

STATES OF JERSEY



Jersey

DRAFT SINGLE-USE PLASTICS ETC. (RESTRICTIONS) (JERSEY) AMENDMENT LAW 202-

**Lodged au Greffe on 29th October 2024
by the Minister for Infrastructure
Earliest date for debate: 10th December 2024**

STATES GREFFE



Jersey

DRAFT SINGLE-USE PLASTICS ETC. (RESTRICTIONS) (JERSEY) AMENDMENT LAW 202-

European Convention on Human Rights

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

In the view of the Minister for Infrastructure, the provisions of the Draft Single-Use Plastics etc. (Restrictions) (Jersey) Amendment Law 202- are compatible with the Convention Rights.

Signed: **Connétable A.N. Jehan of St. John**

Minister for Infrastructure

Dated: 25th October 2024

REPORT

1.0 Introduction

The Ministers for Infrastructure and Environment made a commitment to bring a ban on single use vapes before the States Assembly.

The proposed ban aims to address the environmental impact of single use vapes. Finite resources are used in the manufacture of these devices that have a lifespan of a few days, and the management of this increasing waste stream is problematic and costly.

Following consultation, the [Single-Use Plastics etc. \(Restrictions\) \(Jersey\) Law 2021](#) has been amended to extend the powers of this legislation to single use vapes. This Law was implemented in July 2022 as new primary legislation to reduce the use of avoidable single use plastics to support Jersey's Carbon Neutral Strategy.

This report summarises the work that has been completed to support the proposed ban and outlines how the ban can be implemented in 2025.

It is the recommendation of this report that the members of the States Assembly vote in favour of the Single-Use Plastics etc. (Restrictions) (Jersey) Amendment Law 202- so a ban on single use vapes can be delivered.

2.0 Background

2.1 What are single use vapes?

Vapes (also called e-cigarettes) are defined by Action on Smoking and Health (also known as ASH, an independent UK public health charity set up by the Royal College of Physicians) as 'battery-powered devices that deliver nicotine by heating a solution containing nicotine, flavourings and other additives.'⁽¹⁾

Vapes are available as rechargeable and refillable units and as single use disposable devices.

Single use vapes are non-rechargeable and are ready filled with e-liquid to provide the user with approximately 600 'puffs'⁽²⁾. These devices are designed for consumption and disposal, with a possible life span of just a few days.

Inside, the single use vape typically includes plastic, copper and a lithium battery. A photo of a deconstructed vape is included below:



Source: Zero Waste Scotland, 2023⁽³⁾

The cost of a single use vape starts from as little as £3 and devices are available from supermarkets, convenience stores, garage forecourts, independent newsagents, high street stores and specialist vape retailers.

The use of vapes is increasing. The Jersey Opinions and Lifestyle Survey Report 2023⁽⁴⁾ identified that:

- Adults who currently use or had tried vapes increased from 19% in 2022 to 26% in 2023
- Half of young adults aged 16 to 34-years-old had used vaping products, far higher than other age groups, and of these, more than 29% had never smoked cigarettes

The Jersey Children and Young People's Survey 2021⁽⁵⁾ also recorded:

- 13% of 14 to 15-year-olds used vapes occasionally or regularly in 2021
- 58% of young people in year 12 (16 to 17 year-olds) had tried vaping, a rise of 16% since 2018 and with nearly 29% using vapes either occasionally or regularly in 2021

The UK government has attributed the overall increase in vaping to 'the emergence of a new class of vapes: disposable products.'⁽⁶⁾

This observation is supported by an increased use of single use vapes by adults in the UK (2.3% in 2021 and 31% in 2023)⁽⁷⁾ and the popularity of single use vapes was evidenced in recent engagements with Jersey students led by Public Health which found that in a group of 15 to 17-year-olds, the daily vaping use was 81.25% and the majority used a single use vape⁽⁸⁾.

2.2 The environmental impact of single use vapes

Single use vapes are not designed to be refilled or recharged. They are a disposable device designed for a limited lifespan.

The use of materials including plastics, metals and a lithium battery in each single use device starkly contrasts with sustainability commitments to reduce waste, maximise resources and reorientate behaviour towards the circular economy.

An article from The Bureau of Investigative Journalism, 2022⁽⁹⁾ concluded that each vape contains 0.15 g of lithium and included the following comment from Mark Miodownik, Professor of Materials and Society at University College London: 'We can't be throwing these materials away. It really is madness in a climate emergency – lithium is one of the things that is going to fuel the green economy'.

Research completed by Material Focus⁽¹⁰⁾ put this finding into real life terms by stating that the number of single use vapes purchased by UK adults in 2022 equated to '5,000 electric vehicle batteries worth of lithium being thrown away per year.'

The increasing popularity of single use vapes means that there are more vapes being disposed of in various ways, all of which are problematic:

- Recycling

While the recycling of single use vapes may be possible, the process is labour intensive as most disposable vapes are not designed to be taken apart easily. The process is also highly specialist due to the volatility of the battery and presence of multiple chemicals.

In Jersey, single use vapes are received for recycling along with other household batteries and exported with small mixed waste electrical and electronic equipment (WEEE) such as electric toothbrushes. The recycling of vapes is at an additional cost.

- Rubbish

Materials Focus found that 73% of UK vapers throw away single use vapes as general rubbish⁽¹⁰⁾.

Single use vapes disposed of as general rubbish are a fire risk. In the UK, the Local Government Association released a statement calling for the Government to ban the sale and manufacture of disposable vapes and the Association explained that ‘The collection system for residual waste often includes crushing or compacting and this increases the risk of fires started by lithium-ion batteries. The end destinations for residual waste are landfill or incineration. Neither of these options is a safe option for treating the environmental harm of disposable vapes’⁽¹¹⁾.

- Litter

Materials Focus found that 3% of total UK vapers (and 8% of 16-18 year olds) drop their used single use vapes on the ground⁽¹⁰⁾.

