

Consideration document: unincorporated association

Guidelines for using this document:

Complete Qualifying questions 1-8 and shade in the boxes to confirm if you agree or disagree. If the application fails on any of the qualifying criteria, you should halt the review and call the business to explain what steps need to be taken before the application can be continued. This can be found in column "E" - officer notes

Once the application has passed the qualifying questions, you should move on to the main questions, shading the appropriate 'agree/disagree' box in the spreadsheet. Where you are unsure whether the information agrees or disagrees with a specific criteria or the consideration has prompted another question, you should record this in the notes text box and then ensure you call the business to find out the answer

In order for a resident business licence to be granted, the application must agree with all factors on the consideration document.

No.	Consideration	Agree	Disagree	Officer notes	Policy option 1	Policy option 2	Policy option 3
1	The applicant does not already have a business licence for this activity			Sometimes an applicant will forget they had a licence in place. If this is the case and the new activity is the same, let them know the application is withdrawn			
2	The applicant (s) have an in date Entitled/Entitled for work status			Enter the social security number of the applicant (s) on Nessie to verify their residential status and expiry date If either applicant is 'Registered' or you are unable to verify they are Entitled/Entitled for work, you should pause the application and call the applicant to determine if they are (a) planning on working in the organisation and (b) they believe their status to be Entitled/Entitled for work. <b>Scenario 1:</b> If (a) and (b) are true ask the applicant to email customerservice@gov.je to update their residential status. Pause the application until this is completed and the applicant in question has entitled for work status. <b>Scenario 2:</b> If the applicant is Registered, but not planning on working for the organisation, gain written confirmation of this before proceeding with the review of the application. <b>Scenario 3:</b> If the applicant is Registered and is planning on working in the organisation, inform them that normal policy is to grant a business licence to working owners that have 'entitled for work' status and that the application is likely to be refused. Offer them the opportunity to withdraw the application. If they do not wish to do this, you should speak with Locate Jersey to confirm if the organisation would meet their criteria. If not, the application should be refused.	In addition, the Policy of the Minister is to grant Registered permissions only where it adds the greatest economic or social value, and the application received is not considered to be compelling enough to justify granting a business licence. In particular the application relates to an undertaking which provides services that are readily available from other undertakings in the Island and where there is demand for such services the expectation is that other undertakings will respond to that demand without the need to grant a business licence inclusive of a Registered permission taking into account the Policy of the States of Jersey to control migration.  - in particular the business is unable to provide information regarding the businesses track record in terms of business turnover, profitability, contribution to tax revenues etc. to demonstrate expected benefits to Jersey if operating in Jersey.	The Minister encourages new enterprises, but within the limits of policy and to grant a business licence inclusive of a person (or persons) whose status is Registered will place, or has the potential to place, demands on the Island's limited resources, for example health, education, housing, transport systems.  Normal policy is to grant business licences to individuals whose status is Entitled/Entitled for work	There is no presumption against people who are not resident or Registered from being the beneficial owners of an undertaking. However, ownership does not confer any right to work in an undertaking or to obtain a permission to work in that undertaking (and permission may be refused if there are reasonable grounds to believe this to be the case).
3	The applicant has provided a copy of an email from the JFSC confirming they have successfully registered and remain registered as a 'Not for profit' (NPO) organisation.			An NPO is an organisation established solely or primarily for charitable, religious, cultural, educational, social, or fraternal purposes, with the intention of benefiting the public or a section of the public and which raises or disburses funds in pursuance of those purposes. Funds raised must never be paid out to individual members as profit. It will also include an organisation by means of persons acting as trustees of a trust. Any NPO that raises more than £1000 in a 12 month period (e.g. a sports club through memberships) must register with the JFSC. Registration allows the JFSC to check that the organisation is not being used to fund illegal or illicit activity at the point of registration and also gives the commissioner the power to request information in future from a registered NPO should concerns arise under the not for profit (Jersey) law			
