

# STATES OF JERSEY



## **DRAFT RESTRICTION ON SMOKING (ADVERTISING, PROMOTION AND DISPLAY) (JERSEY) REGULATIONS 201-**

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**Lodged au Greffe on 6th February 2013  
by the Minister for Health and Social Services**

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**STATES GREFFE**





Jersey

# **DRAFT RESTRICTION ON SMOKING (ADVERTISING, PROMOTION AND DISPLAY) (JERSEY) REGULATIONS 201-**

## **REPORT**

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### **1. Background**

There are currently no local Regulations in Jersey that control tobacco advertising and promotion. These proposed Regulations, which are similar to those in the U.K. and Guernsey, would prohibit the advertising and promotion of tobacco and also prohibit the practice of 'point of sale' display. Point of sale display is considered a form of advertising by the World Health Organisation.

Currently, tobacco display acts as a type of promotion, with the product uniformly presented in prominent positions in the majority of local garages, corner shops and supermarkets. Children are continually exposed to this point of sale, which acts as a 'silent salesman' with a constant enticement to experiment.

Eight out of 10 smokers start before the age of 19<sup>1</sup>. Local surveys show that the number of children who believe they will smoke when they are an adult triples as they reach secondary school<sup>2</sup>. This change in perception makes them a particularly vulnerable group who need to be protected from the promotion of a harmful product. The same local surveys show that garages, corner-shops and supermarkets represent a regular source of tobacco for children who do smoke.

The combination of prominent tobacco promotion and continued underage sales allows a new generation of smokers to become addicted.

The aim of a ban on tobacco advertising and promotion is to discourage children from starting to smoke. These Regulations represent one of the crucial steps needed to meet the Tobacco Control Strategy (2010 – 2015) target for reductions in the number of children aged less than 16 years who smoke, to under 5%.

### **2. An overview of the evidence**

The evidence for restricting tobacco advertising is convincing. Results from large-scale studies point toward tobacco promotion encouraging people, particularly

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<sup>1</sup> Goddard E. (2008). General Household Survey 2006: Smoking and drinking among adults 2006 (Office of National Statistics)

<sup>2</sup> Public Health Department: (2006): Health Related Behaviour Survey (unpublished)

children, to take up and continue smoking. Tobacco advertising and promotion has been shown to influence smoking prevalence.

Young people are particularly vulnerable to being persuaded to take up smoking by tobacco advertising and promotion. A review of 9 studies found a ‘positive, consistent and specific relationship’ between exposure to tobacco advertising and take-up of smoking amongst teenagers<sup>3</sup>. In all the studies, teenagers who were more aware of advertising or more receptive to it were more likely to have experimented with cigarettes or taken up smoking at follow-up. Based on the findings of these studies, the authors concluded that ‘tobacco advertising and promotion, increase the likelihood that adolescents will start to smoke’. The review concluded that from a policy perspective, attempts to eliminate tobacco advertising and promotion should be supported.

Parental guidance and wider social influences, not to smoke, have been shown to be outweighed by constant exposure to tobacco advertising. An issue emphasized in a 2008 study by the Centre for Tobacco Control Research<sup>4</sup>. A positive association was found, even when parental, sibling and peer smoking, gender, age and social class were controlled for in the analysis.

Point of sale tobacco advertising is a particularly indiscriminate and powerful tool. In 2009 the results of a large-scale research study on 25,000 young people showed that they were most likely to be exposed to point of sale displays and are also almost 3 times as likely to try smoking as a result. In addition, exposure to point of sale tobacco promotion carried a greater risk than even parental smoking<sup>5</sup>. This study’s findings were consistent with a further systematic review of international research<sup>6</sup>, which positively associated point of sale promotion with an increased risk of youth smoking.

Acting on the growing research evidence, a number of countries have already implemented bans on tobacco advertising, including point of sale advertising. An extensive review of the literature undertaken on behalf of the Department of Health (1992), found that advertising bans enacted in 4 countries (Norway, Finland, Canada, and New Zealand) had been followed by a fall in smoking on a scale which cannot reasonably be attributed to other factors<sup>7</sup>. Other studies reviewing the effects of similar policies show rapid falls in youth smoking prevalence at a national level<sup>8</sup>.

