

# Sunday trading in Jersey

## Guidance notes for applicants for Sunday trading permits

The notes should be read alongside the Shops (Regulation of Opening and Deliveries) Law 2010 and the Shops (Regulation of Opening) (Jersey) Regulations 2011

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## **Background to the Sunday trading permit scheme**

On 4th November 2009, the States approved the Shops (Regulation of Opening and Deliveries) Law 2010 (the 2010 Law). On 21st July 2011, the States approved the Shops (Regulation of Opening) (Jersey) Regulations 2011.

This legislation establishes a permit scheme for Sunday trading. That scheme is basically proscriptive in that it establishes that shops are not generally allowed to open on Sundays and other specified days (Christmas Day, Good Friday, Liberation Day, and 26th December).

With this principle established, the Regulations create a permit scheme to allow shops to open on these days with the consent of the relevant Connétable, subject to limitations the Connétable may impose.

## **The effect of the scheme**

The scheme is intended to allow shops to trade on Sundays and other specified days at the discretion of the Connétables. In order to create a simple and enforceable scheme there is no approved lists of goods that can be sold or types of shop that can open.

The type of permit for which a shop can apply is determined by its size and whether it supplies goods or provides services. This is intended to allow smaller shops to open but control larger shops which may be more disruptive to local residents and generate more car journeys, etc.

In determining an application, Connétables will consider the size and type of shop and its effects on the peace and tranquillity of the neighbourhood and the potential nuisance to residents<sup>1</sup>.

## **Types of permit<sup>2</sup>**

Three types of permit exist under the new legislation-

- General permit - these may be granted for an individual shop where the retail sales area does not exceed 700 square metres. General permits can authorize the opening of a shop on Sundays, Good Friday, Liberation Day and 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. These permits run until 31st December of the year in which they are granted.

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

- Single permits - these may be granted for any individual shop, and can authorize 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 5 days in any one year under one or more single permits. Single permits cannot allow a shop to open on Christmas Day or 26<sup>th</sup> December. Shops with over 700 square metres of retail sales area can only open on single, not general, permits.

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<sup>1</sup> 2011 Regulations, Regulation 10

<sup>2</sup> 2011 Regulations, Regulation 6

- Blanket permits - these are granted by a notice from the Connétable published in the Jersey Gazette.

The Connétable can specify 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 26th December.

### **Sale of goods and provision of services**

Businesses which provide services<sup>3</sup> are treated differently from those which sell goods. This means that businesses which provide services can apply for general permits to open on every Sunday and specified days (subject to the agreement of the Connétable) regardless of their size. Cinemas and theatres, for instance, might have an area for commercial use over the 700 square metre limit, but would still be able to open on Sundays and specified days.

Shop that sell goods, (i.e. supermarkets, hardware stores etc) are treated differently if they have a retail sales area of more than 700 square metres as shops of that size can only apply for single permits. This limits those shops to trading on only up to 5 Sundays or special days per year.

### **Meaning of 'retail sales area'<sup>4</sup>**

The retail sales area of a shop is the floorspace used for the 'commercial activity' of retail. This comprises the area that is dedicated to the sale or hire of goods, or the display of goods for sale<sup>5</sup>.

This includes the working space behind any counter but not offices, storage areas (to which the public is not given access), staff facilities such as staff kitchens or staff washroom (to which the public is not given access).

For the purposes of the legislation, a business that dispatches or delivers goods treats the floorspace used for that purpose as 'retail sales area'.<sup>6</sup>

If a shop has more than one area from which it sells goods, the retail sales area is measured by adding all of these together. This is broadly in keeping with the definition used in the UK.

NOTE - the exact definition of retail sales area is important and applicants should read Regulation 2 of the Shops (Regulation of Opening) (Jersey) Regulations 2011 for an exact definition.

### **Permit scheme for large shops**

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 will be able to apply for general permits, while some businesses of certain types which use over 700 square metres for commercial activity will only be able to open on 5 Sundays or specified days per year.