4	The applicant has provided a signed copy of the Associations constitution which contains a list of committee members and their roles and the rules and aims of the organisation.			<b>Advocate Veronica Dempsey definition</b> "An unincorporated association is an example of a non-legal entity which is an organisation of two or more persons, who are the members of the association. The membership may change from time to time. The members agree, usually in a written constitution, to co-operate in furthering a common purpose. The affairs of an unincorporated association are usually managed by a committee chosen by the members." The signed constitution in combination with the registration with the JFSC as an NPO confirms to business licensing that this organisation has appropriate governance in place			
5	If the Organisation is one of the following, they must have gained the prior agreement of the authority listed in Cell E6: - Taxi Driver or taxi app - Any form of gambling - Cannabis cultivation - producing animal food - retailing food supplements			<b>Taxi Driver/Taxi App</b> - Approval is first needed from the DVS and you should contact Richard Le Marquand (R.LeMarquand@gov.je) to check if DVS licence has been issued. If confirmed, continue to review the application. If no licence has been issued, you should pause the application and notify the applicant that they must first get DVS approval providing DVS contact details as necessary. Use this template: "Good morning Richard Please can you confirm if (insert name) (insert DOB) has satisfied the requirements of DVS to be a taxi driver." <b>Gambling</b> - Approval is first needed from the Jersey Gambling Commission (JGC). If this approval is not provided, you should contact 828540 and request to speak to an officer to determine if they have approved the activity. If no approval has been issued, you should pause the application and notify the applicant that they must first get JGC approval providing contact details as necessary. <b>Cannabis cultivation</b> - Organisations in this sector also require approval from the Health Minister. This process is significant and can take several months, so we can issue the business licence before this licence is in place. However, we must email Scott Meadows on S.Meadows@gov.je to check if the new organisation has begun the process. If they have, we can continue the review of the application. If they have not, we should pause the application and request that they speak with Scott before they come back to notify us if they would like to continue with the application. Once Scott is content that the organisation is underway with the application to the Health Minister, we can continue to review the application as the organisation will require a business licence to begin employing staff, open bank accounts etc. <b>Producing animal food</b> - please refer all applications to Alistair Bred, Chief Veterinary Officer. This is a highly regulated area and it's unlikely that they will meet the requirements to do this type of activity - Animal Health Waste Food Order (Jersey) 2018 as amended <a href="https://www.jerseylaw.je/laws/unofficialconsolidated/Pages/02.020.05.aspx">https://www.jerseylaw.je/laws/unofficialconsolidated/Pages/02.020.05.aspx</a> / - Animal Health (Animal By-Products) (Jersey) Order 2018 as amended <a href="https://www.jerseylaw.je/laws/revisted/Pages/02.020.15.aspx">https://www.jerseylaw.je/laws/revisted/Pages/02.020.15.aspx</a> <b>Retailing food supplements</b> - there is no permission they need to acquire first. However if the application is successful will place the following condition on the licence: 'that this licence is granted subject to there not being any contravention of the Medicines (Jersey) Law 1995, as amended (or any enactment made under it)'	Each application to commence a resident business and / or employ staff whose status is or would be Registered or Licensed is looked at on its own merits based on the criteria we have regard to: a. Preserving and maximising the benefits of Jersey's resources b. Promoting a balanced and prosperous economy c. Protecting the integrity and reputation of Jersey in commercial and financial matters d. Any relevant policies of the States of Jersey e. Whether such a grant would be in the public interest. and		
6	the activity is NOT listed on table 1 of the JFSC's Sound business practice policy ("Registered, Authorised and/or supervised activities") -			if the activity is listed on table 1, you should halt the application and explain that the applicant must first speak with the JFSC and incorporate a company in Jersey. This is required by anyone wishing to undertake supervised activities. Explain that once they have successfully done this, they should complete the business licence for a limited company. Contact details for the JFSC can be found here: <a href="https://www.jerseyfsc.org/">https://www.jerseyfsc.org/</a>			
