope provide the information required for the Panel's review into the Regulations for the licence application, production and export of medicinal cannabis on Jersey.

#### **Draft Regulations**

##### **1. Could you provide a timeline to the Panel showing key milestones for the next 5 years?**

Jersey's continued economic success depends on our ability to sustain our core economic activity and on identifying new opportunities for growth that can be delivered in an agile, co-ordinated and sustainable way, with Government moving at the pace of the outside world to create the right conditions for business and commercial interests to thrive.

A key Government priority is to generate additional fiscal receipts to support the Island's economic recovery and to increase productivity within all sectors. Cannabis cultivation appears to present a significant opportunity to bring such growth, and ultimately an increase in productivity in Jersey's rural economy, which in turn will drive increased fiscal receipts into the Treasury.

The Government of Jersey has issued the first licences for commercial cultivation of medicinal cannabis in the Channel Islands, and some of the most recent in the British Isles. Jersey has the mature business environment and robust regulatory system required to support a high value, securely managed medicinal cannabis industry. The issuing of these licences in December 2020 puts Jersey at the forefront of the emerging European medicinal cannabis market.

Jersey has previously stated its intention to diversify its rural economy towards alternative high value crops, including a responsible, well-regulated medicinal cannabis industry in the Rural Economy Strategy 2017-2021. There are 2 key phases required to build a Cannabis Investment Framework for Jersey which are:

Phase 1. The establishment of a Jersey Cannabis Agency under an MoU with the UK Home Office which allows the Island to issue licenses to cultivate, possess and supply cannabis-based product for medicinal use as a regulatory authority in its own right. This has now been achieved by way of an unprecedented agreement between Jersey and the UK Drugs and Firearms Licensing Unit (the UK Cannabis Agency) which was signed on 6<sup>th</sup> October 2020. The first Jersey licenses to cultivate medicinal cannabis were subsequently issued in December 2020.

Phase 2. Amendments to the Proceeds of Crime law which are required to be made altering the policy position on cannabis proceeds to clarify that if cannabis is cultivated, produced or sold in a jurisdiction where it is considered legal (no limitation or restriction applied) those proceeds will not be considered in Jersey to be the Proceeds of Crime. This will require a change to the Proceeds of Crime Law but will significantly clarify the overall positioning of the Jersey 'cannabis proposition' and make it much easier for investors in this new and emergent industry, where, as is the case at the moment, it is difficult to even secure basic end-to-end banking services for businesses considering such investment. It is anticipated that these amendments will be lodged for debate in May 2021.

**2. What regulations do you propose to bring forward and when do you propose the draft regulations will be available for the Panel to view?**

The cannabis industry must comply with existing regulations and legislation in the context of, for example, planning, environmental protection and competition. Consideration is being given to the need for specific legislation relating to cannabis in addition to Jersey's misuse of drugs legislation. Currently the focus is on income tax regulations. It is hoped that drafting will be relatively straightforward and take place over the summer months. The Treasury Minister will ensure that the draft income tax regulations are put before the Panel before they are lodged – and the regulations would need to be in force by 1 January 2022.

**3. Could you confirm what you are using as a foundation for the draft regulations and if they are being merged to take account of international treaties?**

The vires for the income tax regulations are found in Article 143AA of the Income Tax (Jersey) Law 1961. The point regarding international treaties is not relevant to the income tax regulations.

**4. Will the regulations require a change in Jersey legislation? If so, could you provide details of which legislation.**

No further change will be required to tax legislation in order for the regulations to be lodged.

**5. How long do you propose the changes in legislation will take?**

The income tax regulations are likely to be relatively straightforward. It is envisaged that they will be drafted over the summer months.

**6. Could you advise if you are using an external consultancy firm to assist in drafting the regulations?**

No external firms will be engaged in creating the drafting instructions, although the LDO does engage external law drafters for certain projects. The LDO would be able to advise.

**7. Are you confident that working to the MoU, at present, as opposed to approved Jersey regulations is robust, secure and in the best interests of the Island?**

The MoU is required to satisfy the provisions of the 1961 UN Single Convention on Narcotic Drugs. Without the MoU, HCS would not be able to issue any licences to cultivate cannabis without falling foul of the Convention. The MoU will be required irrespective of any changes to domestic legislation as it is the UK that is the State Party to the Convention and not Jersey. HCS therefore need a formal arrangement with the Home Office as the UK Cannabis Agency regarding the issue of any cultivation licences in Jersey.

