

STATES OF JERSEY

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DRAFT RESTRICTION ON SMOKING (AMENDMENT) (JERSEY) LAW 200-

**Lodged au Greffe on 21st June 2005
by the Health and Social Services Committee**

STATES GREFFE



Jersey

DRAFT RESTRICTION ON SMOKING (AMENDMENT) (JERSEY) LAW 200-

European Convention on Human Rights

The President of the Health and Social Services Committee has made the following statement –

In the view of the Health and Social Services Committee the provisions of the Draft Restriction on Smoking (Amendment) (Jersey) Law 200- are compatible with the Convention Rights.

(Signed) **Senator S. Syvret**

REPORT

On 11th November 2003 the States supported proposition P.109/2003, namely the Health and Social Services Committees Tobacco Strategy, which was developed to reduce the harm to individuals and the community caused by the use of tobacco. This tobacco strategy provides a package of measures and actions that will achieve the desired reduction in damage to health caused by tobacco use that currently result in some 200 smoking-related deaths per year in Jersey.

In approving the tobacco strategy the States requested the Health and Social Services Committee arrange for existing regulations to be amended.

The existing Restriction on Smoking (Jersey) Law 1973 has been amended to accommodate the changes required by the tobacco strategy. In drafting the legislation the practicalities regarding its enforcement have been incorporated into the provisions. Fundamentally, the approach has been to apply a smoking ban in all places where food is sold to the public, for consumption on the premises, so this will also apply to any premises to which the Licensing (Jersey) Law 1974 and the Places of Refreshment (Jersey) Law 1967 relates.

The amendments will allow the Committee to –

- increase the penalties regarding breaches of existing legislation relating to tobacco products;
- ban local tobacco advertising;
- ban smoking in public eating places;
- introduce legislation regarding the siting of vending machines selling tobacco products.

Financial and manpower implications

This amendment to the principal Law has no manpower or revenue implications, although it should be noted that a number of authorised officers (who are already authorised with regard to other legislation) are identified as appropriate authorising officers within these amendments. Thus, the enforcement functions will be carried out by persons who currently carry out enforcement of legislation in similar areas, such as Environmental Health and Trading Standard Officers.

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 Committee 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 13th June 2005 the Health and Social Services Committee made the following statement before Second Reading of this projet in the States Assembly –

In the view of the Health and Social Services Committee the provisions of the Draft Restriction on Smoking (Amendment) (Jersey) Law 200- are compatible with the Convention Rights.

Explanatory Note

This Law amends the Restriction on Smoking (Jersey) Law 1973 to expand the power to make Regulations in new areas and extends existing Regulation-making powers. It also adds additional provisions to the 1973 Law such as the requirement to display notices, authorized officers (for the enforcement of the Regulations and Orders) and service of documents.

Article 1 provides for the interpretation of terms used in this Law.

Article 2 amends the long title to the 1973 Law to insert a reference to the use of tobacco, to tobacco smoke and to advertising and marketing practices for both tobacco and tobacco products.

Article 3 inserts an Interpretation provision into the 1973 Law. This includes a definition of cigarettes and tobacco. The definition of cigarettes will apply to tobacco that is rolled in paper or tobacco leaf or other material so it will also apply to cigars. It is the same definition used in the Sales of Cigarettes to Children (Jersey) Regulations 1992. The definition of tobacco is much wider and includes cigarettes and a wider range of tobacco. Smoking is defined as being in possession of “ignited tobacco” and so applies in relation to cigarettes (as they are defined in this Law) and to a wider range of tobacco items.

Article 4 amends Article 1 of the 1973 Law which provides a wide range of Regulation-making powers.

Article 4(a) extends the existing power to make Regulations to include the use of tobacco and exposure to tobacco smoke. *Articles 4(b) and (c)* amend Article 1(a) of the 1973 Law (which concerns the power to make Regulations for warning notices to be printed on or inserted into a packet of cigarettes) to include tobacco and tobacco products and a warning about the use of tobacco generally. *Article 4(d)* extends the existing power to provide a warning on the nicotine, tar and sugar content of a wider range of tobacco.

Articles 4(e) to (h) amend Article 1(1)(b) of the 1973 Law which currently gives the States the power to make Regulations in three areas: the first (Article 1(1)(b)(i)) is smoking in places of public entertainment or on public transport; the second (Article 1(1)(b)(ii)) is advertisements that promote smoking; and the third (Article 1(1)(b)(iii)) is the sale of cigarettes to person under a minimum age (this is now 18 years under the Restriction on Smoking (Sales of Cigarettes to Children) (Jersey) Regulations 1992 (as amended by the Restriction on Smoking (Sales of Cigarettes to Children) (Amendment) (Jersey) Regulations 2004).

Article 4(e) of this Law amends Article 1(1)(b)(i) (under which Regulations prohibiting or restricting smoking in places of public entertainment or on public transport may be made) so that Regulations made under that Article can also provide for the prohibition or restriction on the use of tobacco.

Article 4(f) of this Law amends Article 1(1)(b)(ii) (under which Regulations prohibiting or restricting advertisements designed to promote the habit of smoking may be made) so that the Regulations can apply to the use of tobacco and a tobacco product. It is extended to allow the Regulations to provide for advertisements in premises or at point of sale, use of websites and the publication, printing, devising and distribution of an advertisement and the electronic distribution of an advertisement.