### **3. Summary of the proposed Regulations**

The amendments will enforce restrictions of tobacco advertising across all media and include brand-sharing and point of sale display. The Regulations are set out in 5 parts and are summarised below.

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<sup>3</sup> Lavato et al: (2004): Impact of tobacco advertising and promotion on increasing adolescent smoking behaviours: Cochrane Review: The Cochrane Library: Issue 3

<sup>4</sup> Centre for Tobacco Control Research (2008): Point of sale display of tobacco products. Funded by Cancer Research UK

<sup>5</sup> Paynter J, et al: (2009) Point of Sale tobacco displays and smoking amongst 14-15 year olds in New Zealand: Cross Sectional Study: Tobacco Control Journal

<sup>6</sup> Paynter J, Edwards R: (2009) The Impact of Tobacco Promotion at the Point of Sale: A Systematic Review Nicotine, Tobacco Research, 11:1:25-35

<sup>7</sup> Smee et al (1992): Effect of tobacco advertising on tobacco consumption: a discussion document reviewing the evidence: Department of Health

<sup>8</sup> See <http://www.hc-sc.gc.ca/hl-vs/tobac/research-recherche/stst/ctums-esutc/2007-eng.php>

#### Part 1 General (Regulations 1 – 4)

Defines key terms used in the Regulations such as “specialist tobacconist and “bulk tobacconist. The Regulations apply to any advertising that is designed to promote smoking or tobacco, including a particular brand of tobacco, using any form of communication, including electronic communication.

#### Part 2 Advertising (Regulations 5 – 14)

These Regulations address advertising in more detail and also describe exemptions. A person found guilty of an offence under these regulations is liable to an unlimited fine.

The Regulations prohibit the publishing, printing, devising or distributing of tobacco advertising in Jersey. The Regulations make it an offence to advertise tobacco through sponsorship agreements, as well as prohibiting a person from giving away tobacco products for the purpose of promotion.

#### Part 3 Brandsharing (Regulations 15 – 16)

These Regulations address brandsharing in more detail. A person found guilty of an offence under these Regulations is liable to an unlimited fine. The Regulations prohibit the use of brandsharing where its purpose is to promote smoking or tobacco and particular brands of tobacco.

#### Part 4: Point of Sale Display (Regulations 17 – 21)

These Regulations address display at the point of sale. A person found guilty of an offence under these Regulations is liable to an unlimited fine. These Regulations prohibit any person from displaying tobacco where tobacco is offered for sale.

#### Part 5: Display of Prices (Regulations 22 – 27)

These Regulations set out the specific requirements for the display of prices of tobacco products without prejudice to the Price and Charges Indicators (Jersey) Law 2008.

#### Part 6: General – (Regulations 28 – 29)

These Regulations set out the general provisions relating to offences under these Regulations. The lead-in time before the Regulations come into force is set at 18 months for all retailers.

### **5. Summary**

These Regulations will put in place a comprehensive response to tobacco advertising which goes beyond existing inadequate and out-of-date voluntary agreements. By introducing these Regulations now, and in addition to existing measures contained within the States of Jersey Tobacco Strategy, the Island community will be proactively protecting local children from the known harms of tobacco, and taking positive steps to securing the future good health of the population.

#### **Financial and manpower implications**

These Regulations will be monitored and enforced via existing capacity, and therefore there are no additional financial or manpower implications for the States.

## Explanatory Note

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These Regulations are made under the Restriction on Smoking (Jersey) Law 1973 (the Law). They prohibit the advertising, promotion and display of tobacco.

### *PART 1 – General*

*Regulation 1* defines several terms used in the Regulations.

*Regulation 2* sets out the definition of “specialist tobacconist” and “bulk tobacconist”. A “specialist tobacconist” is a retail shop or self-contained part of a retail shop in respect of which more than half of the sales are of cigars, snuff, pipe tobacco and smoking accessories. A “bulk tobacconist” is a shop in respect of which at least 90% of its sales of cigarettes and hand-rolling tobacco, in the original packaging, are in pre-packed quantities of at least 200 cigarettes or of at least 250 grams respectively and the remainder are in pre-packed quantities of at least 100 cigarettes or of at least 125 grams, respectively.