7	the activity is NOT listed on table 2 of the JFSC's Sound business practice policy ("Activities that pose a potential risk to the reputation of the Island and are not within the scope of table 1")			if the activity is listed, pause the application and notify the applicant that given the activity, further advice is being sought. Refer to a Specialist Officer who will seek the advice of the relevant specialist government department to support decision making. Following the advice, refer up to management to confirm decision making and see if there are any other bodies that should be sought for a view.	Each application to commence a resident business and / or employ staff whose status is or would be Registered or Licensed is looked at on its own merits based on the criteria we have regard to: a. Preserving and maximising the benefits of Jersey's resources b. Promoting a balanced and prosperous economy c. Protecting the integrity and reputation of Jersey in commercial and financial matters d. Any relevant policies of the States of Jersey e. Whether such a grant would be in the public interest. and		
8	The organisation is NOT requesting Registered or Licensed staff			if the business is requesting Registered/Licensed staff, you should pause the application and consider any additional information provided against the Registered or Licensed permission consideration template. Locate Jersey and Digital Jersey often support new business applications requiring Registered/Licensed permissions, so if the application has not come from one of these partners, you should contact them to see if they would support the applicant. If it is unlikely that the requested Registered/Licensed permissions would be granted, you should discuss the importance of this with the applicant before continuing with the review as they may decide not to continue with the application if they are not permitted the additional staff member	In addition, the Policy of the Minister is to grant Registered permissions only where it adds the greatest economic or social value, and the application received is not considered to be compelling enough to justify granting a business licence. In particular the application relates to an undertaking which provides services that are readily available from other undertakings in the Island and where there is demand for such services the expectation is that other undertakings will respond to that demand without the need to grant a business licence inclusive of a Registered permission taking into account the Policy of the States of Jersey to control migration.  - in particular the business is unable to provide information regarding the businesses track record in terms of business turnover, profitability, contribution to tax revenues etc. to demonstrate expected benefits to Jersey if operating in Jersey.	The Minister encourages new enterprises, but within the limits of policy and to grant a business licence inclusive of a person (or persons) whose status is Registered will place, or has the potential to place, demands on the Island's limited resources, for example health, education, housing, transport systems.  Normal policy is to grant business licences to individuals whose status is Entitled/Entitled for work	There is no presumption against people who are not resident or Registered from being the beneficial owners of an undertaking. However, ownership does not confer any right to work in an undertaking or to obtain a permission to work in that undertaking (and permission may be refused if there are reasonable grounds to believe this to be the case).
<b>Main questions</b>							
1	Check the form has been filled out fully and correctly			if any sections have been missed, contact the applicant to fill in over the phone. If the signature has been missed, the applicant will need to come in to complete this	<b>if info not received within 4 weeks of request</b> I write further to your application to carry on a X undertaking in the island to permit additional Registered/Licensed staff to be engaged by Y.I wrote to/mailed you requesting additional information however I can see from our records that no response has been received to date. I have therefore withdrawn the application. Should you wish to operate an undertaking in the future, information is available on <a href="http://www.gov.je/working/startbusiness/pages/settingupbusiness.aspx">http://www.gov.je/working/startbusiness/pages/settingupbusiness.aspx</a> on the setting up a business page where you can find information on how to apply.		
2	check the nature of the undertaking to ensure that it makes reasonable sense			A business licence can be issued in accordance with the information submitted, so we do not need to worry too much about what it says for the nature in the application, we can just place in what the applicant said. However, there are word limits on CRM and there are occasions where the applicant wording does not make sense, so if the nature is to be something different from what the applicant wrote, we should call them to confirm they agree any proposed new wording	<b>if info not received within 4 weeks of request</b> I write further to your application to carry on a X undertaking in the island to permit additional Registered/Licensed staff to be engaged by Y.I wrote to/mailed you requesting additional information however I can see from our records that no response has been received to date. I have therefore withdrawn the application. Should you wish to operate an undertaking in the future, information is available on <a href="http://www.gov.je/working/startbusiness/pages/settingupbusiness.aspx">http://www.gov.je/working/startbusiness/pages/settingupbusiness.aspx</a> on the setting up a business page where you can find information on how to apply.		