Littered lithium batteries will leach toxic compounds into the environment and the liquid residue can be toxic, flammable and, in sufficient quantities, would be classed as hazardous⁽³⁾.

The often sweet liquid residue, as a result of the popular flavours of vapes such as fruit and confectionary, can attract wildlife and this will contain liquid nicotine that is harmful to pets and animals if ingested. The RSPCA has supported a future ban on disposable vapes in the UK and their response sights ingestion, poison and choking as risks to animals and young children⁽¹²⁾.

The increasing use of single use vapes exacerbates these challenges by increasing the cost of managing the Island’s waste, increasing the likelihood and frequency of lithium battery fires, increasing pollution incidents and their legacy and increasing the use of single use plastics.

2.3 The application of the Single-Use Plastics etc. (Restrictions) (Jersey) Law 2021

The Single-Use Plastics etc. (Restrictions) (Jersey) Law 2021 was implemented in July 2022 as new primary legislation to ‘reduce waste, increase reuse and support Jersey’s Carbon Neutral Strategy’⁽¹³⁾.

While the Law was initially limited to ‘prohibit the supply and importation of certain single-use plastic items and to set a price for the supply of reusable carrier bags, and for connected purposes.’⁽¹⁴⁾, the Law was prepared in such a way to provide ‘an opportunity to extend the legislation to other avoidable single-use plastics in the future’⁽¹³⁾.

It is on this basis that the Law has been amended to include single use vapes.

The definition of single use vapes included in the Law has been informed by that used in the draft of The Environmental Protection (Single-use Vapes) (England) Regulations 2024⁽¹⁵⁾.

The Law has also been amended to enable the restrictions to be applied to individuals and personal activity as well as traders and commercial activity. Applying the restrictions to individuals in regard to single use vapes aims to ensure that individuals cannot import single use vapes for their own personal use, for example through online purchases.

2.4 Restrictions on single use vapes in nearby jurisdictions

- England, Scotland and Wales

In January 2024, the UK government announced plans to ban single use vapes from 1 April 2025. The Conservative Government published draft regulations but the general election prevented this work from moving forward. A timeline for progressing this under the current Labour Government has yet to be announced.

- Guernsey

In May 2024, the States of Guernsey approved an enabling law to regulate vapes⁽¹⁶⁾. This law will include a ban on the importation, sale and supply of single use vapes along with banning the sale and supply of vapes to under 18s, restricting the advertisement of vapes and introducing a licence scheme for vape sellers.

The Vaping Products (Enabling Provisions) (Guernsey) Law, 2024⁽¹⁷⁾ has been submitted for approval by the States of Guernsey on 20 November 2024.

- France

In March 2024, the French Parliament agreed a ban on single use vapes. The bill now requires approval by the European Commission before implementation. (For reference, the EU Commission approved a bill from Belgium to ban the sale of single use vapes on 19 March 2024).

2.5 Alternatives to single use vapes

Vape devices that are designed to be recharged and refilled provide a means to continue to vape if a ban on single use vapes is approved.

The Single-Use Plastics etc. (Restrictions) (Jersey) Amendment Law 202- does not restrict the use of rechargeable vape devices that can be refilled. Different refill mechanisms are available and the most common are ‘tank’ systems which can be refilled with a compatible e-liquid and the use of pre-filled pods.

Rechargeable vape devices have a limited lifespan which ranges from several months to several years, depending on use and how it is cared for. This means that rechargeable vapes will continue to enter the waste stream, ideally as recycling, but the number of units will be far less than the number of single use vapes used in the same time period.

3.0 Consultation

A consultation regarding the impact of a ban on single use vapes ran from 28 March to 9 May 2024.

The consultation was delivered using an online survey and through individual stakeholder meetings. The consultation aimed to inform the following key areas:

- Definition / specification of single use vapes to be banned and any required exemptions
- Implementation requirements, for example the duration of the implementation period and supporting tools / point of sale material
- Impact of banning single use vapes on local businesses and individuals

The consultation was targeted at retailers selling or supplying single use vapes. To encourage participation, the following retailers and the relevant representative bodies were contacted directly with the aim of sharing the consultation with their networks:

- Jersey Chamber of Commerce
- Jersey Business
- Jersey Hospitality Association
- Parish of St Helier
- Supermarkets and / or their local retail operators
- Jersey Chemist Contractors Committee
- Forecourt / convenience store chain
- Specialist vape shops
- Channel Islands Tobacco Importers and Manufacturers' Association (CITIMA)

The survey was also advertised on social media and in the JEP Gazette.

In accordance with the requirements of Article 5.3 of The World Health Organization Framework Convention on Tobacco Control (FCTC), respondents were asked to disclose whether they had any direct or indirect links to, or receive funding from, the tobacco industry. Responses from those with links to the tobacco industry were not considered when developing the recommendations from this consultation.

A total of 15 responses to the online survey were received.

Stakeholders were contacted directly to arrange individual meetings to discuss the consultation. Meetings were held with the following government departments:

- Waste operations and recycling
- Trading Standards
- Jersey Customs
- Prison Service
- Health Improvement
- Help2Quit
- Children's Services
- Child and Adolescent Mental Health Service
- Adult Mental Health and Adult Social Care
- Education
- Youth Service
- Economic Development

The recommendations from the consultation to inform the ban on single use vapes are summarised below. The full consultation report is available from gov.je ⁽¹⁸⁾.

- Definition of a single use vape

The definition of a single use vape that has been developed by the Department for Environment, Food and Rural Affairs (DEFRA) and included in the draft The

Environmental Protection (Single-use Vapes) (England) Regulations 2024⁽¹⁵⁾ for implementation in England, Wales and Scotland should be considered as the definition to be applied locally.

- Exemptions to the ban

No exemptions to the ban on single use vapes are required.

This recommendation was made as no significant issues such as safety and security were raised through the consultation to justify any exemptions. This recommendation is also linked to the proposed use of the definition of a single use vape drafted by DEFRA which allows the continued use of single use refill pods.

