

STATES OF JERSEY

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DRAFT RESTRICTION ON SMOKING (AMENDMENT No. 2) (JERSEY) LAW 200

**Lodged au Greffe on 28th March 2006
by the Minister for Health and Social Services**

STATES GREFFE



Jersey

DRAFT RESTRICTION ON SMOKING (AMENDMENT No. 2) (JERSEY) LAW 200

European Convention on Human Rights

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. 2) (Jersey) Law 200 are compatible with the Convention Rights.

(Signed) **Senator S. Syvret**

REPORT

This Law amends the Restriction on Smoking (Jersey) Law 1973. The Restriction on Smoking (Amendment No. 2) (Jersey) Law 200 provides a power for the States to make Regulations to prohibit or restrict smoking of tobacco or any other substance in a workplace.

In 2005 the States of Jersey agreed in principle to introduce a complete ban on smoking in all enclosed public workplaces throughout the Island. The Health and Social Services Committee sought and were granted States approval for a consultation exercise regarding such a ban. This consultation phase ended on 31st January 2006. Earlier this year I addressed the States Assembly and indicated my intention to press for an early introduction of the ban on smoking in all enclosed workplaces. This legislation provides the basis for achieving this.

Financial/manpower considerations

There are financial and manpower implications arising from this legislation. Enforcement will require the appointment of a Tobacco Control Officer (to be located within the Health Protection Department) plus out-of-hours support for existing staff. This will require new funding of circa £50,000.

European Convention on Human Rights

Article 16 of the Human Rights (Jersey) Law 2000 will, when brought into force by Act of the States, require the Minister in charge of a Projet de Loi to make a statement about the compatibility of the provisions of the Projet with the Convention rights (as defined by Article 1 of the Law). Although the Human Rights (Jersey) Law 2000 is not yet in force, on 28th March 2006 the Minister for Health and Social Services made the following statement before Second Reading of this Projet in the States Assembly –

In the view of the Minister for Health and Social Services the provisions of the Draft Restriction on Smoking (Amendment No. 2) (Jersey) Law 200 are compatible with the Convention Rights.

Explanatory Note

The effect of this Law is to provide a power for the States to make Regulations to prohibit or restrict smoking of tobacco or any other substance in a workplace.

This Law amends the Restriction on Smoking (Jersey) Law 1973.

Article 1 provides the interpretation of terms for this Law.

Article 2 amends the long title of the 1973 Law to include a reference to smoking substances that are not tobacco.

Article 3 amends Article A1 of the 1973 Law. Article A1 of the 1973 Law (was inserted by the Restriction on Smoking (Amendment) (Jersey) Law 2006). *Article 3* provides an interpretation of terms for the amendments to the 1973 Law effected by this Law. It includes a definition of “volunteer” to apply. It includes a definition of workplace and in *Article 3(2)* extends the definition of smoking to include the smoking of substances that are not tobacco.

A workplace is defined as being any of the following –

- (a) premises in which; land on which; and place at which; a person carries out his or her work and is required to be in, on or at for that purpose;
- (b) tent; temporary structure; and movable structure; in which a person carries out his or her work and is required to be in for that purpose;
- (c) ship; and vessel; on which a person carries out his or her work and is required to be on for that purpose;
- (d) vehicle, whether it is a motor vehicle or no; in which a person carries out his or her work and the vehicle is used solely for that purpose or in which a person is required to be for the purpose of carrying out his or her work, whether occasionally or otherwise, and the vehicle is used solely for that purpose; and
- (e) a public transport vehicle in which a person carries out his or her work and is required to be in for that purpose. Public transport vehicle is defined as including a public service vehicle within the meaning of the Motor Traffic (Jersey) Law 1935 and that falls within a class of those vehicles that is set out in Article 5(1) of that Law and to which Article 5(2) of that Law applies. Those classes are an omnibus service, a char-a-banc service and a cab service.

Any place or thing mentioned in paragraphs (a) to (e) will be treated as a workplace if the work is carried out on in or at the place or thing occasionally or otherwise and whether or not the public have access to the workplace. The Regulations can exempt any workplace from the application of the Regulations or a part of the Regulations under Article 1AB. They can also exempt a dwelling or a workplace or part of a workplace if it is not enclosed.