*Regulation 3* amends the definition of “brandsharing” in Article A1 of the Law. Article 1C of the Law allows the States to amend by Regulations the definitions in Article A1. “Brandsharing” is currently defined in the Law to mean where a feature associated with tobacco is used to promote a non-tobacco product. This might occur, for example, where a producer uses a well known tobacco logo to promote clothing products. Regulation 3 broadens the definition of brandsharing to include the use of a non-tobacco product to promote tobacco. This might occur, for example, where a well known producer of non-tobacco products or services starts to sell tobacco products and uses the same logo.

*Regulation 4* sets out the forms of advertising and brandsharing to which the Regulations apply. The Regulations apply to any advertising and brandsharing using any form of communication, including electronic communication.

This Regulation also provides that Parts 2 and 3 of these Regulations (relating to advertising and brandsharing) do not apply to the extent that the brand name of a tobacco product is used in connection with a sporting or cultural event that traditionally takes place in Jersey, or in the Bailiwick of Guernsey, in which representatives of Jersey or residents of Jersey take part.

### *PART 2 – Advertising*

*Regulation 5* makes it an offence to publish, print, devise or distribute a tobacco advertisement in Jersey or cause any of these things during the course of a person’s business. This Regulation also makes it an offence for any person to display a tobacco advertisement in a public place. This does not apply to advertisements published, printed, devised or distributed outside Jersey if they are not primarily addressed to members of the public in Jersey. No offence is committed, if, broadly speaking, a person did not know that a publication contained a tobacco advertisement; or had no reason to suppose that it would be published, printed, devised or distributed in Jersey or did not know that the purpose and effect of the advertisement would be to promote tobacco. A person guilty of an offence under this Regulation is liable to an unlimited fine.

*Regulation 6* provides that Regulation 5 does not apply to a tobacco advertisement in the premises of a specialist tobacconist provided the advertisement complies with the technical requirements set out in the Regulation, including a health warning.

*Regulation 7* provides that Regulation 5 does not apply to certain communications made during the course of business in the tobacco trade and directly solely to other persons in business in the tobacco trade who are responsible for making decisions about the purchase of tobacco products or for the conduct of that business. Nor does Regulation 5 apply to such things as letter heads that are used solely to identify the business.

*Regulation 8* provides that Regulation 5 does not apply to a tobacco advertisement contained in a communication made in response to a particular request by an individual. Specific provisions are made concerning replies made by means of an information society service, that is, a service provided by means of electronic equipment. A reply by means of such a service will not count as a tobacco advertisement only if the request itself (a) was made by an information society service which doesn't send unsolicited tobacco advertisements to people or (b) was not made by means of an information society service. More generally, the Regulation also provides that the supply of information to an individual is not a tobacco advertisement for the purposes of these Regulations in circumstances where an information society service, through which tobacco products may be purchased, includes the provision of information about a tobacco product and the information becomes available only after the individual has started the purchase process.

*Regulations 9, 10 and 11* provide that these Regulations do not apply to service providers who, broadly, are solely engaged in providing access to an electronic communications network and do not initiate the transmission of a tobacco advertisement or select the recipient or select or modify the information contained in the advertisement. Where a service provider is engaged in storing information, the service provider must remove or disable access to the network upon obtaining actual information that the transmission contains a tobacco advertisement prohibited by these Regulations.

*Regulation 12* provides that these Regulations do not apply to advertisements contained in radio and television broadcasts in Jersey that are regulated by the Office of Communications in the United Kingdom.

*Regulation 13* makes it an offence for a person to give away any product (whether or not tobacco related) for the purpose of promoting smoking or a tobacco product unless that is done in the course of the tobacco trade business to a person also in that business who is responsible for making decisions about the purchase of tobacco or responsible for the conduct of that business. A person guilty of an offence under this Regulation is liable to an unlimited fine.

*Regulation 14* makes it an offence for a person to promote tobacco, including a particular brand of tobacco in Jersey, under a sponsorship agreement. Such a person is liable to an unlimited fine.

### *PART 3 – Brandsharing*

*Regulation 15* prohibits brandsharing where its purpose or effect is to promote smoking or a tobacco product in Jersey. A person guilty of an offence under this Regulation is liable to an unlimited fine.