The importance of single use refills in rechargeable vape devices is acknowledged for security reasons in some settings and to minimise the impact on societal groups that may be more vulnerable to the ban. The groups considered were those in prison, mental health facilities, elderly care facilities and those with poor dexterity, impaired intellect and those on a low income.

- Extension of the law to individuals

The restrictions currently set out in the legislation must be extended to apply to individuals. This will mean the sale and supply of single use vapes is prohibited for commercial and personal use.

- Implementation period

The implementation period must be adequate so that stakeholders can make required changes (including the sale of existing stock) and high levels of public awareness can be achieved.

The consultation delivered by Public Health Jersey identified a sense of urgency amongst parents / carers for the government to take action to address the ‘vaping epidemic.’

As six months was considered to be unsatisfactory by most of the retailers (four out of five) that took part in the survey due to existing stock levels, the Minister for Infrastructure wrote to retailers in June 2024. The letter thanked retailers for their involvement in the consultation and provided an unofficial notice period by informing them of the intention to move forward with a ban and implementing the changes in April 2025 (estimated) after States Assembly approval.

- Implementation plan

An implementation plan should be prepared that includes the communication tools and resources recommended by stakeholders. The responses to the consultation identified the importance of posters for retailers to display, online resources and an island wide campaign to reach all Islanders / vape users.

- Amend to the Law, Order making powers

The Minister is able to issue Guidance to support the application of the Law and this has included exemptions for specific types of carrier bags.

In accordance with best practice, the agreed exemptions will be formalised in an Order (to be lodged) and order making powers are included in the Law to support future requirements.

3.1 Views of children and young people

The views of children and young people were not directly invited, as Public Health Jersey delivered a consultation to understand more about the use vapes amongst children and young people (March – May 2024).

Public Health Jersey delivered an online parent / carer survey and engaged directly with children and young people. The findings are summarised below:

- 95.65% of the children and young people that used vapes, used single use vapes
- The responses from the online survey found that 17.84% of children and young people vape
- Engagement with a group of 15–17 year olds identified that 81.25% of the group of vape on a daily basis
- 89.67% of parents / carers supported a ban on single use vapes and there was an overall sense of urgency for decisive Government intervention to address the ‘vaping epidemic’.

The following provide some snapshots of the views expressed by young people during the various engagements:

- *Ban disposables to stop being readily available in shops.*
- *Banning disposable vapes would mean harder access to vapes and would affect cost.*
- *They are just disposed of anywhere, not even in bins.*
- *All the plastic used to make the container isn't good for the environment.*
- *The proposed ban of single use vapes is beneficial to the environment and potentially an incentive for young people to stop.*
- *Young people vaped mostly single use products as they regularly got them confiscated, so conversely wanted them to be cost effective, in that they are cheaper (and wanted to try different flavours).*
- *They perceived banning them like they have in Australia would be better, though a handful would turn to smoking.*
- *Controlling the brightly coloured packaging and flavours and including warnings on packages they also perceived as beneficial.*
- *Regulation of safety and contents of vape liquids is also something they said should be looked into, as they assume if they can buy it... it's safe.*
- *If banned, then will always find a way (to circumvent law) and if banned, may just smoke more*
- *Should not ban as vaping is something the students 'like to do' and 'our choice'*
- *Question raised as to why not ban all vapes but others recognised that would cause a lot of arguments with the people that are addicted to it or it'll just cause people to go back to cigarettes*
- *It's our bodies so can choose to do what we want/our bodies so our choice, and no right to tell us what we can or cannot do (I remember being like that!)*

The findings from this separate consultation informed the development of a Child Rights Impact Assessment. The conclusion on the impact of the proposed ban on single use vapes on the rights of children in Jersey is included below for reference:

A ban on single use vapes will remove the existing and increasing environmental impacts of these devices which are seen locally in terms of litter and waste and experienced globally by the use of finite resources in a disposable product.

Vape use by children can have negative impacts on health, development and wellbeing and a ban will create barriers that may reduce youth vaping and prevent future nicotine dependency.

A ban will support the rights of children in Jersey by protecting the environment that children live and grow up in, and by safeguarding children's physical and mental wellbeing.

The voice of the child has been listened to in developing the proposed ban and children that already use single use vapes will be directly affected by the decision. Through joined up working across government departments and public communications, support will be available and for those that wish to continue to vape, other devices will continue to be available.

The full Children's Rights Impact Assessment has been shared with States Members along with this Report.

4.0 Implementation and impact

A ban on single use vapes will result in an immediate reduction in the amount of single use devices being thrown away. The sale and use of single use vapes bought prior to the ban coming into force will not be restricted and so devices will continue to enter the waste stream for some time.

The ban will also have a positive impact on the environment on a global scale, as Jersey will contribute to a reduced demand on the resources required to manufacture single use vapes, notably the lithium used in the single use batteries.

An implementation plan has been drafted that will start after States approval and run until after the ban has come into force. The implementation plan is included as **Appendix A**.

Once the Law is registered in the Royal Court, the ban will come into force by a Commencement Order. It is proposed that the Law comes in to effect with 4 weeks' notice, supported by the communications outlined in the implementation plan.

The implementation plan will serve three audiences:

- Retailers that sell vapes and their representative bodies
- Individuals that use vapes
- Government departments that work with smokers and vape users such as Health Promotion, Help2Quit, Education and the Youth Service.

Island wide communications will be delivered to ensure the audiences are aware of the ban on single use vapes, understand why the ban is being implemented and how it affects them.

The cost of the implementation plan can be funded from existing operational budget. This will enable the delivery of communications that will target Islanders through traditional and digital media and deliver messages direct to retailers by the Trading Standards Team. A dedicated page

on the Government of Jersey website will be launched to provide information to the public and retailers.

A working group has been established with representatives across the Cabinet Office, Waste and Recycling, Trading Standards, Jersey Customs and Immigration Service, Health Improvement and Regulation. This group will help to share information across departments and professional networks. This will be supported by internal Lunch and Learn sessions, newsletter articles and internal digital screens.