The definitions also include a definition of “volunteer” which describes a voluntary worker.

Article 4 inserts two new Articles, Article 1AA and 1AB, into the 1973 Law.

Article 1AA provides the States with the power to make Regulations to prohibit or restrict the smoking of tobacco or other substances in a workplace or in any of the premises, places or things listed in paragraphs (1)(a) to (h) to the extent that the premises, places or things are a workplace.

Under Article 1AA(1)(a) to (f), the Regulations may prohibit or restrict smoking tobacco or a substance that is not tobacco or the use of tobacco in any of the following only to the extent that each of them is a workplace : premises, land, place, place, public entertainment, tent, temporary structure, movable structure, vehicle (including a motor vehicle), public transport vehicle, ship and vessel. Article 1AA(1)(g) allows the Regulations to prohibit or restrict smoking tobacco or a substance that is not tobacco or the use of tobacco in any other premises, land, place or thing that is not specified in the previous sub-paragraphs. Article 1AA(1)(h) allows the Regulations to prohibit or restrict smoking tobacco or a substance that is not tobacco in a part of any of the matters specified in the previous sub-paragraphs.

Article 1AA(2), without prejudice to the generality of the places referred to in Article 1AA(1), lists a number of places to which the Regulations can apply. This includes a licensed premises, a club, a premises registered under

the Tourism (Jersey) Law 1948 or the Places of Refreshment (Jersey) Law 1967, a cinema, theatre, concert hall, place of public entertainment or place normally used for indoor public entertainment and a hospital or other similar premises.

Article 1AA(3) provides the ancillary powers to allow for making different provision for any place (or a part of a place) to which the Regulations would apply. It also allows, in Article 1AA(3)(b), Regulations to provide for different workplaces and to make different provision for a workplace that is comprised of employees, self-employed persons or voluntary workers. In Article 1AA(3)(c) allows the Regulations to make different provision for a workplace on the basis of the number of employees, self-employed persons or volunteers who work in the workplace to which the Regulations apply. The Regulations can also, under Article 1AA(3)(d) apply to a workplace, or a part of a workplace, on the basis of whether there is public access to the workplace or not, as the case may be.

Article 1AA(4) allows the Regulations to impose a duty that relates to the prohibition or restriction in the Regulations. The persons on whom the duty may be imposed are any person, proprietor, person for the time being in charge of a workplace, a manager of a workplace or other person concerned in the management of the workplace or an occupier of the workplace to which the Regulations apply. The duty can include, under Article 1AA(4)(b), or a duty to take all reasonable steps to ensure compliance with the Regulations, a specific Regulation and to ensure compliance with the Regulations by any other person in the workplace.

Article 1AA(5) allows the Regulations to make different provision for the different persons on whom the duty may be imposed. Article 1AA(6) allows the Regulations to specify a period of time to which the prohibition is to apply. Article 1AA(7) allows the Regulations to apply to volunteers, self-employed persons and volunteers. A volunteer is a voluntary worker.

Article 1AB(1) allows the Regulations that prohibit or restrict smoking tobacco or any other substance to exempt a workplace or other places from the prohibition or restriction on smoking. The power to do so is made in general terms but Article 1AB(2) specifically allows the Regulations to exempt a dwelling or any part of any matter that is listed in Article 1AA(1) and (2) that comprises a dwelling.

Article 1AB(3) allows the Regulations to exempt a part if it is a workplace.

Article 1AB(4) allows the Regulations to exempt a workplace that is not enclosed or any part of a workplace that is not enclosed and the Regulations can provide for the meaning of enclosed.

Article 1AB(5) allows the Regulations to exempt a workplace on the basis of whether employees, self-employed persons, voluntary workers work in the workplace; on the basis of the number of employees, self-employed persons or volunteers that work in the workplace; and on the basis of whether the public have access to the workplace.

