

White Paper

Sunday trading trial de-regulation

3rd February 2014

Purpose and type of consultation

This document sets out the Economic Development Minister's proposal to amend the existing Sunday trading regime for a trial period of eighteen months which will include a review and any resultant legislative amendments.

Currently the vast majority of shops are permitted to open on Sundays. The proposed change is intended to make the current legislation less restrictive by allowing the remaining shops which are prohibited from opening (shops which have a retail sales area of more than 700m²) to apply for a general permit to trade on Sundays throughout the year.

The aim is to give consumers improved choice locally, whilst offering more freedom to local businesses to compete effectively by removing regulatory barriers.

Closing date 28th March 2014

Summary

The Economic Development Department (EDD) is inviting Islanders to comment on a trial de-regulation of Sunday trading.

In 2011 the Law was changed to allow all shops which were below a certain size to trade on Sundays. The decision was made following a public consultation by and a survey in the Jersey Annual Social Survey which both demonstrated support for some relaxation of the Sunday trading rules.

Three years later the economic environment has changed enormously. The retail industry in Jersey finds itself under great pressure from multi-national companies boasting significant economies of scale, and the changing lifestyle demands of technology savvy customers. With the backdrop of the number of high street shops closing nearly doubling in 2013, this paper establishes the Economic Development Minister's position in seeking to assist the retail sector through the complete removal of barriers to trading on Sundays for the trial period.

This trial is one aspect of a broader package of initiatives which has been created as part of EDD's retail development programme designed to support the retail sector in Jersey. This package includes:

- An extension of the GST Visitor Refund Scheme
- Parking incentives
- A programme of retail development workshops
- Coordinated training and development for retailers by Jersey Business
- A partnership with the Chamber of Commerce to develop **Shop Jersey** online

The Council of Ministers would like to hear from:

- members of the public
- representatives of the retail industry
- religious organisations
- trade unions
- parishes and other community officials/representatives.

How to comment

If you have any comments on the Sunday trading trial de-regulation please let us know. You can submit your comments:

- by emailing: economicdevelopment@gov.je
- online at: www.gov.je/consult
- by writing to:

Sunday Trading
Economic Development Department
PO Box 600
Jersey
JE4 8UL

If you are submitting comments, please provide the following information with your response:

1. Your name:.....
2. Your contact details (email; phone; address)
3. Whether you are commenting as an individual or on behalf of an organisation and, if so, the name of the organisation.

Your submission Please note that consultation responses may be made public (sent to other interested parties on request, sent to the Scrutiny Office, quoted in a published report, reported in the media, published on www.gov.je, listed on a consultation summary etc).

Please delete the following as appropriate:

I agree that my comments may be made public and attributed to me

I agree that my comments may be made public but not attributed (i.e. anonymous)
I don't want my comments made public

Trial de-regulation of Sunday trading: White Paper

January 2013

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1. Purpose

This document sets out the Economic Development Department's proposal to amend the existing Sunday Trading regime for a trial period of one year, which together with a six month window to facilitate a review and make any necessary legislative changes, will amount to a total period of de-regulation of 18 months. The change is intended to make the current legislation less restrictive by allowing shops which have a retail sales area of more than 700m² to apply for a general permit to trade on Sundays throughout the year.

The aim is to offer consumers improved choice locally, whilst offering more freedom to local businesses to compete effectively by removing regulatory barriers.

2. Introduction

Sunday Trading in Jersey is governed by the Shops (Regulation of Opening and Deliveries) (Jersey) Law 2010 and the Shops (Regulation of Opening) (Jersey) Regulations 2011 which set out the provisions determining which shops may open on certain days and the making of wholesale deliveries to those shops.

Under this legislation it was established that shops are not generally permitted to open on Sundays and other specified days (Christmas Day, Boxing Day, Good Friday & Liberation Day), but through the Regulations a permit scheme was introduced which allows shops which occupy an area of less than 700m² to open, with the permission of the relevant Connétable.

This position represented a rationalisation of the rules following the canvassing of public opinion through the Jersey Annual Social Survey (2006)¹ and the Economic Development Department's (EDD) public consultation in 2007², in which the overwhelming majority indicated that they were in favour of some form of Sunday trading.

The 700m² threshold came about through agreement at the time the legislation was brought into force that there should be some limitation on the potential disruption caused by Sunday trading, and that it seemed logical to assume that the larger the shop, the larger the disruption. Essentially, the size limit reflects how far Jersey was willing to go as a society in modernising Sunday trading in 2011.

The landscape in which retailers are now operating has changed significantly since the public were last consulted and indeed since the current Law was introduced in 2011. It is important that the EDD responds to these changes and presents retailers with every opportunity to remain competitive, whilst offering consumers more flexibility and choice. With this in mind it is proposed that changes are made to the current regulations on a trial basis in order to respond to the change in environment.

