

STATES OF JERSEY



DRAFT RESTRICTION ON SMOKING (MOTOR VEHICLES) (JERSEY) REGULATIONS 201-

Lodged au Greffe on 1st April 2015
by the Minister for Health and Social Services

STATES GREFFE



Jersey

DRAFT RESTRICTION ON SMOKING (MOTOR VEHICLES) (JERSEY) REGULATIONS 201-

REPORT

1. Background

In July 2014 the States Assembly voted in favour of changes to the Restriction on Smoking (Jersey) Law 1973 to make it an offence to smoke in a motor vehicle carrying anyone under 18 years. The purpose of the proposed Regulations is to make clear the details of the offences of smoking in an enclosed motor vehicle carrying one or more under 18 year olds and to set the date for enforcement. The implementation of these proposed regulations are 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.

Following this consultation and knowledge of the high level of public support, the then Minister for Health and Social Services proposed changes to the Restriction on Smoking (Jersey) Law 1973 to allow the future development of Regulations to enforce the Law. The States Assembly debated the proposed law change on 15th July 2014 and voted 42 pour and 4 contre, with no members abstaining.

Levels of exposure

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

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

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 6 week check. Information from schools survey data from 2014 shows that 10% of Year 8 and Year 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 1,800 children could be experiencing weekly exposure to the harmful effects 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. Additionally, scientific reports by reliable medical and scientific organisations including WHO, the International Agency for Cancer Research⁴, the United States Surgeon-General⁵ and the United Kingdom Scientific Committee on Tobacco and Health⁶, unequivocally agree that exposure to second-hand smoke contributes to a range of serious and fatal diseases in non-smokers. Among children exposed to second-hand tobacco smoke, there is a 50–100% higher risk of acute respiratory illness⁷, higher incidence of ear infections⁸ 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.^{9,10,11}

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,

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>

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

⁸ Hermann, M., King, K. and Weitzman, M. – Pre-natal tobacco smoke and post-natal second-hand smoke exposure and child neurodevelopment. *Current Opinion in Paediatrics*, 2008, 20, pp. 184-190

⁹ 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

¹⁰ 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

¹¹ Liu, S. & Zhu, Y. – A case study of exposure to ultrafine particles from second-hand tobacco smoke in an automobile. *Indoor Air*, 2010

the level of second-hand smoke created by one cigarette can be as high as 7 times the average of a smoky bar¹².

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 concentrations in a vehicle were greater than in any other small enclosed place¹³.

The immediate effects of being exposed to second-hand smoke can include eye and throat irritation, dizziness, headache, coughing and nausea⁵. In addition, research has demonstrated that children specifically exposed to second-hand smoke in cars have up to twice the risk of a persistent wheeze, as well as increased risks of developing bronchitis and chronic bronchitis compared to children not exposed.^{14 15 16}

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.¹⁷

Acting on the growing research evidence, a number of countries, including Australia, United States of America and Canada, have already implemented Laws that prohibit smoking and the use of tobacco in vehicles carrying children. England has now proceeded with a change to their Laws, and have Regulations that will come into effect on 1st October 2015. Scotland, Wales and Northern Ireland are similarly pursuing law changes.

3. Summary of proposed Regulations

These Regulations will make it an offence to smoke in an enclosed vehicle when one or more under-18 year-olds are present. The Regulations describe the meaning of an enclosed vehicle, which in effect exempts open-top or convertible-style cars. The reason for this is because the evidence of harm from second-hand tobacco smoke is specifically from smoke in an enclosed vehicle whether or not windows are open. The Regulations make it an offence both to smoke when an under-18 year-old is present, as well as an offence to fail to prevent smoking from taking place in an enclosed motor vehicle. The Regulations also include an exemption for any stationary vehicle that is permanently equipped to be a person's primary residence, to ensure that an individual's liberty to smoke in their home is not affected. The proposed Regulations have been scheduled to come into force on 1st September 2015.

¹² Sendzik, T., Fong, G.T., Travers, M. & Hyland A. – An experimental investigation of tobacco smoke pollution in cars. *Nicotine & Tobacco Research*, 2209; Vol. 11(6), pp. 627–634

¹³ 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

¹⁴ Sly, P.D., Deverell, M., Merci, M. *et al.* – Letter to the editor: Exposure to environmental tobacco smoke in cars increases the risk of persistent wheeze in adolescents. *Medical Journal of Australia*, 2007; 186(6): 322

¹⁵ Kabir, Z. *et al.* – Second-hand smoke exposure in cars and respiratory health effects in children. *European Respiratory Journal*, 2009; 34: 629–633

¹⁶ Evans, J. & Chen, Y. – The association between home and vehicle environmental tobacco smoke (ETS) and chronic bronchitis in a Canadian population: The Canadian Community Health Survey, 2005. *Inhalation Toxicology* 2009; 21: 244–249

¹⁷ 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, Pages 1027–1031

4. Summary

By introducing these Regulations, 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 States of Jersey Police, but these will be managed within existing resources. No further additional resources have been identified.