5.0 Enforcement

The Single-Use Plastics etc. (Restrictions) (Jersey) Amendment Law 202- enables restrictions to be applied to traders, or traders and individuals depending on the commercial value and environmental risk of the specific item. Prior to this amendment, the Law only applied to traders. The current restrictions to the commercial sale and supply of specified carrier bags remain in force, whereas restrictions on single use vapes have been applied to commercial and personal activity.

Extending the restrictions to individuals is essential to prohibit the purchase / import of single use vapes by individuals.

Along with this amendment, the power of authorised officers has been extended to allow test purchases at any time and the power to enter any premises (other than premises used only as a private dwelling) has been redefined as for the purpose of determining whether a product is compliant with this Law.

Prior to this, a test purchase could only be made after a Notice had been issued and the power to enter premises was confined to determining whether an offence has been committed (an offence being non-compliance with a Notice).

The officers actively working to enforce the Law will continue to be (but not restricted to) the Jersey Customs and Immigration Service and Environmental and Consumer Protection (Trading Standards).

Enforcement will adopt the existing '4E's approach' of Engage, Explain, Encourage and Enforce. This delivers a high level of engagement and ensures that a penalty is incurred when necessary through a proportionate approach.

Officers will also continue to undertake proactive and risk-based enforcement checks by monitoring imports and maintaining a presence at ports of entry.

6.0 Finance and staffing implications

Enforcing the Single-Use Plastics etc. (Restrictions) (Jersey) Amendment Law 202- and monitoring compliance will be delivered by the Jersey Customs and Immigration Service and the Environmental and Consumer Protection Team (Trading Standards).

Due to the clarity of the proposed ban (all single use vapes) and the intention to ban single use vapes in neighbouring jurisdictions, the resource implications for enforcement are low and this can be delivered as part of the existing duties of officers.

The implementation plan requires £3,500 which will be funded from existing operational budget. This is a one-off cost to support the implementation and there are no on-going financial implications.

7.0 Performance Measures

The ban on single use vapes will result in fewer lithium batteries being received for recycling and this can be monitored by the Department for Infrastructure. However, as single use vapes will continue to enter the waste stream for some time after the ban comes into force, the impact will be gradual.

As vapes incur an additional recycling charge, the Department for Infrastructure should also see the cost decrease as less vape devices will be received for recycling. There will continue to be an ongoing cost to recycle rechargeable vapes but as these have a longer useful life than single use devices, fewer devices will be disposed of in the same time period.

The ban will result in fewer lithium batteries being disposed of in the general waste and as litter and this will reduce the likelihood and frequency of lithium battery fires and pollution incidents caused by littering. Anecdotal evidence may be recorded by departments and agencies responsible for street cleaning, road sweeping and waste collection to support this positive impact.

8.0 Recommendation

The Single-Use Plastics etc. (Restrictions) (Jersey) Law 2021 was implemented to ‘reduce waste, increase reuse and support Jersey’s Carbon Neutral Strategy’⁽¹³⁾ and has now been amended to include a ban on single use vapes based on their environmental impact.

A consultation with retailers and stakeholders identified no barriers to the ban, largely because alternative vape devices are readily available and these are accessible for individuals that may be more vulnerable to this change.

An implementation plan has been drafted to support retailers and Islanders in advance of a ban coming into force and this can start to be delivered after States approval.

This work has been overseen by a working group that includes officers across the Cabinet Office, Waste and Recycling, Trading Standards, Jersey Customs and Immigration Service, Health Improvement and Regulation.

It is the recommendation of this report that the States Assembly vote in favour of the Single-Use Plastics etc. (Restrictions) (Jersey) Amendment Law 202- and deliver a ban on single use vapes.

8.1 Children’s Rights Impact Assessment

A Children’s Rights Impact Assessment (CRIA) has been prepared in relation to this proposition and is available to read on the States Assembly website.

8.2 Human Rights

The notes on the human rights aspects of the draft Law in **Appendix B** 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.

9.0 References

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APPENDIX A TO REPORT

Implementation plan

Activity	2024			2025				
	October	November	December	January	February	March	April	May / June
Key dates:	Proposition lodged		States Assembly				Commencement Order signed - estimated	Ban comes into force - estimated
Media release / note								
Social media content across all I&E and GoJ platforms								
Letter sent to retailers and representative bodies (following States Assembly sitting)								
Gov.je webpage goes live (following States Assembly sitting)								
Intranet content goes live (following States Assembly sitting)								
Lunch and Learn sessions								
Factsheets available on gov.je								
JEP advertising								
Internal GoJ display screens (CLS and the Library, others to be confirmed)								
Video shared on social media and gov.je								
Posters sent to retailers, representative bodies and relevant GoJ departments								
Roadside banner (location to be confirmed)								
Channel 103fm advertising								

APPENDIX B TO REPORT**Human Rights Notes on the Draft Single-Use Plastics etc. (Restrictions) (Jersey) Amendment Law 202-**

These notes have been prepared in respect of the draft Single-Use Plastics etc. (Restrictions) (Jersey) Amendment Law 202- (the “**draft Law**”) 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, in the form reviewed by them, is compatible with the European Convention on Human Rights (“**ECHR**”).

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

The draft Law, if passed, would amend the Single-Use Plastics etc. (Restrictions) (Jersey) Law 2021 (the “**2021 Law**”), to prohibit traders and individuals from importing and supplying single-use vapes. It also adds categories of prohibited carrier bags to the Schedule of the 2021 Law and inserts an Order-making power for the Minister for Infrastructure to create exemptions to the 2021 Law for certain types of carrier bags. It also makes provision to include the Chief Inspector of Weights and Measures in the list of people who may issue a notice to a person who does not comply with the 2021 Law and updates some provisions of the 2021 Law to align with current drafting practice.

The draft Law and the substantive amendments to the 2021 Law engage the right to property in Article 1 of the First Protocol to the ECHR (“**A1P1**”) which is addressed below.