*Regulation 16* sets out the circumstances in which a person using brandsharing does not commit an offence under Regulation 15. These are (a) where the person does not intend to promote smoking or tobacco and could not have foreseen that would be the effect; (b) where the person is not in the tobacco trade and is not using the feature under an agreement to which at least one party is a tobacco producer or promoter; or (c) the use of the feature in the brandsharing does not make it appear that the same person, firm or company is responsible for branding both the tobacco and the tobacco or service unrelated to tobacco. The Regulation also provides that a person who does not commit an offence in the circumstances described in this Regulation does not, in respect of the use of the feature, contravene Regulation 5 (prohibition on tobacco advertising), Regulation 13 (prohibition on free distribution) and Regulation 14 (prohibition on sponsorship).

#### *PART 4 – Display*

*Regulation 17* prohibits any person from displaying tobacco products in the course of a business where such items are offered for sale. A person guilty of an offence under this Regulation is liable to an unlimited fine.

*Regulation 18* sets out exemptions from Regulation 17 which apply to premises used only by persons who are in the tobacco trade, specialist tobacconist shops and bulk tobacconist shops. Tobacco products can be displayed in the premises of a specialist tobacconist provided they are not visible from the outside of those premises (or, if applicable, if the specialist tobacconist is in a self-contained part of the shop, that self-contained part.) Tobacco products can also be displayed in a bulk tobacconist provided that (a) the area in which they are displayed contains only tobacco products and smoking accessories; (b) the display is not visible from outside that area and (c) there is a notice to the entrance of the area stating that it is illegal to sell tobacco products to anyone under the age of 18; and (d) any person who wants to buy products other than tobacco products does not have to pass through the tobacco area.

*Regulation 19* exempts from Regulation 17 displays of tobacco products in response to a request by an individual aged 18 or over to purchase a tobacco product or for information about products sold by a person. If a person is charged with an offence under Regulation 17 of displaying a tobacco product in a case where the display is to an individual under the age of 18, it is a defence that the person took all reasonable steps to establish the individual's age. If a person is charged with an offence under Regulation 17 of causing the display of a tobacco product where the display is to an individual under the age of 18, it is a defence that the person exercised all due diligence to avoid committing the offence.

*Regulation 20* exempts from Regulation 17 displays of tobacco products that occur in the course of carrying out certain incidental activities. A display of tobacco products in a storage unit is exempt provided that the display is in the course of a specified activity being carried out, such as stock-taking or staff training. A display of tobacco products outside a storage unit is exempt if the tobacco products are displayed only in the course of being placed in the storage unit.

*Regulation 21* exempts from Regulation 17 a display requested by an enforcement officer authorized under Article 1F of the Restriction on Smoking (Jersey) Law 1973, a police officer or a Customs and Excise officer.



*PART 5 – Display of prices*

*Regulation 22* sets out requirements for the display of prices of tobacco products. Without prejudice to the requirements of Regulations under the Price and Charges Indicators (Jersey) Law 2008, tobacco products must be accompanied by a general price list or a price list displayed on a storage unit. The Price Indicators (Jersey) Regulations 2008 require, amongst other things, prices to be displayed in such a way that the price displayed is unambiguous, easily identifiable, clearly legible, placed in proximity to the goods being sold and placed so that consumers do not need to seek assistance to ascertain the selling price. In addition to a general price list or to a price list displayed on a storage unit, prices may be displayed on a list that is available only on request.

*Regulations 23, 24, 25 and 26* set out, respectively, specific requirements for the display of prices that must be complied with in all cases, requirements for price lists on general display, requirements for price lists on storage units and requirements for price lists available on request only.

*Regulation 27* provides that specialist and bulk tobacconists do not need to comply with the requirements relating to price display under Regulation 22 except in relation to displays that are visible from outside the area where the tobacco products are sold.

*PART 6 – General*

*Regulation 28* sets out general provisions relating to offences under these Regulations that are committed by limited liability partnerships, separate limited partnerships or bodies corporate.

*Regulation 29* sets out the title of the Regulations and provides that they come into force on the date that is 18 months after they are made.