Articles 4(g) and (h) of this Law amend Article 1(1)(b)(iii) of the 1973 Law (under which Regulations may be made prohibiting or restricting the sale of cigarettes to persons under a minimum age specified in the Regulations). The amendment means that Regulations can now include the sale of tobacco generally to persons under 18 and sale to them by means of a vending machine.

Article 4(i) inserts three new Regulation making powers into Article 1(1)(b) of the 1973 Law. Regulations can be made to address the promotion of tobacco or a tobacco product and the wide range of forms the promotion can take (the use of products, coupons or other things, charging, or not charging, for them or applying a discount for them) and Regulations may also be made prohibiting or restricting promotion by means of brandsharing and sponsorship. The Regulations can also provide for prohibiting or restricting any promotion agreements.

Article 4(j) substitutes additional paragraphs for Article 1(2) of the 1973 Law. These paragraphs extend the power to make Regulations concerning advertising under Article 1(1)(b)(ii) and (b)(iv) to (b)(vi). Under the new paragraph (3) Regulations can address the means of electronic transmission and different persons involved in the electronic transmission and advertising using printed or written words, designs, still or moving pictures, images or other devices. The Regulations may also provide for the different medium of communications used. These include image projection, sound reproduction, computer communication and broadcasting by radio or television (or any

similar broadcast) or any other medium. Any Regulations made under this Law may also make different provision in the Regulations (which prohibit and restrict the advertising and promotion of tobacco and tobacco products) for persons involved in the tobacco trade and specialist tobacconists. The Regulations prohibiting or restricting the promotion can also provide for those situations in which existing contractual relationships concerning promotion exist at the date on which the Regulations come into force. The Regulations can also provide for a duty to comply with the Regulations on any person connected with the advertising or promotion. The Regulations can impose a duty to ensure the Regulations are complied with on the following persons: a person connected to a place of public entertainment, public transport and premises in which tobacco is sold. For Regulations that require warning notices to be printed on or inserted into containers or packets of cigarettes or tobacco imported into, or manufactured in, Jersey a duty to comply with the Regulations can be imposed on a person who imports, manufactures and sells cigarettes and tobacco to comply with the Regulations.

It also inserts a new power allowing the Committee to make an Order setting out the requirements for information and warnings on the danger to health caused by smoking. The information and warnings can include words, symbols and images.

Article 5 inserts new Articles 1A to 1G into the 1973 Law.

Article 1A(1) gives the States power to make Regulations to prohibit and restrict smoking and the use of tobacco in premises or a part of premises in which food is sold for consumption on it and to which members of the public have access. This will include licensed premises that sell food.

Article 1A(1) also gives the States power to make Regulations that prohibit and restrict smoking and the use of tobacco in premises or a part of premises where food is supplied to the public without being sold if the public have access to those premises (or, if the access is to a part of those premises, to prohibit or restrict smoking in the part).

Access to premises or a part of premises by the public can arise from having access that is free or subject to charge or being invited to premises generally or from membership of a club or society.

Additional consequential powers under Article 1A(2) will allow the Regulations to make different provision for different types of food sold for consumption on premises to which the Regulations apply. This allows exemptions from the prohibition or restriction on smoking to apply to premises that sell certain types of food. Article 1A(3)(a) to (c) allows any Regulations made under this Article to make specific provision for premises registered under the Places of Refreshment (Jersey) Law 1967, the Tourism (Jersey) Law 1948 and licensed premises. Provision can be made for the proprietors of those premises and for holders of a licence granted in respect of licensed premises. Different provision can be made for different licensed premises (if food is sold on them) having regard to the basis of the different types of licence that may be granted under the Licensing (Jersey) Law 1974.

The Regulations may also provide for a period in which the prohibition or restriction on smoking and the use of tobacco is to apply in premises in which food is sold and for making different periods of prohibition or restriction having regard to the different types of premises (or parts of premises) for which Regulations can be made (Article 1A(3)(d)).

The Regulations may also include a duty to be placed on an occupier of those premises, a person who owns the business carried on in those premises and a holder of a licence granted in respect of licensed premises including a duty to ensure that the Regulations are complied with by other persons on those premises (Article 1A(3)(e)).

Article 1A(4) allows the Regulations prohibiting or restricting smoking and use of tobacco in premises in which food is served to the public to provide for the prohibition or restriction on smoking and use of tobacco in parts of premises if food is sold in one part and consumed in another part.

Article 1B(1) provides a power to make Regulations for the position in which a vending machine is located in premises to which a person aged under 18 years has access. Regulations can also make similar provision in licensed premises in those circumstances in which a person of that age is permitted access to licensed premises as set out in the Licensing (Jersey) Law 1974. The Regulations may require that a vending machine selling tobacco (which is defined as including cigarettes but also applies to a wider range of tobacco) is installed at a location in premises that permits the occupier or the person who owns the business (or the employees of the occupier or person) to supervise and observe all persons using the vending machine. The Regulations may prohibit or restrict the installation of a vending machine selling tobacco in any part of premises in which a person using the machine cannot be supervised and a duty on a proprietor or occupier to ensure compliance with the Regulations. The Regulations can also provide a duty on the persons to ensure compliance with the Regulations.