This system is designed to control the operation of large businesses that might cause disruption if they were to trade on Sunday or specified days, while maintaining a level playing field for those businesses across the Parishes.

<sup>3</sup> 2011 Regulations, Schedule 2, Part 1

<sup>4</sup> 2011 Regulations, Regulation 2

<sup>5</sup> 2010 Law, Article 1, Section 2 (a) (i)

<sup>6</sup> 2010 Law, Article 1, Section 2 (a) (ii)

The legislation does not permit a business to reduce its trading area to 700 square metres or less on Sundays or specified days in order to acquire a general permit. The size of the retail sales area that is used on weekdays is the defining factor.

The size of a business retail sales area, and therefore its eligibility for a general permit, must be established by means of a plan, prepared and certified as accurate by a surveyor, showing the measurements and size of space that will be used as retail sales area.

### **Surveyor's plans and proof of size<sup>7</sup>**

When a business which sells goods to the public is making an application for a general permit, it must include a statement of the retail sales area of the shop (as detailed above).

Some (but not all) businesses are required to provide a surveyor's plan detailing the layout and size of the retail sales area.

Businesses that must provide a surveyor's plan are-

- Businesses which claim to have a retail sales area of 700 square metres or less, and which sell goods to the public and have not previously applied for a Sunday trading licence under the new legislation.
- Businesses which claim to have a retail sales area of 700 square metres or less, and which sell goods to the public and have made alterations to the size and/or layout of their retail sales area since their last application for a Sunday trading licence under the new legislation.

Businesses that do not need to provide a surveyor's plan are-

- Any business that provides only services and not goods to the public
- Any business over 700 square metres
- Any business that has previously applied for a Sunday trading licence under the new legislation and has not since altered the size or layout of its retail sales area.

A surveyor's plan is necessary because under the new Law there is a commercial benefit to a business if it informs the Connétable that its retail sales area is 700 square metres or less, and therefore statements to this effect must be supported by evidence.

Although shops seeking to obtain a general Sunday trading permit will have to provide a surveyors plan with their first application, when a business makes its second and subsequent applications, if the retail sales area of the shop has remained the same then the Connétable may accept a statement from the business that the retail sales area has not changed since the last application was made.

Also, the plan is not required if the shop is a vehicle.

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<sup>7</sup> 2011 Regulations, Regulation 8 (6)

## **The application process**

Shops must apply for a Sunday trading permit to the Connétable of the Parish in which they are situated, using the approved forms for single and general permits.

When deciding whether or not to grant a permit, a Connétable will consider what effect the opening of the premises will have on-

- The peace and tranquillity of the neighbourhood.
- The avoidance of nuisance to residents.

These effects will be governed to a large extent by-

- The kind and size of a shop.
- Any noise, traffic and litter that could result from its opening.

When determining an application, a Connétable may inspect a shop, or appoint someone to do so. An appointed inspector must report to the Connétable in writing, with a copy passed to the applicant. The Connétable will inform the applicant that they may make written representations in respect of this report. The Connétable will then consider both the inspector's report and any written submission when determining the application.

After making a decision, the Connétable will respond to the applicant in writing to inform them of the decision and, if the application has been refused, to notify them of the appeal procedure.

If a Sunday trading permit is issued, it must be displayed by the permit holder in a conspicuous place when it is required for the shop to open (on Sundays and special days).

An appeal mechanism exists for applicants whose permit application has been refused.

## **Special occasions and blanket permits**

The Economic Development Minister has the power, after consultation with the Comité des Connétables, to declare any day except Good Friday, Liberation Day, Christmas Day or 26th December to be a special occasion.<sup>8</sup>

On such special occasions, Connétables may publish a notice in the Jersey Gazette granting permission to trade to all shops of specified types (a 'blanket' permit)<sup>9</sup>. The Connétable has discretion over which types of business are included in this blanket permit. Conditions can be imposed upon shops opening under a blanket permit in the same way that they can in relation to a single permit.