Jersey

**DRAFT RESTRICTION ON SMOKING  
(ADVERTISING, PROMOTION AND DISPLAY)  
(JERSEY) REGULATIONS 201-**

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Jersey

## **DRAFT RESTRICTION ON SMOKING (ADVERTISING, PROMOTION AND DISPLAY) (JERSEY) REGULATIONS 201-**

*Made* [date to be inserted]

*Coming into force* [date to be inserted]

**THE STATES**, in pursuance of Articles 1, 1C and 2 of the Restriction on Smoking (Jersey) Law 1973<sup>1</sup>, have made the following Regulations –

### **PART 1 GENERAL**

#### **1 Interpretation**

In these Regulations, unless the context otherwise requires –

“distribute” includes, in relation to a tobacco advertisement, any of the following whether or not in electronic form –

- (a) transmit a tobacco advertisement;
- (b) participate in its transmission;
- (c) provide the means of its transmission;

“EEA state” means any of the following –

- (a) a member State of the European Union;
- (b) any other state that is a party to the agreement on the European Economic Area signed at Oporto on 2nd May 1992, together with the Protocol adjusting that Agreement signed at Brussels on 17th March 1993;

“group”, in relation to a company, means that company, any other company that is its holding body or subsidiary and any other company that is a subsidiary of the holding body;

“holding body” has the meaning given by Article 2 of the Companies (Jersey) Law 1991<sup>2</sup>;

“information society service” means any service provided at the individual request of a recipient of the service, normally for remuneration, at a distance, by means of electronic equipment for the processing (including digital compression) and storage of data;

“Law” means the Restriction on Smoking (Jersey) Law 1973<sup>3</sup>;

“non-tobacco product” means any product other than a tobacco product;

“original package” means the package in which cigarettes or hand-rolling tobacco were supplied for the purpose of retail sale by the manufacturer or importer;

“package” means any box, carton or other container;

“premises” –

- (a) includes any place, including any vehicle, vessel, stall or moveable structure; and
- (b) in relation to a specialist tobacconist in a self-contained part of a shop, means that self contained part;

“public place” means any place to which members of the public have access or are invited to for any purpose whether on payment of a charge or otherwise and includes any shop, cinema, theatre, catering establishment, sports facility or public service vehicle used by members of the public;

“recipient of the service” means any person who uses an information society service for any purpose including seeking information or making it accessible;

“service provider” means a person providing an information society service;

“shop” means any premises where there is carried on a trade or business consisting wholly or mainly of the sale of goods;

“storage unit” means a gantry, cabinet, shelf or other product in which tobacco is held pending sale;

“subsidiary”, in relation to a company, has the meaning given by Article 2 of the Companies (Jersey) Law 1991<sup>4</sup>;

“tobacco” includes a “tobacco product” and vice versa;

“tobacco” and “tobacco product” each include any particular brand of tobacco;

“tobacco advertisement” means an advertisement –

- (a) the purpose of which is to promote a tobacco product; or
- (b) the effect of which is to do so.

## **2 Meaning of “specialist tobacconist” and “bulk tobacconist”**

(1) In these Regulations –

- (a) “specialist tobacconist” means a shop selling tobacco products by retail in respect of which more than half of the sales conducted in

the shop or in a self-contained part of the shop derive from the sale of cigars, snuff, pipe tobacco and smoking accessories;

- (b) “bulk tobacconist” means a shop selling tobacco products (whether or not it sells other products) whose sales of cigarettes or hand-rolling tobacco, measured in accordance with paragraph (2), comply with the following conditions –
  - (i) at least 90% of its cigarette sales are in pre-packed quantities of 200 or more cigarettes in their original package, and the remainder are in pre-packed quantities of 100 or more in their original package, and
  - (ii) at least 90% of its hand-rolling tobacco sales are in pre-packed quantities with a weight of 250 grams or more in their original package, and the remainder are in pre-packed quantities with a weight of 125 grams or more in their original package.
- (2) The sales referred to in the definitions in paragraph (1) are to be measured by sale price –
  - (a) during the most recent period of 12 months for which accounts are available; or
  - (b) during the period for which the shop has been established, if it has not been established long enough for 12 months’ accounts to be available.

### **3 Definition in the Restriction on Smoking (Jersey) Law 1973 amended**

In Article A1 of the Law –

- (a) for the definition “brandsharing” there shall be substituted the following definition –
  - “ ‘brandsharing’ means the use by a person in the course of that person’s business –
    - (a) of any feature in connection with any service or product unrelated to tobacco, such feature being the same as any feature that is connected with tobacco or is so similar as to be likely to be mistaken for that feature; or
    - (b) of any feature in connection with tobacco, such feature being the same as any feature that is connected with any service or product unrelated to tobacco or is so similar as to be likely to be mistaken for that feature;”;
- (b) after the definition “employee” there shall be inserted the following definition –
  - “ ‘feature’ means a name, emblem, logo, trademark, symbol, motto, type-face, colour or pattern of colour, picture, artwork, imagery, appearance or other message, whether alone or in combination;”.