¹ <http://www.gov.je/SiteCollectionDocuments/Government%20and%20administration/R%20JASS2006%20200712%20SU.pdf>

² <http://www.statesassembly.gov.je/AssemblyPropositions/2009/36084-49255-672009.pdf>

3. The Law as it stands

3.1 Existing Permit Scheme

Under the current scheme there are three types of permit:

3.2 General Permit

These may be granted for an individual shop where the retail sales area does not exceed 700m². General permits can authorise the opening of a shop on Sundays, Good Fridays, Liberation Day and the 26th December, or any combination of those days. Conditions can be imposed to control opening hours, deliveries etc. It will be valid throughout the year in which it is granted. The permits run until the 31st December of the year in which they are issued.

A general permit cannot be granted in respects of shops which sell goods with retail sales areas of over 700m². General permits cannot allow a shop to open on Christmas Day.

3.3 Single Permits

These may be granted for any individual shop, and can authorise its opening on a particular date or dates specified in the permit.

A single permit can specify more than one date, and a shop may apply for more than one single permit in a year. However, no shop may open for more than five days in any one year under one or more single permits. Single permits cannot allow a shop to open on Christmas Day or the 26th December. Shops with over 700m² of retail sales area can only open on single, not general permits.

3.4 Blanket permits

A blanket permit authorises the opening in a parish of every shop (including those over 700m²) of a description specified in the permit, on any special occasion as specified in the permit. The Economic Development Minister must declare a special occasion before it can be granted by the placement of a notice in the Jersey Gazette from the Connétable.

The Connétable has discretion over which types of shops are to be affected, and those shops will be permitted to open on one or more Sundays as if they held individual Sunday trading licences. Connétables may not grant blanket permits for any specified day i.e. Good Friday, Liberation Day, Christmas Day or the 26th December.

In 2011 the Minister designated four Sundays before Christmas in every year as special occasions, thereby allowing blanket permits to be issued by the Connétables on an annual basis. This decision was based on the prevailing expectation of both retailers and the general public following the development of the Fete de Noué pre-Christmas festival.

As indicated in the permit scheme, businesses are treated differently according to the type of operation and the size of their measured trading area. Most businesses are able to apply for general permits, while retail businesses over 700m² are only able to open on five Sundays and designated special occasions.

Large shops are therefore able to trade on up to nine Sundays in any year, if you include the four decreed as special occasions in the run up to Christmas.

The permit system was designed to control the operation of large businesses which might cause disruption if they were allowed to open on Sundays. However, it can be argued that keeping these large 'destination' stores closed on the majority of Sundays has reduced the overall volume of trading in St. Helier by limiting the shopping options for the public and making a trip to town less attractive.

3.5 Options for implementation of the trial de-regulation

The trial could be instigated through an amendment to the General Permit system in the Regulations. This method would maintain the Connétables position in retaining some control over any noise and disturbance aspects caused by deliveries and potential increased traffic.

Alternatively the de-regulation could be achieved by removing the permit system altogether which would have the benefit of eliminating the entire administration process. This in itself would constitute the removal of a barrier to Sunday trading.

EDD will be guided by the advice of the Connétables as to which mechanism for implementing the trial is best fit.

4. Current Situation

The EDD's decision to introduce this trial de-regulation has been based on a number of factors. These are summarised below.

4.1 Economic

Since 2008 Europe and much of the world has been suffering one of the deepest and longest recessions recorded and Jersey has not been immune to the effects. Economic activity in Jersey has fallen for the fifth year in a row although this has been driven by the trends in banking sector and in particular the impact of the low interest rate environment. Overall GVA trends in the non-finance sectors of our economy have been much more stable. Although employment has remained close to record levels, the unemployment rate has increased to almost 6%³ - the highest rate ever recorded.

A combination of weak economic conditions locally (as people's incomes have been squeezed) and competition from internet sales has meant that retail sales volumes in total are below what they were in 2008 and particularly in non-food retail. Twenty seven shops have closed in St. Helier during the course of 2013, which is nearly double the number that closed in 2012⁴. Businesses need to be more competitive than ever before in order to survive.

³ ILO measure of unemployment June 2013, JASS 2013 (States of Jersey Statistics Unit)

⁴ St. Helier Town Centre Partnership Statistics

The retail & wholesale sector contributes 7% to Jersey's Gross Value Added (GVA)⁵ and represents 14% of the workforce. While this is relatively small in GVA terms when compared with the finance sector, it is nonetheless a significant employer and an important facet of the Island's economy. These sectors also play a vital role in making the town centre an attractive and vibrant place to spend time, providing leisure activities for residents and visitors.