Article 1AB(6) allows the Regulations to provide differently for the different parts of any workplace when specifying exemptions from the prohibition or restriction on smoking. This includes the power to provide differently in respect of the exemptions for the diverse types of workplaces (and the parts of them) that are covered by Articles 1AA(1) to (3) and also for the exemptions generally and the specific exemptions that may be made for dwellings, places that are not enclosed and the workplaces of employees, self-employed persons and voluntary workers.

Article 5 amends Article 1D of the 1973 Law. Article 1D (inserted by the Restriction on Smoking (Amendment) (Jersey) Law 2006) provides for supplemental provisions for the making of Regulations generally under the 1973 Law. The effect of this Article is to apply Article 1D to the Regulations. Article 1D(1) allows the Regulations to include a requirement to display notices in premises. This is amended by *Articles 5(a) to (f)* to allow Regulations made under Articles 1AA and 1AB to provide for a notice on the prohibition or restriction on smoking in premises or workplaces or the exemption from the prohibition.

Articles 5(g) to (j) amends Article 1D(3). Article 1D(3)(a) allows Regulations made under the 1973 Law to provide for the liability of any person who contravenes the Regulations to pay for any food or beverages supplied to or ordered by the person in any premises to which the Regulations apply. This is amended to allow such a provision to be made in Regulations made under Article 1AA and 1AB.

Article 1D(3)(b) is amended by substituting an amended version of the sub-paragraph to allow Regulations made under 1AA and 1AB to provide for the liability of any person who contravenes a provision of the Regulations to pay for any goods or services that have been supplied to the person or order by them and whether or not the goods have been consumed or the service has been supplied.

Article 6 amends Article 2 of the 1973 Law (which was amended by the 2006 Law). Article 2 of the 1973 L allows Regulations to provide for a person who contravenes a specified provision of the Regulations to be guilty of an offence and to provide a penalty for it. The amendment allows Regulations made under Article 1AA and 1AB to also provide for an offence for contravention of a specified provision of the Regulations and a penalty in respect of it.

Article 7 inserts a new Article 2B into the 1973 Law. It is a general provision for an offence under the 1973 La or Regulations made under it. The provision deals with the circumstances in which a limited liability partnership or body corporate has been proved to have committed an offence with the consent or connivance of or to be attributable to the neglect of a partner of the partnership, a director, manager, secretary or other similar officer of the body corporate or any person purporting to act in such a capacity. Article 2B(1) provides for that person to be guilty of the offence also and liable in the same way as the partnership or the body corporate. Article 2B(2) provides that where the affairs of the body corporate are managed by its members then the principle in Article 2E (1) will apply to a member of the body corporate as if the member was a director.

Article 8 provides for the name of the Law and that it will come into force 7 days after it is registered.



Jersey

DRAFT RESTRICTION ON SMOKING (AMENDMENT No. 2) (JERSEY) LAW 200

Arrangement

Article

<u>1</u>	<u>Interpretation</u>
<u>2</u>	<u>Long title amended</u>
<u>3</u>	<u>Article A1 amended</u>
<u>4</u>	<u>Articles 1AA and 1AB inserted</u>
<u>5</u>	<u>Article 1D amended</u>
<u>6</u>	<u>Article 2 amended</u>
<u>7</u>	<u>Article 2B inserted</u>
<u>8</u>	<u>Citation and commencement</u>



Jersey

DRAFT RESTRICTION ON SMOKING (AMENDMENT No. 2) (JERSEY) LAW 200-

A LAW to further amend 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 1973^[1].

2 Long title amended

In the long title of the principal Law, after the words “ignited tobacco” there shall be inserted the words “the prohibition of smoking substances other than tobacco.”.