It is noted that Article 10 of the draft Law would amend Article 7 of the 2021 Law to align with current drafting practice. Article 7 of the 2021 Law engages Article 6 ECHR (right to a fair trial) in that the provision would provide for a defence to specified offences in the 2021 Law (as amended). The assessment of that provision’s compatibility with the ECHR was dealt with in the ECHR advice on the draft version of the 2021 Law and that compatibility assessment remains unchanged.

Article 1 of the First Protocol to the ECHR

A1P1 protects the right to property. Its aim is to ensure that no one is deprived of their possessions and provides that this may only take place where certain conditions are satisfied. It also recognises that States are entitled to control the use of property in accordance with the general interest. As a qualified right, an interference with the A1P1 right will be justified if the interference is in accordance with the law and achieves a fair balance between the means employed and the public or general interest pursued.

A1P1 is engaged by Articles 4, 5, 7 and 8 of the draft Law which would amend the 2021 Law so that both the supply and importation of single-use vapes by traders and individuals is prohibited. Additionally, A1P1 is engaged by Article 11 of the draft Law which would amend Article 8 of the 2021 Law so that where an offence has been committed under the 2021 Law, items (including single-use vapes) may be subject to forfeiture.

The prohibition of the supply and importation of single-use vapes by individuals and traders, and the potential for forfeiture of single-use vapes, would be a control of use of possessions for the purposes of A1P1. For a measure constituting a control of use to be justified it must be in accordance with law and for ‘the general interest’. The measure must also be proportionate to the aim pursued.

The control of use of possessions through a prohibition on the supply and importation of single-use vapes, would be considered a justifiable measure for A1P1 purposes on the basis that the provisions are in pursuit of a legitimate aim, because it is in the public interest to prevent pollution and protect the environment by preventing single-use vapes from entering, and being supplied within, Jersey.

With respect to the control of use of possessions through forfeiture, in the context of A1P1, a general interest has been found in measures enabling the seizure of goods taken in relation to legal proceedings, and for reasons relating to legality such that compliance with certain laws has been held to constitute a legitimate general interest objective. The power in Article 8 of the 2021 Law to require the forfeiture of single-use vapes and other prohibited items, which is amended in minor respects by Article 11 of the draft Law, is a power imposed to meet objectives that can be aligned closely to these recognised interests.

Measures also need to be in ‘accordance with the law’ for justification for a ‘control of use’ under A1P1. This requires the law to be sufficiently precise and foreseeable. It is reasonable to conclude that the draft Law would satisfy this requirement. The nature of the interferences constituted by the importation and supply prohibition would be deemed to be ‘in accordance with the law’ and the prohibition would be contained in provisions which will have a basis in domestic law and which can be viewed as sufficiently precise and accessible, therefore being foreseeable.

With respect to proportionality, this requires a fair balance to be struck between the means employed in furtherance of the general interest identified and the protection of fundamental rights. This balance will not be struck if the person concerned has had to bear an “individual and excessive burden”. The prohibition of the importation and supply of single-use vapes, and the forfeiture of prohibited goods, is considered proportionate to the general interest of protection of the environment since the objective of preventing single-use vape waste impacting the local environment can only be countered by preventing those vapes from entering and circulating within the Island.

A further aspect of the draft Law which, is relevant to the proportionality assessment, is that transitional provisions are provided for at Article 15B (which is to be deleted 6 months after coming into force) of the draft Law so that a person may supply a single-use vape that was in Jersey immediately before commencement.

Consequently, for the reasons set out above, the draft Law is considered compatible with A1P1 ECHR and there are no other material ECHR issues considered to arise from the draft Law.

EXPLANATORY NOTE

This Law, if passed, will amend the [Single-Use Plastics etc. \(Restrictions\) \(Jersey\) Law 2021](#) (the “2021 Law”) to –

- prohibit traders and individuals from importing and supplying single-use vapes;
- add types of prohibited carrier bags to the Schedule;
- insert an Order-making power for the Minister for Infrastructure (the “Minister”) to create exemptions to the 2021 Law for certain types of carrier bags;
- include the Chief Inspector of Weights and Measures in the list of people who may issue a notice to a person who fails to comply with the 2021 Law;
- update some provisions of the 2021 Law to align with current drafting practice.

Article 1 states that the Law amends the 2021 Law.

Article 2 amends the long title to reflect that some existing prohibited items are not plastic, and that certain reusable non-recyclable bags are being added to the list of prohibited items.

Article 3 inserts new definitions and amends some existing definitions. The new definitions include the meanings of “vape” and “single-use vape”.

Article 4 amends Article 2 to prohibit traders from supplying single-use vapes (in addition to the prohibition on traders supplying certain types of bags, which is already in the 2021 Law). Supplying includes, among other things, selling, hiring out, lending, or giving as a prize or gift. As is currently the case for prohibited bags, if a trader supplies a single-use vape, they may be issued with a notice to stop doing so. It is an offence for the trader to fail to comply with the notice, and they may be liable to a fine of up to £1,000.

The amendments to Articles 2 and 14 mean that the Minister now cannot exempt certain types and descriptions of bags from the 2021 Law by simply issuing guidance. This has been replaced by an Order-making power in new Article 15A.

Article 5 inserts new Article 2A, which prohibits individuals from supplying single-use vapes. As for traders, supplying includes selling, hiring out, lending, or giving as a prize or gift. If an individual supplies a single-use vape, they may be issued with a notice to stop doing so. It is an offence for the individual to fail to comply with the notice, and they may be liable to a fine of up to £1,000.

Articles 6 and 10 amend Articles 3 and 7, respectively, to align with current drafting practice.

Article 7 amends Article 4 to prohibit traders from importing single-use vapes (in addition to the prohibition on traders importing certain types of bags, which is already in the 2021 Law). As is currently the case for prohibited bags, if a trader imports a single-use vape, they may be issued with a notice to stop doing so. It is an offence for the trader to fail to comply with the notice, and they may be liable to a fine of up to £1,000.