Regulations under Article 1B(2) can prohibit or restrict the operation of a vending machine selling tobacco or premises on which an event that is held exclusively for under-18 year olds is held. The Regulations can also require an occupier of premises or a person who owns the business that is carried on in those premises (or, if those premises are licensed premises, the holder of the licence) to ensure that if there is an event held on those premises for persons aged under 18 years any vending machine selling tobacco located on those premises does not operate during the event.

Article 1C allows the States to amend the definitions in Article A1 of the 1973 Law (which is inserted by Article 3 of this Law).

Article 1D provides supplemental provisions for Regulations made under Articles 1, 1A and 1B.

As described by Regulation 1D(1)(a), the Regulations may also provide for the display of notices relating to the prohibition or restriction specified in them.

As described by Regulation 1D(1)(b), the Regulations may also provide for incidental, consequential and transitional provision as are necessary or expedient.

As described by Article 1D(2), Regulations prohibiting or restricting smoking in public eating premises may provide that different types of notices can be required to be displayed (these will include notices stating where smoking is prohibited and, if it is the case, where smoking is not prohibited) so it will be clear to persons on those premises as to where smoking is prohibited.

As described by Article 1D(3), where a person breaches any Regulations made under Article 1A (prohibiting or restricting smoking and the use of tobacco in public eating premises), or Article 1(1)(b)(iii) (sale of cigarettes or tobacco to minors including the sale by vending machines) the Regulations may provide that those persons will be liable to pay for any food or beverages supplied or ordered by them. Regulations concerning places of public entertainment or public transport may also provide for a person who contravenes the Regulations to pay for any thing or service supplied to that person.

Article 1E gives the Health and Social Services Committee the power to make orders addressing the type and content of notices that the Regulations may require to be displayed. It will be an offence not to comply with a notice and the penalty is a fine at level 3 on the standard scale.

Article 1F(1) deals with the enforcement of the Regulations and Orders made under the 1973 Law as amended by this Law.

It specifies those persons who may be authorized by the Committee to be officers to enforce the legislation. It also sets out their powers. The persons eligible for authorization by the Committee are those listed in Article 1F(6). It also allows persons authorized as Traffic Officers under the Motor Traffic (Jersey) Law 1935 to be authorized officers for the purposes of Regulations and Orders that relate to public transport (Article 1F(2)).

Article 1F(1) empowers the Health and Social Services Committee to authorize persons listed in Article 1F(6) to be authorized officers for the purpose of enforcing all Regulations and Orders except those relating to public transport.

The group of persons who are eligible to be an authorized officer are set out in Article 1F(6). They are persons who are already appointed under other Laws to perform an enforcement function. The persons who may be an authorized officer to enforce the Regulations made under the Law are an inspecteur sanitaire (appointed under the Loi (1934) sur la Santé Publique), an authorized officer (appointed under the Food and Drugs (Jersey) Law 1966), an authorized person (appointed under the Statutory Nuisances (Jersey) Law 1999) and a designated officer (appointed under the Piercing and Tattooing (Jersey) Law 2002).

Article 1F(2) provides that Traffic Officers under the Motor Traffic (Jersey) Law 1935 will enforce the Regulations prohibiting or restricting smoking on public transport. Their powers are set out in the paragraph.

Article 1F(3) requires that the authorization by the Committee is to be in writing and that the authorized officer must produce the written authorization before exercising his or her powers under the Law. Traffic Officers will be required to produce evidence of their appointment as Traffic Officers. It also requires an authorized officer, when exercising his or her powers, to cite the power under the Article that he or she is exercising.

Article 1F(4) sets out the powers of the authorized officers enforcing Regulations made under Article 1A (public eating places), 1B (sale of tobacco by vending machine), 1(1)(b)(i) (that relate to places of public entertainment) and 1(1)(b)(ii), (iii), (iv), (v) and (vi) (advertising, sales to persons under 18, promotions, sponsorship and brandsharing).

Article 1F(5) makes it an offence for a person to give information to an authorized officer which that person knows to be false or misleading, or to obstruct or impede an officer when the officer is exercising his or her functions. The penalty for the offence is level 4 on the standard scale.

Article 1G provides that the Regulations may make different provision for all cases and classes of cases to which the Regulations refer and make different provision for those cases or classes of cases.

Article 6 substitutes new text for Article 2 of the 1973 Law which provides for penalties for breach of Regulations made under it. Regulations made under the Law can specify that a breach of the Regulations is an offence and the penalty is a fine that does not exceed level 4 on the standard scale, but for Regulations concerning advertising and promotions, sponsorship and brandsharing, the penalty is an unlimited fine. The Regulations can also provide for a defence for a person charged with an offence under the Regulations and for offences by a body corporate and a limited liability partnership.

Under the Criminal Justice (Standard Scale of Fines) (Jersey) Law 1993, the standard scale of fines is –

Level 1 £50

Level 2 £500

Level 3 £2,000

Level 4 £5,000.

Article 16A of the Interpretation (Jersey) Law 1954 has the effect that –

- (a) where the penalty for an offence is expressed as a specified term of imprisonment or specified fine, a penalty not exceeding the specified term or amount may be imposed for the offence;
- (b) where no amount or level on the standard scale is specified for a fine, the fine is to be construed as a fine of an unlimited amount;
- (c) where the penalty for an offence is expressed as a term of imprisonment and a fine, either or both of the term of imprisonment and the fine may be imposed for the offence.

