

STATES OF JERSEY



DRAFT RESTRICTION ON SMOKING (AMENDMENT No. 4) (JERSEY) LAW 201-

**Lodged au Greffe on 29th May 2014
by the Minister for Health and Social Services**

STATES GREFFE



Jersey

DRAFT RESTRICTION ON SMOKING (AMENDMENT No. 4) (JERSEY) LAW 201-

European Convention on Human Rights

In accordance with the provisions of Article 16 of the Human Rights (Jersey) Law 2000, the Minister for Health and Social Services has made the following statement –

In the view of the Minister for Health and Social Services, the provisions of the Draft Restriction on Smoking (Amendment No. 4) (Jersey) Law 201- are compatible with the Convention Rights.

Signed: **Deputy A.E. Pryke of Trinity**

Minister for Health and Social Services

Dated: 28th May 2014

REPORT

1. Background

The aim of this amendment to the Restriction on Smoking (Jersey) Law 1974 is to enable the future development of regulations that make it an offence to smoke in a motor vehicle carrying children under the age of 18 years. This amendment is a crucial step towards meeting the [Tobacco Control Strategy \(2010 – 2015\)](#) key objective of protecting families and communities from tobacco-related harm.

In the summer of 2013 the Public Health Directorate conducted a public consultation on ‘protecting children from second-hand smoke’. The purpose of this public consultation was to gauge public opinion and explore Islanders’ views about protecting children from second-hand smoke in public places, family homes and cars carrying children less than 18 years of age. The consultation report stated that –

- 87% of all smokers who responded said it is important for the States of Jersey to stop children coming into contact with second-hand smoke.
- A majority of 76% respondents said they would support a law in Jersey to stop smoking in cars carrying children. Of smokers, 53% say they are in support compared to 81% of non-smokers.¹

Additionally, the 2013 Jersey Annual Social Survey, designed to be a representative sample of islanders, showed 81% supporting a ban with 66% of smokers also in support.

Despite education and media campaigns regarding the known harms of exposure to second-hand smoke, children are still exposed to the harmful effects. In England 430,000 children aged between 11-15 years of age are exposed to second-hand smoke in the family car each week² and in the UK passive smoking in children is estimated to cause the NHS £23 million per year³. Locally we know that around 160 babies each year are identified as being at risk of exposure to second-hand smoke at their six-week check. Information from schools survey data from 2014 shows that 10% of year 8 and 10 students are exposed at least weekly to second-hand smoke in cars. If similar levels of exposure are experienced across all ages under 18, approximately 1800 children could be experiencing weekly exposure to the harmful effect of second-hand smoke in cars. The success of future regulations will be measured primarily by a reduction in children’s risk of and actual exposure to cigarette smoke in motor vehicles.

2 Evidence

The scientific evidence of the harms of smoking to health has been overwhelmingly established for more than 50 years. However, smokers are not the only ones at risk of disease or death caused by smoking: non-smokers who breathe in second-hand smoke also have increased risk of disease and death. There is no risk-free level of exposure to smoking or to second-hand smoke. Scientific reports by reliable medical and scientific

¹ Results of Public Consultation: protecting our children from second-hand smoke, States of Jersey, February 2014.

² British Lung Foundation, <http://www.blf.org.uk/Page/smoking-in-cars-infographic> .

³ RCP report: Passive smoking and children: A report by the Tobacco Advisory Group: Royal College of Physicians, 2010. pp.129-132.

<http://www.rcplondon.ac.uk/sites/default/files/documents/passive-smoking-and-children.pdf>

organisations including WHO , the International Agency for Cancer Research⁴, the United States Surgeon General⁵ and the United Kingdom Scientific Committee on Tobacco and Health unequivocally⁶ agree that exposure to second-hand smoke contributes to a range of serious and fatal diseases in non smokers.

Research also confirms that exposure to second-hand smoke causes illness, disability and death from a wide range of diseases⁷. It is estimated that second-hand smoke causes about 600 000 premature deaths globally per year. Of all deaths attributable to second-hand tobacco smoke, 31% occur among children.⁸ Among children exposed to second-hand tobacco smoke there is a 50–100% higher risk of acute respiratory illness⁹, higher incidence of ear infections¹⁰ and an increased likelihood of developmental disabilities and behavioural problems.