Article 8 inserts new Article 4A, which prohibits individuals from importing single-use vapes, including receiving them by post. If an individual imports a single-use vape, they may be issued with a notice to stop doing so. It is an offence for the individual to fail to comply with the notice, and they may be liable to a fine of up to £1,000.

Article 9 amends Article 5 so that authorised officers can use their powers in order to determine whether a person has complied with the 2021 Law, even if an offence has not yet been committed.

Article 11 amends Article 8 to ensure that the Royal Court may order forfeiture of prohibited items under the 2021 Law only if an offence has been committed under that Law in relation to those items.

Article 12 amends Article 9 so that if a person is issued a notice under new Article 2A or 4A, the person has the same right of appeal as they would if they were issued a notice under Articles 2, 3 or 4.

Article 14 substitutes Article 15 to align with current drafting practice. The Order-making power to amend the minimum price of certain bags is moved from Article 15 to new Article 15A.

Article 15 inserts new Article 15A, which gives the Minister power to make Orders to –

- allow traders to supply or import certain types and descriptions of prohibited bags;
- allow traders to supply or import prohibited bags in specified circumstances or for specified purposes;
- amend the minimum price of certain plastic and paper bags.

Article 15 also inserts new Article 15B, which allows traders and individuals to supply single-use vapes that are already in Jersey on the date this draft Law comes into force. But they may do so for only 6 months after that date.

Article 16 amends the Schedule to add single-use vapes and 2 types of non-recyclable bags to the list of prohibited items.

Article 17 gives the title of the Law and provides for it to come into force on a day to be specified in an Order made by the Minister.



Jersey

DRAFT SINGLE-USE PLASTICS ETC. (RESTRICTIONS) (JERSEY) AMENDMENT LAW 202-

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Jersey

DRAFT SINGLE-USE PLASTICS ETC. (RESTRICTIONS) (JERSEY) AMENDMENT LAW 202-

A LAW to amend the [Single-Use Plastics etc. \(Restrictions\) \(Jersey\) Law 2021](#) to prohibit importing and supplying single-use vapes by traders and individuals, to add categories of prohibited carrier bags, and for connected purposes.

<i>Adopted by the States</i>	<i>[date to be inserted]</i>
<i>Sanctioned by Order of His Majesty in Council</i>	<i>[date to be inserted]</i>
<i>Registered by the Royal Court</i>	<i>[date to be inserted]</i>
<i>Coming into force</i>	<i>[date to be inserted]</i>

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

1 [Single-Use Plastics etc. \(Restrictions\) \(Jersey\) Law 2021](#) amended

This Law amends the [Single-Use Plastics etc. \(Restrictions\) \(Jersey\) Law 2021](#).

2 Long title amended

In the long title, for “single-use plastic items” there is substituted “single-use or non-recyclable items”.

3 Article 1 (interpretation) amended

In Article 1(1) –

- (a) the definition “commercial activity” is deleted;
- (b) for the definition “prohibited item” there is substituted –
“prohibited item” has the meaning given in Article 2(1);
- (c) after the definition “prohibited item” there is inserted –
“restricted item” has the meaning given in Article 3(1);
“single-use vape” means a vape that is not designed or not intended for 1 or more of the following –
 - (a) to be reused;

- (b) to be refilled with the substance that is intended to be vaporised or aerosolised, whether by refilling or replacing a container in the vape;
 - (c) to have its battery recharged; or
 - (d) to have a coil that can be replaced by an individual in the normal course of use;
 - (d) for the definition “supply” there is substituted –
 - “supply” –
 - (a) means –
 - (i) selling, hiring out or lending an item,
 - (ii) entering into a hire purchase agreement to provide an item,
 - (iii) providing an item in exchange for anything of value other than money,
 - (iv) providing an item in, or in connection with, the performance of a statutory function, or
 - (v) giving an item as a prize or gift;
 - (b) includes any offer, agreement, exposure or possession of an item for the purposes of supply; and
 - (c) excludes anything that is –
 - (i) done only for the purpose of waste management, and
 - (ii) approved by the Minister;
 - (e) in the definition “trader”, after “commercial activity,” there is inserted “including for charitable purposes”;
 - (f) after the definition “trader” there is inserted –
 - “vape” –
 - (a) means a device that vaporises or aerosolises substances for inhalation through a mouthpiece; but
 - (b) excludes a device that is a medical device, as defined in Regulation 1 of the [Protection of Children \(Nicotine Inhaling Products\) \(Jersey\) Regulations 2016](#), unless the device is intended to enable inhalation of nicotine;
- “writing” includes writing in an electronic form.

4 Article 2 (prohibition on supply of single-use items) amended

- (1) This Article amends Article 2.
- (2) For the heading there is substituted –

2 Trader must not supply certain single-use or non-recyclable items

- (3) For paragraph (1) there is substituted –
 - (1) A trader must not supply an item of a type and description specified in paragraph 1 of the Schedule (a “prohibited item”), regardless of whether –
 - (a) the supply takes place in person or electronically; or
 - (b) a charge is made in relation to the supply.

- (4) Paragraphs (2) and (3) are deleted.
- (5) For paragraphs (4) to (6) there is substituted –
 - (4) If the Minister, the Chief Inspector or an authorised officer reasonably suspects that a trader is acting in breach of paragraph (1), the Chief Inspector or authorised officer may give a notice to the trader requiring them to stop supplying items of the type and description specified in the notice.
 - (5) Before giving the notice, the Chief Inspector or authorised officer must, if practicable, give the trader a reasonable opportunity to express their views or to voluntarily comply with the requirement in the notice.
 - (6) The notice must –
 - (a) contain or be accompanied by the following information –
 - (i) the requirement in paragraph (4),
 - (ii) details of the alleged breach,
 - (iii) the type of item supplied and, if necessary, a description of the item sufficient to identify it,
 - (iv) a statement that an appeal may be made against the notice under Article 9, and
 - (v) any other information that the Minister considers necessary;
 - (b) be given in writing; and
 - (c) be delivered to the trader’s registered or administrative office or, if the address of that office cannot be determined, to a person who controls or manages the place where the item was supplied.
- (6) After paragraph (7) there is inserted –
 - (8) See Article 15A(a) for the power to make an Order to suspend or disapply this Article in relation to specified types of prohibited items or in specified circumstances.