Article 7 inserts a new Article 2A which provides for the service of documents.

Article 8 provides for amendments to provisions of this Law that are connected to the coming into force of the States of Jersey Law 2005 and the introduction of Ministerial government. The amendments will delete the definition of Committee, insert a definition of Minister for Health and Social Services, and substitute the term “Minister” for “Committee”.

Article 9 provides for the name of this Law and that its provisions will come into force on a day or days to be appointed by the States. It also provides for the commencement of the amendments in Article 8 (amendments connected to the commencement of the States of Jersey Law 2005) by linking its commencement to that of Article 42(3) of the States of Jersey Law 2005.



Jersey

DRAFT RESTRICTION ON SMOKING (AMENDMENT) (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 inserted</u>
<u>4</u>	<u>Article 1 amended</u>
<u>5</u>	<u>Articles 1A to 1G inserted</u>
<u>6</u>	<u>Article 2 substituted</u>
<u>7</u>	<u>Article 2A inserted</u>
<u>8</u>	<u>Amendments relating to Article 42(3) of Law of 2005</u>
<u>9</u>	<u>Citation and commencement</u>



Jersey

DRAFT RESTRICTION ON SMOKING (AMENDMENT) (JERSEY) LAW 200-

A **LAW** to amend the Restriction on Smoking (Jersey) Law 1973 and to provide for related matters.

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 “due to smoking” there shall be inserted the words “and tobacco, including the use of tobacco and exposure to smoke from ignited tobacco, to prohibit or restrict advertising and certain marketing practices relating to tobacco and tobacco products, to provide in the Law for Orders that relate to notices relating to the danger to health of smoking and prohibitions and restrictions, for enforcement of the Regulations and for related matters”.

3 Article A1 inserted

Before Article 1 of the principal Law there shall be inserted the following Article–

“A1 Interpretation

In this Law, unless the context otherwise requires –

‘advertisement’, in relation to smoking or tobacco (or a tobacco product) includes every form of recommendation of smoking or tobacco (or a tobacco product) to the public including –

- (a) a statement of the name of a manufacturer or importer of a tobacco (or a tobacco product);
- (b) the name of any brand of tobacco (or a tobacco product);
- (c) a statement of any trade description or designation or the display or other publication or a trademark, emblem, marketing image or logo, by reference to

which the tobacco (or tobacco product) is marketed or sold, in circumstances where such statement, display or publication may reasonably be regarded as a recommendation to the public;

- (d) a statement of the properties of the tobacco on a label, container, wrapper, package, circular, pamphlet or brochure issued to the public or given to a purchaser with the public;

‘authorized officer’ shall be construed in accordance with Article 1F;

‘brandsharing’ includes the use by a person of any feature that does not relate to tobacco (or a tobacco product) but which is the same as, or is so similar as to be likely to be mistaken for, any feature that is connected to tobacco (or a tobacco product) for the purpose of promoting tobacco (or a tobacco product);

‘cigarette’ includes cut tobacco rolled in paper, tobacco leaf or other material in such form as to be capable of immediate use for smoking;

‘coupon’ means a document or other thing which (whether by itself or not) can be redeemed for a product, service, cash or other benefit;

‘Committee’ means the Health and Social Services Committee;

‘Law of 1974’ means the Licensing (Jersey) Law 1974^[2]

‘Law of 2005’ means the States of Jersey Law 2005^[3]

‘licence’ has the meaning assigned to it by the Law of 1974 and ‘holder of a licence’ shall be construed accordingly;

‘licensed premises’ has the meaning assigned to it by the Law of 1974;

‘point of sale’ means a point within any fixed or movable premises at which a gantry or display unit that is –

- (a) fixed to one place within fixed or movable premises; and
- (b) primarily used for the display of tobacco to customers;

‘public’ means the public generally or any section of the public, however selected;

‘public transport’ means the classes of public service vehicles as defined in Article 5(1) of the Motor Traffic (Jersey) Law 1935^[4]

‘smoking’ means –

- (a) being in possession of ignited tobacco; or
- (b) being in possession of a pipe or other smoking equipment in which tobacco is ignited,

and ‘smoke’ shall be construed accordingly;

‘sold’ includes offered for sale (or offered for sale and sold) whether by retail or otherwise and cognate words shall be construed accordingly;

‘sponsorship agreement’ is an agreement under which, in the course of a business, a party to it makes a contribution towards something, whether the contribution is in money or takes some other form including the provision of services or of contributions in kind that promotes tobacco in Jersey;

‘tobacco’ means all or any of the following items derived from the tobacco plant –

- (a) a cigarette;
- (b) tobacco leaf;
- (c) cut tobacco (including hand-rolling tobacco);

- (d) any thing that consists in whole or in part of tobacco, including cut tobacco, hand-rolling tobacco and tobacco leaf or any of them;
- (e) tobacco to which paragraph 5 of Part II of the First Schedule of the Customs and Excise (Jersey) Law 1999^[5] applies,

but does not include a product that contains nicotine for use in the treatment of addiction to tobacco or any other medicinal purpose;

‘tobacco product’ means any of the following –

- (a) any cigarette paper, tube or filter or other thing manufactured for use in smoking;
- (b) any thing on which an emblem, symbol, logo, image or name of tobacco or a manufacturer of tobacco is printed or affixed;
- (c) a coupon used for promotion of tobacco;

‘use of tobacco’ means sucking, sniffing or chewing tobacco;

‘vending machine’ includes a machine –

- (a) that sells or offers cigarettes for sale; and
- (b) in respect of which a purchaser is permitted to supply himself or herself, either on or before payment, with tobacco whether by means of the depositing of money or a token (that is used as a substitute for money) in that machine or otherwise.”.