**8. How does the MoU guidance currently being used by Jersey compare to approved regulations in other jurisdictions?**

The MoU is not a regulatory framework and so cannot be compared to regulations in other jurisdictions. The MoU sets out the working arrangement between the UK Home Office, as the Cannabis Agency, and Jersey regarding the process for issuing licences to cultivate cannabis in order to ensure compliance with the UN convention and any UK obligations under the Convention.

**9. Could you confirm how the structure in the Department of Firearms and Licence Unit (DFLU) within the UK Home Office is currently organised and how many people are assigned to the overall management of the licences issued in Jersey?**

We do not have details on the organisational structure of the DFLU.

**10. Do you have any plans to increase security and tighten regulations at freight companies once the import/export of illegal substances are underway?**

Not at this stage. The licensee is responsible for the safe transport of controlled substances and should follow guidance issued by the Home Office ([Home Office Guidance on Transporting Controlled Drugs](#)). The stocks of controlled substances remain the responsibility of the licensee until the recipient acknowledges receipt and so it will be for the licensee to liaise with their logistics providers around appropriate security for the transport of any controlled substances. There should be a formal contract between the licensee and the carrier/courier stipulating the required level of security and respective responsibilities and also a Standard Operating Procedure for handling controlled substances in transit.

**11. The application guidance states enhanced DBS checks will be carried out as part of the due diligence process. Can you explain what this will involve and how it is different from the standard DBS checks?**

DBS checks can be obtained by applicants from a number of registered providers of criminal record certificates on payment of a fee, completion of a form and verification of identification. A standard DBS check shows offences and cautions recorded on the Police National Computer including spent and unspent convictions. An enhanced DBS check shows the same information plus relevant information provided by police authorities.

**12. Could you provide details of who the enhanced DBS checks will apply to within the structure of any company licences to cultivate and manufacture cannabis products?**

It will apply to all those who are required to be named on the licence application. Current application guidance requires all shareholders to be named on the application and also the following individuals:

- a. Managing Director or person in charge of the company
- b. Person responsible for the security of the premises to be licensed
- c. Person responsible for legal compliance and regulatory affairs at the site relevant to the application
- d. 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)

**13. You have informed the Panel that businesses operating a licence will follow the Record keeping requirements in respect of controlled substances as in the Misuse of Drugs (Jersey) Law 1978. Is this law up to date to incorporate the risks associated with**

**the cultivation and export of cannabis or is it likely to be revised? If so, when will the law be revised?**

The Law is equivalent to UK legislation with regard to record keeping and provisions relating to import and export of controlled drugs. The 1961 UN Convention on Narcotic Drugs dictates that no jurisdiction should issue an export licence for any controlled drug unless the destination jurisdiction has first issued an import licence.

**14. Clause 4.11 of the MoU refers to Annexes A to F with detailed operational information. We appear to have A to D and would be grateful if you could provide E, F and G.**

Annexes attached.

### **Licence Fee and Application**

**1. Could you provide the Panel with how many licences you are proposing to issue annually and the background on how this target has been arrived at?**

There is no target or set number of licenses

**2. How was the licence fee of £2,500 estimated and what costs does the fee cover?**

£2,500 is not the licence fee – it is the maximum fee the Home Office will charge for their work under the MoU. Our licence fees are set in legislation and can be found at [Misuse of Drugs \(Licence Fees\) \(Jersey\) Order 2020](#). The initial licence fee to cultivate, produce, possess and supply cannabis is £7,500 with an annual renewal fee set at £3,750. The fee was set taking into account of UK fees set in 2010 and the time taken in dealing with licence applications in Jersey in order to ensure, as much as possible, that full costs are recovered. The level of fees was also considered by the Misuse of Drugs Advisory Council prior to being set in legislation.

**3. Is there any proposal to increase the licence fee or make it an annual cost as opposed to one off? If the fee is a one-off payment, why has no annual fee been included in proposals as any recurring costs will be incurred by Government?**

There is an annual renewal fee already provided for. The level of fees will be kept under review.