The exact balance between the economic costs and benefits of allowing the remaining shops in Jersey to open on a Sunday is unclear (and that is one of the reasons the proposal is for a trial period). However, with economic growth objectives focused on raising productivity across the economy there does not appear to be a strong economic case for keeping such regulation in place.

The aims of the proposed de-regulation of the current Sunday trading scheme are to realise the following potential benefits:

- Allow all retailers the opportunity to compete with internet shopping on a Sunday and also to maximise the benefit from the visitor market
- Provide job opportunities for those who want to work on a Sunday and currently cannot
- Allow competition between all retailers on a Sunday and the benefits this can bring consumers
- Maximise efficiency and productivity across the whole retail sector, including reduced congestion and queuing at busier times and reduced wastage for retailers selling perishable goods
- Improve consumer choice and convenience by allowing those who want to shop in the larger stores on a Sunday to do so

However, it is recognised that there are potential costs that could result from the extension of Sunday trading to the remaining larger stores, such as:

- While there is the potential to increase revenues for some retailers there is also the potential to increase variable costs and it is not necessarily the case that the increase in costs will be outweighed by the increase in revenues either for the retail sector as a whole or for individual retailers.
- Shops may be forced to open on a Sunday just to match other stores that do so. (However, some small shops that don't open on a Sunday but want to will be able to during the trial).
- Smaller shops (some of which may already be facing difficult trading conditions) could lose out to competition from the larger stores on a Sunday.
- Some Islanders may face increased social costs from the impact of additional Sunday trading either directly or indirectly.
- Some employees may feel they have to offer to work on a Sunday when they would otherwise choose not to do so.

It is intended through the trial deregulation period and the subsequent evaluation process to get a better understanding of the balance between the benefits and costs in Jersey from extending the opening hours to larger stores.

⁵ Measuring Jersey's Economy: Gross Value Added 2012 (States of Jersey Statistics Unit)

4.2 Globalisation

The world recession has not been the only factor contributing to making the economic environment a difficult place for businesses to survive, competition no longer just comes from local or national rivals, but from all around the globe, giving consumers an array of choices when contemplating any purchase.

Advances and increased adoption of technologies such as broadband internet, smartphones and tablet technology enable consumers to access a global market place. This coupled with low cost international travel and freight distribution means that the Jersey retail industry is increasingly under pressure to compete on choice, availability, convenience, price and service. This is highlighted by the fact that Jersey has comparatively high rates of access to the internet (82%)⁶ which is on a par with the UK which now ranks 8th in a league table for most connected nations⁷.

This is a global phenomenon with real benefits for consumers, however the flip-side is that local retailers face increased competition, often from multi-national businesses, for example Amazon, who can leverage huge economies of scale into their product offerings.

Jersey residents seem to have enthusiastically embraced online shopping. There appears to be a relatively high propensity to make purchases online, with independent market research suggesting that only 2% of respondents (to an online survey) indicated that they did not purchase anything online. The same research indicates that 39% of respondents buy online on a weekly basis, with 4% using the internet to make purchases every day⁸.

These figures are corroborated by statistics which indicate an increase in inbound parcels to the Island of 28% in 2012 with further increases expected in 2013⁹.

Clearly offering consumers increased opening hours is only one part of a complex equation when looking to compete with online offerings which have access to consumers via a variety of devices 24 hours a day, 7 days a week. The retail industry in Jersey will need to evaluate, adjust (and keep adjusting) its business and service models in order to deliver a customer experience which is successful and sustainable.

4.3 Lifestyle

Consumer lifestyles are changing in Jersey. People are working longer, more varied hours and households have a higher than average employment rate for both men (93%) and women (82%)¹⁰ when compared with the European average (men 70% & women 60%)¹¹. It

⁶ Jersey Annual Social Survey 2013

⁷ <http://www.iabuk.net/news/uk-moves-up-to-8th-in-internet-connectivity-league-table>

⁸ 'Electronic Communications' Usage and Behaviour Survey', Island Analysis December 2013

⁹ Jersey Post Report & Accounts 2012

¹⁰ Jersey Annual Social Survey 2013

is therefore no surprise that there is an increasingly limited amount of leisure time available and with shopping increasingly becoming part of our recreational activities the need for shops to provide more flexibility in terms of accessibility through traditional and contemporary sales channels has never been greater.

It is important to recognise that with leisure time becoming scarcer as a result of changes in working cultures, there is a risk that the proposed de-regulation of Sunday trading could lead to further erosion of recreational and family time through the increased availability of shopping and the potential for increased working hours for retail employees.

4.4 Public opinion

The EDD recognises that trading on a Sunday is an emotive issue and that public opinion on these proposed changes will be polarised. Evidence suggests that the majority of people in Jersey support relaxing restrictions although a minority strongly opposes.