4 Article 1 amended

In Article 1 of the principal Law–

- (a) in paragraph (1), after the words “due to smoking” there shall be inserted the words “and use of tobacco (including exposure to smoke from ignited tobacco or smoke exhaled by a person who is smoking)”;
- (b) in paragraph (1)(a), after the words “of cigarettes” there shall be inserted the words “and tobacco (including a tobacco product),”;
- (c) in paragraph (1)(a), after the word “smoking” there shall be inserted the words “and use of tobacco”;
- (d) in paragraph (1)(a), after the words “the cigarettes” there shall be inserted the words “and tobacco”;
- (e) in paragraph (1)(b)(i), after the word “smoking” there shall be inserted the words “and use of tobacco”;
- (f) in paragraph (1)(b)(ii), after the word “smoking” there shall be inserted the words “or to promote tobacco or a particular brand of tobacco (or a tobacco product), including an advertisement in premises or at a point of sale, the use of a website in relation to an advertisement and the publication, printing, devising and distribution of an advertisement (including distribution by transmission in electronic form)”;
- (g) in paragraph (1)(b)(iii), after the word “cigarettes” there shall be inserted the words “and tobacco”;
- (h) in paragraph (1)(b)(iii), for the words “the Regulations.” there shall be substituted the words “the Regulations, including the sale of tobacco to those persons by means of a vending machine,”;
- (i) after paragraph (1)(b)(iii) there shall be inserted the following clauses–
 - “(iv) the promotion of tobacco or a tobacco product (or both of them) including, without prejudice to the generality of the foregoing, promotion by distribution of tobacco or a tobacco product (or both of them) with or without charge, making available any product, coupon or thing (whether with or without charge, or at a discount) in any circumstances as may be specified in the Regulations, and any agreement relating to the promotion,
 - (v) the promotion of tobacco or a tobacco product (or both of them) by means

of brandsharing, and any agreement relating to the promotion,

(vi) the promotion of tobacco or a tobacco product (or both of them) by means of sponsorship, and any sponsorship agreement relating to the promotion.”;

(j) for paragraph (2), there shall be substituted the following paragraphs–

- “(2) Without prejudice to the generality of paragraph (1)(b)(ii), the Regulations may provide for –
- (a) the electronic means of transmitting an advertisement where it is transmitted in electronic form;
 - (b) the display of an advertisement for tobacco (or an advertisement specifying the price of tobacco) in a place or on a website where tobacco is offered for sale;
 - (c) the prohibition or restriction of the publication of such an advertisement in a newspaper, periodical, magazine (including a magazine that is made available on an airplane or a vessel) or class of newspaper, periodical or magazine;
 - (d) persons or classes of person participating in the distribution of the advertisement; and
 - (e) an advertisement that is contained in any form of communication whether using printed or written words, designs, still or moving pictures or images or any other devices, and whether the medium of communication is tangible by way of image projection or sound reproduction, computer communication and radio, television or similar broadcast or other medium.
- (3) Without prejudice to the generality of paragraphs (1)(b)(ii) and (1)(b)(iv) to (vi), Regulations made under any of those paragraphs may –
- (a) make different provision in respect of the prohibition or restriction for persons involved in the tobacco trade and specialist tobacconists;
 - (b) make different provision for persons (or classes of persons) to whom contractual relationships that arise out of a promotion to which paragraph (b)(iv), (b)(v) or (b)(vi) applies, or otherwise have effect, on the date on which the Regulations come into force;
 - (c) make different provision for different types and classes of tobacco or tobacco product;
 - (d) require notices or warnings of the danger to health of smoking and use of tobacco, as are specified in the Regulations, to be printed on the packaging or container of the tobacco or inserted into the container of the tobacco or printed on or inserted into any thing connected with the promotion; and
 - (e) provide for a duty on any person concerned with the advertisement or promotion (including any distribution or publication) to which the Regulations have effect, to take all reasonable steps to ensure compliance with the Regulations, including compliance by other persons concerned with the advertisement, promotion, distribution and publication to which the Regulations apply.
- (4) Regulations under this Article may provide for a duty on any of the following –
- (a) an occupier (or a person concerned in the management) of a place of public entertainment in respect of which the Regulations have effect;
 - (b) the proprietor of public transport in respect of which the Regulations have effect;
 - (c) an occupier of premises in which tobacco is sold (including a premises in which tobacco is sold by means of a vending machine) in respect of which the Regulations have effect;
 - (d) a person who imports into, or manufactures in, Jersey a packet or container referred to in paragraph (1)(a) and a person who sells tobacco in respect of which the Regulations have effect,

to take all reasonable steps to ensure compliance with the Regulations, including compliance by other persons on or in those premises, the place of public entertainment or the public transport, as the case may be, to which the Regulations apply.