The evidence for prohibiting smoking in motor vehicles carrying anyone under the age of 18 is also convincing. Levels of second-hand smoke in cars can be extremely high because of the confined area in which the smoke is circulated. Several studies have measured tobacco smoke pollutants in vehicles and found high levels, even in those vehicles that had been moderately ventilated.^{11 12 13}

Research conducted in Canada found that one cigarette smoked in a stationary car with its window closed produced levels of second-hand smoke up to 11 times higher than the level found in an average bar where smoking is permitted. In a moving car, the level of second-hand smoke created by one cigarette can be as high as 7 times the average of a smoky bar¹⁴.

A US study examined 100 different air change rate measurements in 4 vehicles. The results showed that under all ventilation circumstances, even with the windows open and the fan on high, second-hand smoke concentration in a vehicle were greater than in any other small enclosed place¹⁵.

⁴ International Agency for Research on Cancer, Tobacco smoke and involuntary smoking: summary of data reported and evaluation, World Health Organization, 2002.

⁵ The health consequences of involuntary exposure to tobacco smoke: a report of the Surgeon General, US Department of Health and Human Services, 2006.

⁶ Update of evidence on health effects of second-hand smoke, Scientific Committee on Tobacco and Health, 2004.

⁷ Woodward, A. & Laugesem, M. How many deaths are caused by second-hand tobacco smoke? *Tobacco Control*, 2001, Vol.10, pp.383-388.

⁸ WHO Report on the Global Tobacco Epidemic: Implementing smoke-free environment, WHO, 2009.

⁹ Law, M.R & Hackshaw, A.K. Environmental tobacco smoke. *British Medical Bulletin*, 1996, Vol .52, pp.22-34.

¹⁰ Hermann, M., King, K. and Weitzman, M. Pre-natal tobacco smoke and post-natal second-hand smoke exposure and child neurodevelopment. *Current Opinion in Pediatrics*, 2008, 20, pp.184-190.

¹¹ Sendzik, T., Fong, G.T., Travers, M. & Hyland A. An experimental investigation of tobacco smoke pollution in cars. *Nicotine & Tobacco Research*, 2009; Vol.11(6), pp.627-634.

¹² Jones, M., Navas-Acine A Yuan J. & Breysse, P. Second-hand tobacco smoke concentrations in motor vehicles: a pilot study. *Tobacco control*, 2009, Vol.18, pp.399-404.

¹³ Liu, S. & Zhu, Y. A case study of exposure to ultrafine particles from second-hand tobacco smoke in an automobile. *Indoor Air*, 2010.

¹⁴ Sendzik, T., Fong, G.T., Travers, M. & Hyland A. An experimental investigation of tobacco smoke pollution in cars. *Nicotine & Tobacco Research*, 2009; Vol.11(6), pp.627-634.

¹⁵ Ott, W. Klepeis, N. and Switzer, P. Air change rates of motor vehicles and in-vehicle pollutant concentrations from second-hand smoke. *Journal of exposure science and Environmental Epidemiology*, 2007, Vol.18, pp.312-315.

Evidence also shows that children who grow up in smoking environments are more likely to become smokers themselves. A study investigating exposure to smoke in cars and early smoking initiation found a significant and substantial increase of risk for both initiated and current smoking with exposure to second-hand smoke in cars. This further lends support to the case for introducing legislation protecting children from second-hand smoke exposure in cars.¹⁶

Acting on the growing research evidence, a number of countries, including Australia and Canada, have already implemented laws that prohibit smoking and the use of tobacco in vehicles carrying children. England and Wales are similarly pursuing law changes expected by April 2015.

3. Summary of proposed amendment

The Draft Restriction on Smoking (Amendment No. 4) (Jersey) Law 201- would make provision to allow the States to make regulations to prohibit smoking tobacco in a motor vehicle in which a person under the age of 18 years is present.