**4. You have informed the Panel in your letter dated 24th March 2021 that the licence fee will pay for the engagement of support for the Chief Pharmacist. With the cost of the licence fee relatively low at £2,500 and only 2 licences having been granted to date, is this adequate to support this function?**

The level of fees set should provide sufficient funding for the engagement of support for the Chief Pharmacist. See also question 2 above.

**5. Does the Chief Pharmacist have capacity within his office to support licensing and regulatory issues related to cannabis production and if not, how will this be dealt with moving forward?**

The Office of the Chief Pharmacist with regard to regulatory matters currently consists of the Chief Pharmacist only. The Chief Pharmacist is currently exploring how best to utilise the funding now being received from licence fees to provide additional regulatory support.

**6. Could you provide the Panel with the procedures currently in place to deal with producers who do not operate under the terms of their licence?**

Any producer not operating under the terms of their licence would be committing an offence. If such transgression was an accidental oversight, then the Chief Pharmacist would work with the producer to rectify matters. If this is not possible, and/or the transgression was a deliberate act the Health Minister could revoke the licence and the matter referred to the police for investigation. If a licence was revoked any stock or crops held by the producer would be destroyed as they would no longer be legally entitled to possess the controlled substances.

**7. Do you have any plans to engage the JCRA to have oversight with regards to any regulatory issues? If not, why not?**

The JCRA regulates telecoms, ports and post and general competition law applies to all businesses. If the producer were abusing a dominant position, engaged in an anti-competitive arrangement or involved in merger or acquisition activity the JCRA would potentially be interested in supervising those situations if they are brought to the JCRA's attention. Otherwise there is no reason for the Authority to become involved at present.

**8. Could you provide the Panel with details of the appeals process in place, if any, should a licence not be granted?**

A refusal to grant a licence could be challenged by an application to the Royal Court for the decision to be judicially reviewed in accordance with Part 16 of the Royal Court Rules. There is no statutory right to appeal a refusal to grant a licence under the Misuse of Drugs Law.

**Tax Revenue**

**1. Could you provide the Panel with a detailed breakdown of the projected tax revenue over the next 5 years?**

The projected level of tax revenue is uncertain at this stage, as the companies involved are at a relatively early stage in establishing their businesses. It is unlikely that there will be any tax revenue for the year of assessment 2021, as the companies will be able to offset their allowable (and not insignificant) set-up costs against profits (if any). However, the Minister is confident that these measures will play an important role in developing Jersey's rural economy; they will provide jobs; and they will ultimately diversify and bolster the Government's revenue streams.

**2. Could you confirm what the current tax rate is for those already granted licences to set up a business in medicinal cannabis? Will this be the same as any future set ups?**

As agreed by the Revenue Policy Development Board, a 20% rate of income tax will be set out in the forthcoming income tax cannabis regulations. This rate will apply to all businesses in scope.

**3. Are there any tax exemptions to be applied to the cannabis industry? If so, could you please provide details.**

The calculation of profits of companies in the cannabis industry will be subject to normal tax principles. No special exemptions will apply.

**4. Could you confirm if there are different tax rates depending on the licence being applied for and if so, could you provide details?**

In the context of medicinal cannabis production, a 20% rate of income tax will apply across the board.

**5. Please provide details of what, if any, tax breaks are available and if they differ depending on licences?**

As stated above, the calculation of profits of companies in the cannabis industry in Jersey will be subject to normal tax principles. This will involve, for example, offsetting allowable set-up costs against profits in the early years. No special tax breaks will apply.

**6. Are the tax rates and tax breaks, if any, in line with other agricultural and export businesses and are they considered fair and transparent?**

The standard rate of income tax for corporates in Jersey is 0%. Ministers are proposing that a 20% rate is appropriate, which is in line with Guernsey.

**Financial and Manpower Implications**

**1. Can you provide a breakdown of how many members of staff within your Department are providing resource, whether part time or full time, to the medicinal cannabis licence application and the project overall?**

3 officers from within the economy directorate provide part-time resource:

- Group Director Economy (PT) Tier 2
- Sector Lead Agriculture and Fisheries (PT)
- Sector Officer Agriculture and fisheries (PT)

**2. What is the weekly financial cost of providing this resource?**

Resources are provided as and when necessary. There is no set pattern beyond a monthly coordination meeting, as such the weekly cost is extremely variable and therefore it is not possible to provide an exact figure.

Yours sincerely,



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