- (5) The Committee may prescribe by Order the content and publication requirements for a notice or warning in respect of which provision has been made in Regulations made under paragraph (1)(a) or (3)(d) including the size of such notice and the information warning, words, images or symbols to be specified on it.”.

5 Articles 1A to 1G inserted

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

“1A Regulations for public eating premises

- (1) The States may make Regulations to prohibit or restrict smoking and the use of tobacco in premises (or a part of premises) –
 - (a) in which food is sold, or is supplied otherwise than by sale, to members of the public for consumption on those premises (or that part); and
 - (b) to which members of the public have access (whether on payment of a charge or otherwise) or are invited to for any purpose or by virtue of membership of any club or society,and without prejudice to the generality of the foregoing, such premises (or part) includes licensed premises but does not include a dwelling.
- (2) The Regulations may make different provision for different parts of premises or classes of premises, including classes of premises selling, or supplying otherwise than for sale, different food or classes of food.
- (3) Without prejudice to the generality of paragraph (1), Regulations made under this Article –
 - (a) may make provision in respect of the prohibition or restriction for premises registered under the Places of Refreshment (Jersey) Law 1967^[6] and a proprietor to whom that Law applies;
 - (b) may make provision for premises registered under the Tourism (Jersey) Law 1948^[7] and a proprietor to whom that Law applies;
 - (c) may, where premises referred to in paragraph (1) are licensed premises–
 - (i) make provision for a holder of a licence granted in respect of licensed premises, and
 - (ii) make different provision for licensed premises having regard to the different categories of licence granted under the Law of 1974;
 - (d) may specify a period or periods in which the prohibition or restriction is to apply in those premises (or part of those premises) and make different provision for that period or periods for different premises (or parts of premises) or classes of premises (or parts of premises); and
 - (e) may make provision for a duty on an occupier of premises, a proprietor, holder of a licence and the person having ownership of the business that is carried on in premises to which this Article applies, including a duty on any of them to take all reasonable steps to ensure compliance with the Regulations including compliance by other persons in premises to which the Regulations apply.
- (4) Without prejudice to the generality of paragraph (1), Regulations may make provision

for premises (or a part of premises) in which food is –

- (a) sold for consumption in those premises (or that part); or
 - (b) supplied otherwise than by sale for consumption on those premises (or that part),
- and the food is sold or supplied in a different part of those premises to the part in which it is consumed.

1B Regulations for sale of tobacco by vending machines

- (1) Without prejudice to the generality of Article 1(1)(b)(iii), the States may by Regulations, make provision for any of the following in respect of the sale of tobacco by means of a vending machine –
 - (a) the position in which a vending machine from which tobacco is sold shall be located in premises to which a person who is under the age of 18 years has access (whether by virtue of membership of any club or society or otherwise, whether on payment of a fee or otherwise and whether accompanied by a person of or over that age or otherwise);
 - (b) the position in which a vending machine from which tobacco is sold shall be located in licensed premises to which a person who is under the age of 18 years is permitted access in accordance with the Law of 1974 (whether by virtue of membership of any club or society or otherwise, and whether on payment of a fee or otherwise);
 - (c) the installation of a vending machine from which tobacco is sold in a manner and location that permit –
 - (i) the occupier of premises referred to in sub-paragraph (a), (or a person having ownership of the business that is carried on in premises to which this Article applies) or persons employed by the occupier (or the person having ownership of the business), to supervise and observe all persons using that machine, and
 - (ii) in the case of licensed premises referred to in sub-paragraph (b), the holder of the licence granted in respect of those licensed premises, or persons employed by the holder of the licence, to supervise and observe all persons using that machine;
 - (d) the prohibition or restriction of the installation of a vending machine from which tobacco is sold in any part of premises referred to in sub-paragraph (a), or licensed premises referred to in sub-paragraph (b), in which a person using that machine cannot be supervised or observed; and
 - (e) a duty on a person referred to in sub-paragraph (c) to take all reasonable steps to ensure compliance with the Regulations, including compliance by other persons in premises (including licensed premises) in respect of which the Regulations have effect.
- (2) Regulations made under this Article may prohibit or restrict the operation of a vending machine from which tobacco is sold and that is located on –
 - (a) premises to which a person who is under the age of 18 years has access (whether by virtue of membership of any club or society or otherwise, whether on payment of a fee or otherwise and whether accompanied by a person of or over that age or otherwise); or
 - (b) licensed premises to which a person who is under the age of 18 years is permitted access in accordance with the Law of 1974 (whether by virtue of membership of any club or society or otherwise, and whether on payment of a fee or otherwise),during any period in which an event is held exclusively for persons who are under the

age of 18 years on those premises and may provide for any of the following–

- (i) an occupier of premises referred to in sub-paragraph (a),
- (ii) a person having ownership of a business that is carried on in premises referred to in sub-paragraph (a),
- (iii) a holder of a licence in respect of licensed premises referred to in sub-paragraph (b),

to ensure that the vending machine concerned does not operate during that period.

1C Regulations to amend Article A1

The States may, by Regulations, amend the definitions in Article A1.