3	if the activity involves activity with vulnerable adults or children ensure the applicant has provided a basic DBS within the last 6 months			A basic DBS check should be requested for any of the main officers of the committee who will be working in the organisation	Each application to commence a resident business and / or employ staff whose status is or would be Registered or Licensed is looked at on its own merits based on the criteria we have regard to: a. Preserving and maximising the benefits of Jersey's resources b. Promoting a balanced and prosperous economy c. Protecting the integrity and reputation of Jersey in commercial and financial matters d. Any relevant policies of the States of Jersey e. Whether such a grant would be in the public interest. and	<b>if info not received within 4 weeks of request</b> I write further to your application to carry on a X undertaking in the island to permit additional Registered/Licensed staff to be engaged by Y.I wrote to/mailed you requesting additional information however I can see from our records that no response has been received to date. I have therefore withdrawn the application. Should you wish to operate an undertaking in the future, information is available on <a href="http://www.gov.je/working/startbusiness/pages/settingupbusiness.aspx">http://www.gov.je/working/startbusiness/pages/settingupbusiness.aspx</a> on the setting up a business page where you can find information on how to apply.	
4	You have received written confirmation that the applicant understands that their NPO registration does not give them any protections over the name they have chosen and there is nothing stopping another organisation choosing the same name. To safeguard against this, they should register their organisation name (e.g. Jersey Cricket Board) as a registered business name with the JFSC using the RBN1 form on the JFSC website. This is their choice.			Send the following template: Dear (insert applicant name)  While the business licence will be granted in your association name, this does not give you any protections over the name and there is nothing stopping another organisation choosing the same name. To safeguard against this, you can register your organisation name as a registered business name with the JFSC using the RBN1 form on the JFSC website. You should do this once your business licence is granted. This is optional and you can complete this here: <a href="https://www.jerseyfsc.org/registry/registry-forms/business-name-form/">https://www.jerseyfsc.org/registry/registry-forms/business-name-form/</a>  Kind regards (insert name)  <b>Note</b> - There have been some occasions where organisations that are NPO's have been using a name that another commercial (for profit) organisation operating in a similar space wishes to use. While this is not an important concern for many NPO's and unlikely to crop up regularly, it is important to gain the written confirmation of their understanding of this to safeguard against future concerns. Save this email in the application register.  <b>Advocate Veronica Dempsey advice confirming the licence can be in the name of the unincorporated association</b> As you have noted, normally applications for business licences come from legal persons such as companies, individuals, partnerships and incorporated associations. But it is clear from Article 25 of the Law that any person, whether a legal person or not, who carries on an undertaking, must obtain a business licence.  An unincorporated association is an example of a non-legal entity which is an organisation of two or more persons, who are the members of the association. The membership may change from time to time. The members agree, usually in a written constitution, to co-operate in furthering a common purpose. The affairs of an unincorporated association are usually managed by a committee chosen by the members.  I have no doubt that when an unincorporated association is granted a business licence it should be issued in the association's name for identification purposes and pragmatic reasons eg that identified regarding changing members. I note this is what happens in practice – the name on the licence is that used by the unincorporated association, as shown on the application form.  The Law imposes, amongst other things, obligations on holders of business licences. The effect of Article 23(b) of the Law is for those applying and enforcing the law to be			

Action: Issue licence provided you have selected 'agree' for all qualifying and main questions. You can grant the licence in the name of the Association (see legal advice above). Ensure you name the nominated officers/committee members in the app register of CRM