## **Conditions on permits**

Connétables have broad powers to apply conditions on both general<sup>10</sup> and single<sup>11</sup> permits to ensure that shops trading on Sunday do not adversely affect the public's enjoyment of Sundays and special days.

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<sup>8</sup> 2011 Regulations, Regulation 4

<sup>9</sup> 2011 Regulations, Regulations 6 and 15

<sup>10</sup> 2011 Regulations, Regulation 12

<sup>11</sup> 2011 Regulations, Regulation 13

Conditions can include (but are not limited to) restricting opening hours, restricting the number and timing of deliveries, and specifying arrangements for parking and traffic management.

These conditions will vary on a permit-by-permit basis, as different shops in different locations will have a varying impact of peace and tranquillity, etc.

These conditions may be appealed against by dissatisfied applicants.

### **Responsibilities of permit holders**

The permit holder, for the purposes of the legislation, is the business to which it is granted and not the owner, manager, or other staff. A Sunday trading permit for a limited company would therefore apply to 'Smiths Limited', not to 'Mr. J. Smith, sole shareholder'. In the case of a partnership or a sole trader the individuals are both the owners and the business, so this distinction does not apply.

General permits contain automatic conditions that require permit holders to notify the Connétable if certain aspects of a business are changed<sup>12</sup>. Permit holders must notify the Connétable within 7 days if-

- There is any change in the size of the retail sales area of the shop for which the permit is granted.
- If the manager of the shop changes.
- There is any change of the predominant use of the shop.
- If the permit holder ceases to occupy a shop.

Permits must be displayed in a conspicuous place, easily visible to customers, when the shop is trading on a Sunday or special day.<sup>13</sup>

If a permit holder changes premises and leaves a shop, any Sunday trading permits (single or general) that are in force in respect of that shop cease to have effect.<sup>14</sup>

A Sunday trading permit holder must provide his permit on demand to the Connétable or to a person appointed by the Connétable (this demand can be made on any day, not just Sunday). The permit holder has the right to demand to see authorisation in this case.

### **Revocation of permits<sup>15</sup>**

The legislation is proscriptive, which means that shops generally cannot open on Sundays<sup>16</sup>. Variations from this position (i.e. Sunday trading permits) are at the discretion of the relevant Connétable, with consideration given to the guidance to Connétables issued by the Comité.

A Sunday trading permit therefore does not grant a permanent right to trade, and Connétables can change the conditions on a permit and even revoke them if they have cause to do so.

The specific conditions which allow a Connétable to revoke a previously issued permit are-

<sup>12</sup> 2011 Regulations, Regulations 12 (1) to (3)

<sup>13</sup> 2011 Regulations, Regulation 12 (4)

<sup>14</sup> 2011 Regulations, Regulation 17

<sup>15</sup> 2011 Regulations, Regulation 18

<sup>16</sup> 2010 Law, Article 2 (1)

- If one or more conditions of the permit have been contravened.
- If the opening of the shop damages the peace or tranquillity of the neighbourhood, or causes nuisance to residents.
- In the case of a general permit only, if the shop no longer fulfils the requirements for the grant of a general permit (if the size or type of business has changed).
- If the permit holder has been convicted of any offence under the Shops (Regulation of Opening and Deliveries) Law 2010.

The legislation allows a Connétable to revoke a permit even if the holder has been convicted of an offence that does not involve the particular permit. For instance, if a company occupied two shops in different Parishes and was convicted of an offence under the Shops (Regulation of Opening and Deliveries) Law 2010 carried out in one Parish, the Connétables of both parishes would have grounds to revoke the respective licences.

If a Connétable proposes to revoke a permit, the Connétable will give the permit holder notice in writing of his or her intention to do so. The written notice will specify the reasons for doing so and inform the permit holder that they may respond with a written representation within 21 days.

The Connétable will consider the permit holder's representation when it arrives, or if 21 days have passed with no representation being provided, and then make a decision on the permit. The Connétable will then write to the permit holder with a final decision, and inform the permit holder of their right of appeal to the Comité. A Connétable can allow a permit holder additional time to respond if they see fit.