1D Articles 1, 1A and 1B: supplemental provisions

- (1) Without prejudice to the generality of Articles 1, 1A and 1B, Regulations made under any of those Articles may provide for any of the following –
 - (a) a requirement to display notices in respect of the prohibition or restriction on smoking in premises (or a part of premises), a place of public entertainment, or any public transport, to which the Regulations have effect and, where appropriate, to display notices specifying where or when the prohibition or restriction on smoking does not apply; and
 - (b) such incidental, consequential and transitional provisions as the States consider to be necessary or expedient for the Regulations.
- (2) Without prejudice to the generality of paragraph (1)(a), Regulations made under Article 1A may make different provision for notices to be displayed in different classes of premises (or a part of those premises).
- (3) Without prejudice to the generality of Articles 1(1)(b)(i) and 1A, Regulations made under –
 - (a) Article 1A may make provision for the liability of any person who contravenes the Regulations to pay for any food or beverages supplied to or ordered by those persons in premises to which the Regulations apply; and
 - (b) Article 1(1)(b)(i) make provision for the liability of any person who contravenes the Regulations to pay for any thing or service provided in the place of public entertainment or public transport to which the Regulations apply.

1E Orders in relation to notices

- (1) The Committee may prescribe by Order the requirements for a notice in respect of which provision has been made in Regulations under this Law, including the size of, and any symbols to be displayed on, such notice.
- (2) A person who contravenes a provision of an Order made under this Article shall be guilty of an offence and liable to a fine of level 3 on the standard scale.

1F Authorized officers

- (1) The Committee may authorize one or more persons to whom paragraph (6) applies to be authorized officers for the purpose of ensuring compliance with Regulations (other than Regulations referred to in paragraph (2)) made under this Law and an Order made under Article 1E.

- (2) A Traffic Officer appointed as such under the Motor Traffic (Jersey) Law 1935 shall, by virtue of that appointment, be an authorized officer for the purposes of ensuring compliance with Regulations made under Article 1(1)(b)(i) that relate to public transport and for that purpose may at all reasonable times –
- (a) enter and inspect any public transport in respect of which the Regulations have effect; and
 - (b) examine any documents relating to the public transport in respect of which the Regulations have effect,
- and, where the authorized officer reasonably suspects that a provision of the Regulations is being or has been contravened, he or she may require any person on the public transport to state his or her name and address.
- (3) An authorization under paragraph (1) shall be in writing and an authorized officer shall–
- (a) prior to exercising his or her functions under this Law, state his or her name and produce the authorization (or in the case of an authorized officer referred to in paragraph (2), produce evidence of his or her appointment as a Traffic Officer) and
 - (b) when exercising his or her functions under this Law, cite the power under this Law that he or she proposes to exercise and the provision of this Law in which that power is specified.
- (4) For the purposes of ensuring compliance with –
- (a) Regulations made under Article 1A, an authorized officer may at all reasonable times –
 - (i) enter and inspect premises or a part of premises (other than a dwelling) in respect of which the Regulations have effect,
 - (ii) take samples of articles or substances found in premises in respect of which the Regulations have effect, and
 - (iii) where the authorized officer reasonably suspects that a provision of the Regulations is being or has been contravened, require any person on those premises to state his or her name and address;
 - (b) Regulations made under Article 1B, an authorized officer may at all reasonable times –
 - (i) enter premises (other than a dwelling) in respect of which the Regulations have effect,
 - (ii) where the Regulations require, ensure that a vending machine selling tobacco does not operate during an event to which Article 1B(2) applies,
 - (iii) inspect any vending machines in respect of which the Regulations have effect,
 - (iv) examine any documents connected with the vending machine in respect of which the Regulations have effect, and
 - (iv) where the authorized officer reasonably suspects that a provision of the Regulations is being or has been contravened, may require any person on those premises to state his or her name and address;
 - (c) Regulations made under Article 1(1)(b)(i) that relate to a place of public entertainment, an authorized officer may at all reasonable times–
 - (i) enter and inspect any place of public entertainment to which the Regulations have effect,
 - (ii) take samples of any articles or substances in any place of public entertainment in respect of which the Regulations have effect, and

- (iii) where the authorized officer reasonably suspects that a provision of the Regulations is being or has been contravened, require any person on the place of public entertainment to state his or her name and address;
- (d) Regulations made under Articles 1(1)(b)(ii), (iii), (iv), (v) or (vi) (or any combination of them), an authorized officer may at all reasonable times –
 - (i) enter premises (other than a dwelling) in respect of which the Regulations have effect,
 - (ii) inspect any goods or other things used in the sale, advertising or promotion of tobacco (or a tobacco product), in respect of which the Regulations have effect,
 - (iii) examine any documents connected with the sale, advertising or promotion of tobacco (or a tobacco product) in respect of which the Regulations have effect, and
 - (iv) take samples of any articles, goods, or other things used in the sale, advertising or promotion of tobacco (or tobacco product) in respect of which the Regulations have effect,

and where the authorized officer reasonably suspects that a provision of the Regulations is being or has been contravened he or she may –

- (A) require the occupier of those premises or connected with the sale of tobacco (or a tobacco product), advertising or promotion, to produce any records that relate to the goods, sale, advertising, promotion, sponsorship or brandsharing, as the case may be, to which the Regulations apply,
- (B) inspect and take copies of those records, or of any entry in, those records, and
- (C) require any person on those premises to state his or her name and address.