EDD consulted on Sunday trading in 2007 (EDD Public Consultation) and before that there was a section in the Jersey Annual Social Survey (JASS) focusing on Sunday trading in 2006. JASS results showed 83% of respondents were in favour of Sunday trading although 53% supported some form of restriction. The EDD Public Consultation showed that 57% favoured Sunday trading, again with the majority supporting some form of restriction.

Within the industry there also appears to be a certain amount of ambivalence as to whether or not the relaxation of Sunday trading regulations would improve commercial activity. A recent survey of retailers indicated that 48% believed more people would visit their store if it was open on a Sunday, whilst 39% believed it would make no difference at all. (REF Chamber)

These statistics are backed up by the fact that despite only approximately 20 shops in St. Helier being excluded from Sunday trading under a general permit in the existing framework, the vast majority choose not to open on Sundays even though they are at liberty to. There is however an argument which suggests that without the lure of the 'flagship' larger shops to customers, the town centre doesn't attract high enough volumes of shoppers to make it worth the while of the smaller shops to open. The trial should prove this point one way or the other.

The Channel Island Competition & Regulatory Authority (CICRA) indicates that it would be in favour of allowing the larger supermarkets to open in Jersey on Sundays. CICRA believes that the benefits would most likely outweigh the disadvantages: "There are likely to be some consumer benefits in large stores opening on a Sunday. Traders may also experience reduced costs, which could be competed away to the benefit of consumers. So CICRA is in favour of allowing traders to choose to open. However, we note that the majority of consumers say they are satisfied with the current supermarket opening hours."¹²

¹¹ http://epp.eurostat.ec.europa.eu/statistics_explained/index.php/Labour_market_and_labour_force_statistics

¹² CICRA Groceries Market Study (January 2014)

The Jersey Consumer Council has also recently called for a relaxation of the Sunday Trading Law and an Island-wide trial. They believe that “the market forces of supply and demand should be allowed to prevail and determine the way forward, with this important and complex decision. There are a host of good reasons for our retailers to operate on a Sunday, none more so than the fact that it has the potential to boost Island employment levels and our local economy.”

5. Employee Protection

5.1 UK

The UK Sunday Trading Act 1994 became effective on the 26th August 1994 and as part of this Act shop workers were given the right to choose whether or not they work on Sundays.

Employees are given the right to opt out of working on a Sunday even if their contract states that they can be asked to do so, by giving 3 month’s written notice to the employer.

Workers can opt in (and out again) as they see fit and are protected against any detrimental action by their employer. Dismissal for lawfully refusing to work on Sundays is automatically unfair¹³.

5.2 Jersey

Currently there is no specific legislative protection for employees with regard to working on Sundays in Jersey. The Employment (Jersey) Law 2003 ensures that employees have a ‘weekly rest period’ of not less than 24 hours in any 7 day period, or a rest period of 48 hours in any 14 day period but makes no specific allowance for employees not to be discriminated against should they decline to work on a Sunday.

Clearly there is concern that the proposed trial could exacerbate any existing issue of shop workers being forced to work on Sundays against their will. Officers from EDD have met with the Employment & Social Security Department (ESSD) and representatives of the Jersey Advisory Conciliation Service (JACS) and agreed that enquiries and complaints will be monitored during the trial in order to assess whether amendments to the Law are necessary should the trial prove successful.

EDD believes that it should remain the prerogative of individuals and families how they choose to spend their leisure time, and indeed whether they want to work or not work on Sundays.

6. Timescale

It is proposed that the changes will be made initially on a trial basis for a period of one year. Following the trial there will be a review period of six months whereby its success will be measured and a decision will be made as to whether the changes should be made permanent. This will require that the de-regulation continues whilst this review takes place

¹³ Sunday Trading Act 1994, Schedule 4

and should the trial be deemed a success, the additional time will also allow for provisions to be made to amend the Regulations on a permanent basis.

The trial period would commence in June 2014 and be measured on its success after 12 months, in June 2015. Bearing in mind the permits need to be renewed every December for the following year, it is proposed that the period of de-regulation will last until December 31st 2015, leaving 6 months to make any necessary amendments should the decision be taken to make the changes permanent.

7. Measurement

The trial will be monitored over the one year period and measured by (but not limited to) the following indicators:

- Retail sales figures over the period: Jersey Retail Sales (States of Jersey Statistics Unit)
- Footfall in St. Helier (Town Centre Manager statistics)
- Inbound parcel traffic (Jersey Post statistics)
- Customer satisfaction (survey)
- Employment levels in the sector (to include an assessment of the ratio of Entitled to Registered retail workers) (States of Jersey Statistics Unit)
- Impact on out-of-town attractions