6. Human Rights Notes

Previous notes have been prepared in respect of the Restriction on Smoking (Amendment No. 4) (Jersey) Law 2014 by the Law Officers' Department ([see P.103/2014](#)).

The newly amended 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 taking such action, are not questions on which human rights law has anything to add.

Explanatory Note

These Regulations create offences in relation to smoking in an enclosed motor vehicle in which a person under the age of 18 years is present.

Regulation 1 sets out the meaning of “enclosed motor vehicle”. “Motor vehicle” itself is defined in Article A1 of the Restriction on Smoking (Jersey) Law 1973 to mean “any mechanically propelled vehicle, intended or adapted for use on roads”. An enclosed motor vehicle is defined in Regulation 1 to mean a motor vehicle which is enclosed wholly or partly by a roof (whether hard or soft, but not including any roof which is completely stowed away so as not to cover any of the vehicle) and by any door or window.

Regulation 2 makes it an offence for a person to smoke tobacco in an enclosed motor vehicle in which another person is present who is under the age of 18. Such an offence is punishable with a maximum fine of level 2 on the standard scale. The Regulations also make it an offence for certain persons to fail to stop such smoking, that is, the driver of such a motor vehicle and a person who is present and in charge of the motor vehicle. Such an offence is punishable with a maximum fine of level 3 on the standard scale. In either case, it is a defence for the person concerned to show that he or she reasonably believed all the other occupants of the motor vehicle to be aged 18 or over. It is also a defence for the driver or person in charge to show that he or she took all reasonable steps to stop the person from smoking or that he or she didn't know that smoking was taking place or that it was otherwise reasonable not to stop the person from smoking. No offence is created if the smoking by a person takes place in a motor vehicle which is stationary, is permanently equipped to provide living accommodation and is the person's sole or principal place of residence.

Regulation 3 sets out the title of these Regulations and provides for them to come into force on 1st September 2015.

Standard scale of fines:

Level 1 £50; Level 2 £500; Level 3 £2,000; Level 4 £5,000.



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Arrangement

Regulation

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Jersey

DRAFT RESTRICTION ON SMOKING (MOTOR VEHICLES) (JERSEY) REGULATIONS 201-

Made [date to be inserted]
Coming into force [date to be inserted]

THE STATES, in pursuance of Articles 1 and 2 of the Restriction on Smoking (Jersey) Law 1973¹, have made the following Regulations –

1 Meaning of “enclosed motor vehicle”

- (1) In these Regulations “enclosed motor vehicle” means a motor vehicle which is enclosed wholly or partly by a roof and by any door or window that may be opened.
- (2) For the purposes of paragraph (1) “roof” –
 - (a) includes any fixed or movable structure or device which is capable of covering all or part of the motor vehicle, including any canvas, fabric or other covering;
 - (b) does not include any fixed or movable structure which is completely stowed away so that it does not cover all or any part of the motor vehicle.

2 Prohibition of smoking in enclosed motor vehicles in which a person under 18 years is present

- (1) A person is prohibited from smoking tobacco in an enclosed motor vehicle in which another person is present, such other person being under the age of 18 years.
- (2) Any person described as follows is under a duty to cause a person smoking in contravention of paragraph (1) to stop smoking –
 - (a) the driver of a motor vehicle in which the person is smoking;
 - (b) a person who is present and in charge of the motor vehicle at the time such smoking takes place.
- (3) A person who contravenes paragraph (1) shall be guilty of an offence and liable to a fine of level 2 on the standard scale.
- (4) A person who contravenes paragraph (2) shall be guilty of an offence and liable to a fine of level 3 on the standard scale.

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- (5) It is a defence for a person charged with an offence under paragraph (3) or (4) to show that, at the time when the smoking occurred, the person reasonably believed that all the other occupants of the motor vehicle were aged 18 or over.
 - (6) It is a defence for a person charged with an offence under paragraph (4) to show that –
 - (a) the person took reasonable steps to cause the person in question to stop smoking;
 - (b) the person did not know, and could not reasonably have been expected to know, that the person in question was smoking; or
 - (c) on other grounds it was reasonable for the person not to comply with the duty under paragraph (2).
 - (7) Paragraph (1) does not apply to a person smoking in a motor vehicle which is stationary if –
 - (a) it contains, as permanently installed equipment, the facilities which are reasonably necessary for enabling the motor vehicle to provide mobile living accommodation; and
 - (b) it is the person's sole or principal place of residence (whether in Jersey or elsewhere).
 - (8) For the purposes of paragraph (7), it is for the person charged with an offence under paragraph (1) to prove that the motor vehicle is the person's sole or principal place of residence.
 - (9) This Regulation has effect notwithstanding any provision in the Restriction on Smoking (Workplaces) (Jersey) Regulations 2006² that may be construed to the contrary.

3 Citation and commencement

These Regulations may be cited as the Restriction on Smoking (Motor Vehicles) (Jersey) Regulations 201- and shall come into force on 1st September 2015.

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- ¹ *chapter 20.825*
² *chapter 20.825.95*