3 Article A1 amended

(1) In Article A1 of the principal Law there shall be inserted, in their respective alphabetical position, the following definitions –

“ ‘club’ means any premises or place that are, or is, used by, and for the purposes of, a club, society or other body of persons, whether incorporated or unincorporated, and whether that use is for profit or otherwise;

‘employee’ has the meaning assigned to it by the 1989 Law;

‘movable structure’ includes a structure that is designed or adapted for human occupation and is capable of being moved from one place to another by –

(a) being towed; or

(b) being transported on a motor vehicle or trailer,

whether or not it can be detached from the vehicle that has towed or transported it;

‘public transport vehicle’ includes a public service vehicle within the meaning of the Motor Traffic (Jersey) Law 1935^[2] that is within a class of vehicle specified in Article 5 (1) of that Law and a motor vehicle to which Article 5(2) of that Law applies;

‘self-employed person’ has the meaning assigned to it by the 1989 Law;

‘vehicle’ includes a motor vehicle that is designed or adapted for human occupation and is capable of being moved from one place to another whether by itself or by –

- (a) being towed; or
- (b) being transported on a motor vehicle or trailer,

whether or not it can be despatched from the vehicle that has towed or transported it;

‘volunteer’ includes a person who is not an employee or a self-employed person but who carries out a function or an action on a voluntary basis that would, if that person were an employee or a self-employed person, be an employee’s or a self-employed person’s work, and the function or action is not carried out for gain or reward and “workplace” and any reference to the carrying out by a person of his or her work shall be construed accordingly;

‘workplace’ includes any –

- (a) premises in which; land on which; and place at which; a person carries out his or her work and is required to be in, on or at for the purpose of carrying out his or her work;
- (b) tent; temporary structure; and movable structure; in which a person carries out his or her work and is required to be in for the purpose of carrying out his or her work;
- (c) ship; and vessel; on which a person carries out his or her work and is required to be on for the purpose of carrying out his or her work;
- (d) vehicle, whether it is a motor vehicle or otherwise; in which a person –
 - (i) carries out his or her work if the vehicle is used solely for that purpose, or
 - (ii) is required to be for the purpose of carrying out his or her work, whether occasionally or otherwise, and the vehicle is used solely for that purpose; and
- (e) public transport vehicle; in which a person carries out his or her work and is required to be in for the purpose of carrying out his or her work,

whether the work referred to in paragraphs (a) to (e) is carried out occasionally or otherwise and whether –

- (i) the public, or any section of it, have access to the workplace, and
- (ii) the access arises –
 - (A) as of right,
 - (B) with the permission of the owner, occupier or other person,
 - (C) on payment of a charge or otherwise, or
 - (D) by virtue of an invitation to the workplace for any purpose or by virtue of membership of any club or society;

‘1948 Law’ means the Tourism (Jersey) Law 1948^[3];

‘1967 Law’ means the Places of Refreshment (Jersey) Law 1967^[4];

‘1989 Law’ means the Health and Safety at Work (Jersey) Law 1989^[5];

- (2) In Article A1 of the principal Law, in the definition “smoking” –
 - (a) in sub-paragraph (a), the word “or” shall be deleted;
 - (b) in sub-paragraph (b), for the word “ignited,” there shall be substituted the words “ignited; or”; and

(c) after sub-paragraph (b), there shall be inserted the following sub-paragraph –

“(c) being in possession of a substance (or a mixture of substances) that is not tobacco and the substance (or mixture) is ignited, or being in possession of a pipe or other smoking equipment in which a substance (or a mixture of substances) that is not tobacco is ignited;”.

4 Articles 1AA and 1AB inserted

After Article 1A of the principal Law there shall be inserted the following Articles–

“1AA Regulations for workplaces

- (1) The States may make Regulations to prohibit or restrict smoking tobacco or a substance (or a mixture of substances) other than tobacco or the use of tobacco in a workplace and in all or any of the following –
 - (a) any premises, to the extent that the premises are a workplace;
 - (b) any land, place or place of public entertainment, to the extent that it is a workplace;
 - (c) any tent, temporary structure or movable structure, to the extent that it is a workplace;
 - (d) any vehicle (whether it is a motor vehicle or otherwise), to the extent that it is a workplace;
 - (e) any public transport vehicle, to the extent that it is a workplace;
 - (f) any ship or vessel, to the extent that it is a workplace;
 - (g) any premises, land, place or other thing to which sub-paragraphs (a) to (f) do not apply, to the extent that it is a workplace;
 - (h) any part of a matter specified in sub-paragraphs (a) to (g) apply, that is, or to the extent that it is, a workplace.
- (2) Without prejudice to the generality of paragraph (1), Regulations under this Article may prohibit a person from smoking in all or any of the following –
 - (a) a licensed premises;
 - (b) a club;
 - (c) a premises registered under the 1948 Law or the 1967 Law;
 - (d) a cinema, theatre, concert hall, place of public entertainment and any other place that is normally used for indoor public entertainment;
 - (e) a hospital or other similar premises providing care for persons who are sick, or any part of the places and premises specified in sub-paragraphs (a) to (e).
- (3) Regulations under this Article may make –
 - (a) different provision for the matters specified in paragraphs (1) and (2) (or different classes of the matters);
 - (b) different provision for different workplaces (or different classes of them), or a part of them, including different provision for a workplace, or part of a workplace, in, on or at which an employee, a self-employed person and a volunteer work (or any of them);
 - (c) different provision for a workplace or other matter to which paragraphs (1) and (2) apply, or a part of such workplace or matter, on the basis of the number of employees, self-employed persons and volunteers (or any of them) work in, at or on the workplace;