5 Article 2A (individual must not supply single-use vapes) inserted

After Article 2 there is inserted –

2A Individual must not supply single-use vapes

- (1) An individual must not supply a single-use vape, regardless of whether –
 - (a) the supply takes place in person or electronically; or
 - (b) a charge is made in relation to the supply.
- (2) If the Minister, the Chief Inspector or an authorised officer reasonably suspects that an individual is acting in breach of paragraph (1), the Chief Inspector or authorised officer may give a notice to the individual requiring them to stop supplying items specified in the notice.
- (3) Before giving the notice, the Chief Inspector or authorised officer must, if practicable, give the individual a reasonable opportunity to express their views or to voluntarily comply with the requirement in the notice.
- (4) The notice must –
 - (a) contain or be accompanied by the following information –

- (i) the requirement in paragraph (2),
 - (ii) details of the alleged breach,
 - (iii) the type of item supplied and, if necessary, a description of the item sufficient to identify it,
 - (iv) a statement that an appeal may be made against the notice under Article 9, and
 - (v) any other information that the Minister considers necessary;
- (b) be given in writing; and
 - (c) be delivered to the individual's usual or last known address.
- (5) An individual who intentionally and without reasonable excuse fails to comply with a notice given under paragraph (2) commits an offence and is liable to a fine of level 2 on the standard scale.

6 Article 3 (price of certain restricted items) amended

For Article 3(1) to (4) there is substituted –

- (1) A trader must not supply an item of a type and description specified in the table in paragraph 2 of the Schedule (a “restricted item”), except for a price at or above that specified in the table.
- (2) If the Minister, the Chief Inspector or an authorised officer reasonably suspects that a trader is acting in breach of paragraph (1), the Chief Inspector or authorised officer may give a notice to the trader requiring them to stop supplying items of the type and description specified in the notice at a price below that specified in paragraph 2 of the Schedule.
- (3) Before giving the notice, the Chief Inspector or authorised officer must, if practicable, give the trader a reasonable opportunity to express their views or to voluntarily comply with the requirement in the notice.
- (4) The notice must –
 - (a) contain or be accompanied by the following information –
 - (i) the requirement in paragraph (2),
 - (ii) details of the alleged breach,
 - (iii) the type of item supplied and, if necessary, a description of the item sufficient to identify it,
 - (iv) a statement that an appeal may be made against the notice under Article 9, and
 - (v) any other information that the Minister considers necessary;
 - (b) be given in writing; and
 - (c) be delivered to the trader's registered or administrative office or, if the address of that office cannot be determined, to a person who controls or manages the place where the item was supplied.

7 Article 4 (importation of single-use items prohibited) amended

- (1) This Article amends Article 4.
- (2) For the heading there is substituted –

4 Trader must not import certain single-use or non-recyclable items

- (3) In paragraph (1), for “an item prohibited under Article 2” there is substituted “a prohibited item”.
- (4) For paragraphs (2) to (4) there is substituted –
 - (2) If the Agent of the Impôts, the Chief Inspector or an authorised officer reasonably suspects that a trader is acting in breach of paragraph (1), the Agent, Chief Inspector or authorised officer may give a notice to the trader requiring them to stop importing items of the type and description specified in the notice.
 - (3) Before giving the notice, the Agent, Chief Inspector or authorised officer must, if practicable, give the trader a reasonable opportunity to express their views or to voluntarily comply with the requirement in the notice.
 - (4) The notice must –
 - (a) contain or be accompanied by the following information –
 - (i) the requirement in paragraph (2),
 - (ii) details of the alleged breach,
 - (iii) the type of item imported, and if necessary a description of the item sufficient to identify it,
 - (iv) a statement that an appeal may be made against the notice under Article 9, and
 - (v) any other information that the Minister considers necessary;
 - (b) be given in writing; and
 - (c) be delivered to the trader’s registered or administrative office or, if the address of that office cannot be determined, to a person who controls or manages the place to which the item was imported.
- (5) After paragraph (5) there is inserted –
 - (6) See Article 15A(a) for the power to make an Order to suspend or disapply this Article in relation to specified types of prohibited items or in specified circumstances.
 - (7) Also see Articles 19, 32, 33 and Part 8 (powers of arrest, search, seizure and liability to forfeiture) of the [Customs and Excise \(Jersey\) Law 1999](#).

8 Article 4A (individual must not import single-use vapes) inserted

After Article 4 there is inserted –

4A Individual must not import single-use vapes

- (1) An individual must not import a single-use vape.
- (2) If the Agent of the Impôts, the Chief Inspector or an authorised officer reasonably suspects that an individual is acting in breach of paragraph (1), the Agent, Chief Inspector or authorised officer may give a notice to the individual requiring them to stop importing items specified in the notice.
- (3) Before giving the notice, the Agent, Chief Inspector or authorised officer must, if practicable, give the individual a reasonable opportunity to express their views or to voluntarily comply with the requirement in the notice.

- (4) The notice must –
 - (a) contain or be accompanied by the following information –
 - (i) the requirement in paragraph (2),
 - (ii) details of the alleged breach,
 - (iii) the type of item imported, and if necessary a description of the item sufficient to identify it,
 - (iv) a statement that an appeal may be made against the notice under Article 9, and
 - (v) any other information that the Minister considers necessary;
 - (b) be given in writing; and
 - (c) be delivered to the individual’s usual or last known address.
- (5) An individual who intentionally and without reasonable excuse fails to comply with a notice given under paragraph (2) commits an offence and is liable to a fine of level 2 on the standard scale.
- (6) Also see Articles 19, 32, 33 and Part 8 (powers of arrest, search, seizure and liability to forfeiture) of the [Customs and Excise \(Jersey\) Law 1999](#).