4. Summary

This amendment will lay the foundation to enable future regulations to protect children under 18 years of age from the known harms exposure to second-hand smoke. By introducing this amendment to the law now, and in addition to existing measures contained within the States of Jersey tobacco Strategy, the Island will be protecting local children from the known harms of tobacco and taking positive steps to securing the future good health of the population.

5. Financial and manpower implications

The draft Regulations will impose additional enforcement duties on the Police, but these will be managed within existing resources. No further additional resources have been identified.

6. Human Rights

The notes on the human rights aspects of the draft Law in the Appendix have been prepared by the Law Officers' Department and are included for the information of States Members. They are not, and should not be taken as, legal advice.

¹⁶ Driving kids to smoke? Children's reported exposure to smoke in cars and early smoking initiation, Marewa Glover et al, 2011-11-01, Volume 36, Issue 11, pp.1027-1031.

APPENDIX TO REPORT

Human Rights Notes on the Draft Restriction on Smoking (Amendment No. 4) (Jersey) Law 201-

These notes have been prepared in respect of the Draft Restriction on Smoking (Amendment No. 4) (Jersey) Law 201- by the Law Officers' Department. They summarise the principal human rights issues arising from the contents of the draft Law and explain why, in the Law Officers' opinion, the draft Law is compatible with the European Convention on

Human Rights ("ECHR") as implemented under the Human Rights (Jersey) Law 2000.

These notes are included for the information of States Members. They are not, and should not be taken as, legal advice.

The amendments provide a broad power for the states to pass regulations to restrict smoking in cars where there is a person of the age of 18 present.

Whilst laws of this type do restrict freedom of action within a private space, and thus notionally come within the privacy rights of Article 8.1 of the ECHR, such action is readily justifiable as a public health measure under Article 8.2.

The draft Law does not specify how the ban will take effect, but providing the Regulations sufficiently and rationally define the duty placed on individuals, there can be no objection. This of itself is fairly usual, it is the approach followed in the equivalent United Kingdom legislation, and is unobjectionable in human rights terms.

The draft Law and any subsequent regulations address an area where the legislature enjoys a very broad margin of appreciation under the ECHR – particularly as it is the protection of minors that is in issue. The legislature can therefore do what it believes is right in terms of the balance of freedom and public health, and in terms of the response to such scientific thinking as exists from time to time. The question of how much a society is willing to pay in response to a risk to health, whether that price will be paid in terms of money or increased government regulation, and the costs in terms of health in not take such action, are not questions on which human rights law has anything to add.

Explanatory Note

This draft Law (*Article 1*) would make provision to allow the States to make Regulations to prohibit smoking tobacco in a motor vehicle in which a person under the age of 18 years is present.

Article 2 sets out the title of the Law and provides that it will come into force 7 days after registration.



Jersey

DRAFT RESTRICTION ON SMOKING (AMENDMENT No. 4) (JERSEY) LAW 201-

A LAW to amend further the Restriction on Smoking (Jersey) Law 1973.

Adopted by the States [date to be inserted]

Sanctioned by Order of Her Majesty in Council [date to be inserted]

Registered by the Royal Court [date to be inserted]

THE STATES, subject to the sanction of Her Most Excellent Majesty in Council, have adopted the following Law –

1 Interpretation

In this Law “principal Law” means the Restriction on Smoking (Jersey) Law 1973¹.

2 Article A1 amended

In Article A1 of the principal Law, after the definition “Minister” there shall be inserted the following definition –

“ ‘motor vehicle’ means any mechanically propelled vehicle, intended or adapted for use on roads;”.

3 Article 1 amended

In Article 1 of the principal Law –

(a) after paragraph (1)(b)(i) there shall be inserted the following clause –

“(ia) smoking tobacco in a motor vehicle in which a person under the age of 18 years is present;”;

(b) after paragraph (4)(a) there shall be inserted the following subparagraph –

“(ab) a person in a motor vehicle in respect of which the Regulations have effect;”;

-
- (c) at the end of paragraph (4) after the words “those premises, the place of public entertainment” there shall be inserted the words “, the motor vehicle”.

4 Citation and commencement

This Law may be cited as the Restriction on Smoking (Amendment No. 4) (Jersey) Law 201- and shall come into force 7 days after it is registered.

¹ *chapter 20.825*