- (5) A person –
 - (a) who gives information to an authorized officer when the officer is exercising his or her functions, being information which that person knows to be false or misleading; or
 - (b) who obstructs or impedes an authorized officer when the officer is exercising his or her functions,

shall be guilty of an offence and liable to a fine of level 4 on the standard scale.

- (6) This paragraph applies to a person who is –
 - (a) an inspecteur sanitaire within the meaning of the Loi (1934) sur la Santé Publique; ^[8]
 - (b) an authorized officer within the meaning of the Food and Drugs (Jersey) Law 1966;^[9]
 - (c) an authorized person within the meaning of the Statutory Nuisances (Jersey) Law 1999;^[10] or
 - (d) a designated officer within the meaning of the Piercing and Tattooing (Jersey) Law 2002^[11]

1G Regulations generally

The power to make Regulations under this Law may be exercised –

- (a) either in relation to all cases to which the power extends, or in relation to all those cases subject to specified exceptions, or in relation to any specified cases or classes of case;

and

- (b) so as to make, as respects the cases in relation to which it is exercised –
 - (i) the full provision to which the power extends or any lesser provision (whether by way of exception or otherwise),
 - (ii) the same provision for all cases in relation to which the power is exercised, or different provision for different cases or classes of case, or different provision as respects the same case or class of case for different purposes of the enactment, and
 - (iii) any such provision either unconditionally or subject to any specified condition.”.

6 Article 2 substituted

For Article 2 of the principal Law there shall be substituted the following Article–

“2 Offences, defences and penalties

- (1) Regulations under this Law may provide that a person who contravenes a specified provision of the Regulations shall be guilty of an offence and liable –
 - (a) in the case of Regulations made under Article 1(1)(a), 1(1)(b)(i) or (b)(iii), 1A or 1B (or any combination of them), to a fine that does not exceed level 4 on the standard scale; and
 - (b) in the case of Regulations made under Article 1(1)(b)(ii), (b)(iv), (b)(v) or (b)(vi) (or any combination of them), to a fine.
- (2) Regulations under this Law may provide for a defence in proceedings for an offence under the Regulations either generally or in specified circumstances and offences by a limited liability partnership and body corporate.”.

7 Article 2A inserted

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

“2A Service of documents

- (1) Any notice or other document required under this Law, or under Regulations or an Order made under this Law, to be given to or served on any person may be given or served on the person in question –
 - (a) by delivering it to the person;
 - (b) by leaving it at the proper address of the person; or
 - (c) by sending it by post to the person at that address.
- (2) Any such notice or other document may –
 - (a) be given to or served on a company incorporated in Jersey by being delivered to the company’s registered office; or
 - (b) be given to or served on a partnership, company incorporated outside Jersey, or unincorporated association –
 - (i) by being given to or served (in any case) on a person who is a principal person in relation to it, or on its secretary, clerk or other similar officer or any person who purports to act in any such capacity, by whatever name called, or (in the case of a partnership) on the person having the control or management of the partnership business, or

- (ii) by being delivered to the registered or administrative office of any such person.
- (3) For the purposes of this Article and of Article 12 of the Interpretation (Jersey) Law 1954, ^[12] the proper address of any person to or on whom a document is to be given or served by post shall be the person's last known address, except that –
 - (a) in the case of a company (or person referred to in paragraph (2)(b)(i) in relation to a company incorporated outside Jersey), it shall be the address of the registered or principal office of the company in Jersey; and
 - (b) in the case of a partnership (or person referred to in paragraph (2)(b)(i)), it shall be the address of the principal office of the partnership in Jersey.”.

8 Amendments relating to Article 42(3) of Law of 2005

- (1) In Article A1 of the principal Law –
 - (a) the definition “Committee” shall be deleted;
 - (b) after the definition “licensed premises” there shall be inserted the following definition –
 - “ ‘Minister’ means the Minister for Health and Social Services;”.
- (2) In the following provisions of the principal Law, for the word “Committee” there shall be substituted the word “Minister” –
 - (a) Article 1(6);
 - (b) Article 1E(1);
 - (c) Article 1F.

9 Citation and commencement

- (1) This Law may be cited as the Restriction on Smoking (Amendment) (Jersey) Law 200.
- (2) This Law, apart from Article 8, shall come into force on such day or days as the States may by Act appoint and different days may be appointed for different purposes.
- (3) If a provision of this Law that inserts a provision into the principal Law comes into force –
 - (a) before Article 42(3) of the Law of 2005 comes into force and the provision that is inserted into the principal Law is amended by a provision of Article 8, the provision of Article 8 that amends the provision that is inserted into the principal Law shall come into force on the same day as Article 42(3) of the Law of 2005 comes into force; or
 - (b) after Article 42(3) of the Law of 2005 comes into force and the provision that is inserted into the principal Law is amended by a provision of Article 8, the provision of Article 8 that amends the provision that is inserted into the principal Law shall come into force on the same day as the provision of this Law that inserts the provision into the principal Law.

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- [1] Chapter 20.825.
[2] Chapter 11.450.
[3] Volume 2005, page 345.
[4] Chapter 25.200.
[5] Chapter 24.660.
[6] Chapter 11.600.
[7] Chapter 05.850.
[8] Chapter 20.875.
[9] Chapter 20.225.
[10] Chapter 22.900.
[11] Chapter 20.900.
[12] Chapter 15.360.