9 Article 5 (powers of authorised officers) amended

- (1) This Article amends Article 5.
- (2) For paragraph (1) there is substituted –
 - (1) An authorised officer may, for the purpose of determining a trader’s or individual’s compliance with this Law –
 - (a) enter into an agreement to be supplied with an item; or
 - (b) purchase an item.
- (3) Paragraph (2) is deleted.
- (4) In paragraph (3), for “ascertaining whether or not an offence under this Law is being or has been committed” there is substituted “determining a trader’s or individual’s compliance with this Law”.

10 Article 7 (defence of due diligence) substituted

For Article 7 there is substituted –

7 Defence of due diligence

- (1) In a prosecution against a person for an offence under Article 2, 2A, 3, 4 or 4A, the person may prove that they have a defence.
- (2) The defence is –
 - (a) that the person’s conduct was because of –
 - (i) a mistake,
 - (ii) an accident,
 - (iii) their reliance on information from an unrelated person,
 - (iv) the conduct of an unrelated person, or

- (v) another cause beyond their control; and
- (b) that the person took all reasonable precautions, and exercised all due diligence, to avoid their conduct, including in respect of a related person.
- (3) The person must comply with paragraph (4) before they may rely on the defence about –
 - (a) reliance on information from an unrelated person; or
 - (b) the conduct of an unrelated person.
- (4) The person must –
 - (a) at least 7 clear days before the start of the day of the hearing, give notice in writing to the Attorney General with all the information they have that helps identify the unrelated person; or
 - (b) have leave of the Royal Court.
- (5) In this Article, “related person” means another person who is under a person’s direction or control.

11 Article 8 (forfeiture) amended

- (1) This Article amends Article 8.
- (2) For paragraph (1), there is substituted –
 - (1) The Minister may apply to the Royal Court (the “Court”) for an order for the forfeiture of any items on the grounds that an offence has been committed under this Law in respect of those items.
- (3) In paragraph (4) –
 - (a) for “there has been a contravention of a prohibition or restriction” there is substituted “an offence has been committed”;
 - (b) for “any such provision has been contravened” there is substituted “an offence has been committed”.
- (4) For paragraph (5) there is substituted –
 - (5) If it is satisfied that an offence has been committed under this Law, the Court may order the items in question to be forfeited.
- (5) After paragraph (6), there is inserted –
 - (7) Also see Articles 19, 32, 33 and Part 8 (powers of arrest, search, seizure and liability to forfeiture) of the [Customs and Excise \(Jersey\) Law 1999](#).

12 Article 9 (appeals) amended

In Article 9(1), for “Article 2, 3 or 4” there is substituted “Article 2, 2A, 3, 4 or 4A”.

13 Article 14 (guidance) amended

In Article 14(1), “, and in particular as to the type or technical specification of carrier bags or other items to which this Law does not apply” is deleted.

14 Article 15 (Regulations and Orders) substituted

For Article 15 there is substituted –

15 Regulations

- (1) The States may, by Regulations, amend the Schedule, including to add or remove categories of single-use or non-recyclable items to which this Law applies.
- (2) Regulations under paragraph (1) (“amendment Regulations”) may make amendments to other enactments (other than the [Human Rights \(Jersey\) Law 2000](#)) that are a consequence of those amendment Regulations coming into force.

15 Article 15A (Orders) and Article 15B (transitional provision) inserted

After Article 15, there is inserted –

15A Orders

The Minister may by Order –

- (a) suspend or disapply Article 2 (trader must not supply certain single-use or non-recyclable items) or 4 (trader must not import certain single-use or non-recyclable items) in relation to –
 - (i) specified types and descriptions of prohibited items, excluding single-use vapes,
 - (ii) the supply of prohibited items, excluding single-use vapes, in specified circumstances or for specified purposes;
- (b) amend the price specified for a restricted item in the table in paragraph 2 of the Schedule.

15B Transitional provision

- (1) This Article provides for the transition that occurs when the Single-Use Plastics etc. (Restrictions) (Jersey) Amendment Law 202- comes into force.
- (2) Despite Articles 2 and 2A, a person may supply a single-use vape that was in Jersey immediately before the commencement of this Article.
- (3) The States may by Regulations amend this Article, except this paragraph.
- (4) This Article is deleted 6 months after it comes into force.

16 Schedule (restricted items) amended

- (1) For the Schedule heading there is substituted –

PROHIBITED AND RESTRICTED ITEMS

- (2) In the Schedule, in paragraph 1 (prohibited items), for the table there is substituted –

Type	Description	Use
Lightweight plastic carrier bag	With or without handle, made of plastic with a wall thickness of 15 microns or more, but less than 50 microns	Single-use
Very lightweight plastic carrier bag	With or without handle, made of plastic with a wall thickness of less than 15 microns and not meeting the “OK compost HOME” (or equivalent) certification	Single-use
Non-recyclable plastic carrier bag	With or without handle, made of non-recyclable plastic, with a wall thickness of 50 microns or more	Reusable
Paper carrier bag	With or without handle, made of paper with a weight of 50 gsm or more, but less than 170 gsm	Single-use
Non-recyclable paper carrier bag	With or without handle, made of non-recyclable paper with a weight of 170 gsm or more	Reusable
Single-use vape	All	Single-use

(3) For the table in paragraph 2 (restricted items) of the Schedule, there is substituted –

Type	Description	Use	Price (inclusive of GST, if applicable)
Recyclable plastic carrier bag	With or without handle, made of recyclable plastic, with a wall thickness of 50 microns or more	Reusable	£0.70
Recyclable paper carrier bag	With or without handle, made of recyclable paper with a weight of 170 gsm or more	Reusable	£0.70

17 Citation and commencement

This Law may be cited as the Single-Use Plastics etc. (Restrictions) (Jersey) Amendment Law 202- and comes into force on a day to be specified by the Minister for Infrastructure by Order.