- (d) different provision for a workplace or other matter to which paragraphs (1) and (2) apply, or a part of such workplace or matter, to which the public, or any section of it, has access and the access arises –
 - (i) as of right,
 - (ii) with the permission of the owner or occupier,
 - (iii) on payment of a charge or otherwise, or
 - (iv) by virtue of an invitation to the workplace for any purpose or by virtue of membership of any club or society.
- (4) Without prejudice to the generality of paragraph (1)–
 - (a) if the Regulations provide for a prohibition or restriction, Regulations made under this Article may provide for a duty to be placed on any person or persons, proprietor of a workplace, person for the time being in charge of a workplace, manager of a workplace, other person concerned in the management of a workplace or an occupier of a workplace to which the Regulations apply, in respect of the prohibition or restriction concerned; and
 - (b) Regulations made under this Article may include a duty, to which subparagraph (a) refers, to take all reasonable steps to ensure–
 - (i) compliance with the Regulations generally or any specified Regulation, and
 - (ii) compliance with the Regulations by any other person or persons in the workplace to which the Regulations apply.
- (5) Without prejudice to the generality of paragraph (4)(a), the Regulations may make different provision for a person, proprietor, person for the time being in charge, manager, person concerned in the management or an occupier of a workplace to which the Regulations apply having regard to the different matters specified in paragraph (1) and (2).
- (6) Regulations may specify the period of time in respect of which the prohibition on smoking is to apply.
- (7) Regulations may apply to employees, self-employed persons and volunteers.

1AB Exemptions in Regulations for workplaces

- (1) Regulations under Article 1AA may provide for exemptions from the application of part or all of the Regulations or from a specified prohibition or restriction imposed by those Regulations.
- (2) Notwithstanding Articles 1AA(1) to (3) and without prejudice to the generality of paragraph (1), the Regulations may exempt from the application of part or all of those Regulations –
 - (a) a dwelling; and
 - (b) any part of any matter specified in Articles 1AA(1) and (2), or to which Article 1AA(3) refers, that comprises a dwelling,
 whether or not the dwelling is in whole or in part a workplace.
- (3) Notwithstanding Articles 1AA(1) to (3) and without prejudice to the generality of paragraph (1), the Regulations may exempt from the application of all or part of those Regulations, different parts of a matter specified in Articles 1AA(1) to (3).
- (4) Without prejudice to the generality of this Article, the Regulations may exempt from the application of part or all of those Regulations a workplace that is not enclosed or any part of a workplace that is not enclosed, and the Regulations may define the meaning of enclosed.

- (5) Without prejudice to the generality of this Article, an exemption under this Article may include an exemption from the application of all or part of the Regulations in respect of any matter specified in Article 1AA(1) to (3) on the basis of all or any of the following–
 - (a) whether it is a workplace in, on or at which employees, self-employed persons or volunteers, or all of them, work;
 - (b) the number of employees, self-employed person or volunteers (or all of them) that work in, on or at the workplace;
 - (c) the public, or any section of it, has access to the workplace to which the Regulations apply, and the access arises –
 - (i) as of right,
 - (ii) with the permission of the owner or occupier,
 - (iii) on payment of a charge or otherwise, or
 - (iv) by virtue of an invitation to the workplace for any purpose or by virtue of membership of any club or society.
- (6) An exemption from the application of all or part of the Regulations may make different provision generally and different provision for –
 - (a) different parts of any matter to which paragraphs (1) to (5) and Articles 1AA(1) to (3) apply (or any part of them); and
 - (b) different classes of any of the matters specified in paragraphs (1) to (5) and Articles 1AA (1) to (3):”.