The Connétable will follow this process even if the revocation of a permit is as a result of the holder having committed an offence under the Shops (Regulation of Opening and Deliveries) Law 2010.

A Connétable does not have to follow this process if they choose to refuse a new application for a permit, including an application for a business that has previously held a permit (for instance when a new permit is required at the beginning of a year).

A permit holder may appeal to the Comité des Connétables against the decision of a Connétable to revoke a permit.

### **Variation of permits<sup>17</sup>**

A Connétable has the power to modify (vary) Sunday trading permits previously issued to shops. The Connétables have wider powers to do this than to revoke permits, and can do so on any grounds. For example, a Connétable could add a condition in June to a permit issued in January requiring that a business must implement a traffic management system when it is trading on Sunday to ensure that traffic congestion is minimised.

Permit holders may also write to the Connétable to request that an existing permit be varied.

If a Connétable wishes to vary a permit, or intends to refuse to change a permit as the holder has requested, then the Connétable will write to the permit holder to give notice of the intention to do

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<sup>17</sup> 2011 Regulations, Regulation 16

so. The Connétable will specify the reasons for doing so and will inform the permit holder that they may respond with a written representation within 21 days.

The Connétable will consider the permit holder's representation when it arrives, or if 21 days have passed with no representation being provided, the Connétable will make a decision on the permit. The Connétable will then write to the permit holder with a final decision, and inform the holder of their right of appeal to the Comité des Connétables.

A permit holder has the right to appeal if they are dissatisfied with the Connétable's decision to either vary or refuse to vary a permit.

## **Appeals**

The legislation makes provision for two levels of appeals against decisions made in relation to Sunday trading, firstly to the Comité des Connétables to review a decision of a Connétable<sup>18</sup>, and then to the Royal Court against the decision of the Comité des Connétables<sup>19</sup>.

The legislation gives three grounds for appeal-<sup>20</sup>

- An applicant may appeal on the grounds that a Connétable has refused to grant an application for a new permit or refused to vary the conditions of an existing permit.
- An applicant may appeal on the grounds that a Connétable has approved a permit subject to conditions that the applicant wishes to change.
- A permit holder may appeal on the grounds that the Connétable has revoked or changed their existing permit.

If the applicant or holder wishes to challenge the decision of the Connétable, they may within 21 days (or longer if the Connétable allows) either -

- Request details of the Connétable's reasons for making such a decision, and then within a further 21 days (or longer if the Connétable allows) contact the Connétable to request appeal to the Comité des Connétables, or
- Contact the Connétable to request appeal to the Comité des Connétables.

On receiving notice that an applicant or permit holder wishes to appeal to the Comité, the Connétable will contact the Chairman of the Comité des Connétables, who will convene a Panel of three Connétables (not including the Connétable whose decision is to be reviewed) to consider the appeal on behalf of the Comité.

If the appeal concerns a decision of the Chairman, the Vice-Chairman will form a Panel instead.

The applicant or holder should provide the panel with details in writing of the grounds on which they want to appeal. A copy should be sent to the Connétable whose decision is being appealed.

The panel will then meet as soon as possible to consider the written submission and decide the appeal. The panel has powers to confirm, reverse or vary the decision of the Connétable.

Once a decision is made, the panel will write to the applicant, detailing its decision and reasons, with reference to the submission of the applicant and any information received from the

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<sup>18</sup> 2011 Regulations, Regulation 20

<sup>19</sup> 2011 Regulations, Regulation 21

<sup>20</sup> 2011 Regulations, Regulations 19 (1) and 20 (1)



Connétable whose decision was being reviewed. This correspondence will be copied to the Connétable who made the initial decision.

The response from the Panel will also inform the appellant of their rights to continue the process to the Royal Court.

NOTE - applicants or permit holders wishing to appeal against the decision of a Connétable or the Comité des Connétables should read the relevant section of the Shops (Regulation of Opening) (Jersey) Regulations 2011 carefully to ensure that they understand their rights.