5 Article 1D amended

In Article 1D of the principal Law–

- (a) in the heading, after the words “1A” there shall be inserted the words “, 1AA, 1AB”;
- (b) in paragraph (1), after the words “1A” there shall be inserted the words “, 1AA, 1AB”;
- (c) in paragraph (1), for the words “apply; and” there shall be substituted the words “apply;”;
- (d) in paragraph (1), after sub-paragraph (a) there shall be inserted the following sub-paragraph –
 - “(aa) a requirement to display notices in respect of –
 - (i) the prohibition or restriction on smoking tobacco or another substance (or mixture of substances) that is not tobacco in a workplace (or a part of a workplace) or any matter specified in Articles 1AA(2) and (3) to which the Regulations have effect, and
 - (ii) the exemption (if any) from the application of all or part of the Regulations under Article 1AB,
 and where appropriate, to display notices specifying where or when the prohibition or restriction on smoking or an exemption (if any) from it does not apply; and”;
- (e) in paragraph (2), after the word “1A” there shall be inserted the words “, 1AA or 1AB”;
- (f) in paragraph (2) after the words “(or a part of those premises)” there shall be inserted the words “or, in the case of Regulations made under Article 1AA and 1AB–
 - (a) different provision for notices to be displayed in different classes of workplace, or a part of a workplace, or any matter specified in Articles 1AA(2) and (3), or a part of such matter, to which the Regulations have effect; and
 - (b) an exemption (if any) from the application of all or part of the Regulations under Article 1AB,

and where appropriate, to display notices specifying where or when the prohibition or restriction on smoking or the exemption from it does not apply; and”;

- (g) in paragraph (3), for the words “Articles 1(1)(b)(i) and 1A,” there shall be substituted the words “Articles 1(1)(b)(i), 1A, 1AA and 1AB”;
- (h) in paragraph (3)(a), after the word “1A” there shall be inserted the words “, 1AA or 1AB”;
- (i) in paragraph (3)(a) for the words “apply; and” there shall be substituted the word “apply;”;
- (j) for paragraph (3)(b) there shall be substituted the following sub-paragraph –
 - “(b) Articles 1(1)(b)(i), 1AA or 1AB may provide for the liability (howsoever arising) of a person who contravenes a provision of the Regulations to pay for any goods or services supplied to or ordered by that person whether or not –
 - (i) the goods had been used or consumed in whole or in part, or
 - (ii) the service had been supplied or provided in whole or in part.”.

6 Article 2 amended

In Article 2(1)(a) of the principal Law, after the words “1A” there shall be inserted the words “, 1AA, 1AB”.

7 Article 2B inserted

After Article 2A of the principal Law there shall be inserted the following Article–

“2B General provisions as to offences

- (1) Where an offence under this Law, or Regulations made under it, is committed by a limited liability partnership or body corporate or is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of –
 - (a) a person who is a partner of the partnership, or director, manager, secretary or other similar officer of the body corporate; or
 - (b) any person purporting to act in any such capacity,the person shall also be guilty of the offence and liable in the same manner as the partnership or body corporate to the penalty provided for that offence.
- (2) Where the affairs of a body corporate are managed by its members, paragraph (1) shall apply in relation to acts and defaults of a member in connection with his or her functions of management as if he or she were a director of the body corporate.”.

8 Citation and commencement

This Law may be cited as the Restriction on Smoking (Amendment No. 2) (Jersey) Law 200 and shall come into force on the seventh day following its registration.

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- [1] *chapter 20.825*
- [2] *chapter 25.200*
- [3] *chapter 05.850*
- [4] *chapter 11.600*
- [5] *chapter 05.300*