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**4 Advertisements and brandsharing to which these Regulations apply**

- (1) For the purposes of these Regulations, a tobacco advertisement or brandsharing may be contained in any form of communication –
  - (a) whether using printed or written words, designs, still or moving pictures or images or any other devices; and
  - (b) whether the medium of communication is tangible by way of image projection or sound reproduction, computer communication, radio, television or similar broadcast or otherwise.
- (2) Parts 2 and 3 of these Regulations do not apply to the extent that the brand name of a tobacco product is used in connection with a sporting or cultural event that takes place in Jersey, or in the Bailiwick of Guernsey, involving one or more persons representing Jersey or persons resident in Jersey, and –
  - (a) such event, being well established prior to the making of these Regulations is reasonably regarded as being traditional to Jersey or is an event in which persons representing Jersey or resident in Jersey traditionally take part; and
  - (b) the use of the brand name can reasonably be regarded as being traditionally associated with the event prior to the making of these Regulations.
- (3) For the purposes of paragraph (2), “in connection with a sporting or cultural event” refers to any connection with such an event including, without prejudice to the generality of the foregoing, the name of a sporting or cultural event or an award or trophy presented in the course of the event.

**PART 2****ADVERTISING****5 Prohibition on publication or display of tobacco advertisement**

- (1) Subject to these Regulations, a person shall not, in the course of that person’s business, publish a tobacco advertisement or cause one to be published in Jersey.
- (2) Subject to these Regulations, a person shall not, in the course of that person’s business do any of the following in Jersey –
  - (a) print, devise or distribute a tobacco advertisement;
  - (b) cause a tobacco advertisement to be printed, devised or distributed.
- (3) Subject to these Regulations, a person shall not display a tobacco advertisement in a public place.
- (4) For the purposes of these Regulations –
  - (a) “tobacco advertisement” includes a tobacco advertisement contained in any publication that is sold or otherwise made available to members of the public in Jersey; and



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- (b) distribution of a tobacco advertisement includes making a publication containing that advertisement available to members of the public whether through sale or otherwise.
  - (5) Paragraphs (1) and (3) shall not apply to a tobacco advertisement that is contained in a publication (other than an in-flight magazine) which is printed in a country or territory other than Jersey and which is not an EEA State if it is not primarily addressed to members of the public in Jersey or in one or more of the EEA States (or in any part of such a State).
  - (6) A person who contravenes this Regulation shall be guilty of an offence and liable to a fine.
  - (7) A person does not contravene paragraph (1) if the person did not know and had no reason to suspect that the publication contained a tobacco advertisement.
  - (8) A person does not contravene paragraph (2) to the extent that the paragraph relates to distributing or causing the distribution of a tobacco advertisement if –
    - (a) the person did not know and had no reason to suspect that what he or she distributed or caused to be distributed was, or contained, a tobacco advertisement;
    - (b) having become aware that what he or she was distributing or causing to be distributed contained a tobacco advertisement, it was not reasonably practicable for the person to prevent its further distribution; or
    - (c) that person did not carry on business in Jersey at the time of the distribution or causing the distribution, as the case may be.
  - (9) A person does not contravene paragraph (1) or (2) if the person did not know and had no reason to suspect that the advertisement would be published, printed, devised or distributed in Jersey.
  - (10) A person does not contravene this Regulation in relation to a tobacco advertisement, if –
    - (a) the person did not know and had no reason to suspect that the purpose of the advertisement was to promote either or both of the following –
      - (i) the habit of smoking,
      - (ii) tobacco;
    - (b) in relation to a tobacco advertisement whose effect is to promote any of the things described sub-paragraph (a)(i) and (ii), the person could not reasonably have foreseen that effect.

## **6 Specialist tobacconists**

- (1) A person who publishes, or causes to be published, a tobacco advertisement that complies with this Regulation does not contravene Regulation 5 in respect of that advertisement.
- (2) The advertisement –

- 
- (a) is in a specialist tobacconist;
  - (b) is not for –
    - (i) cigarettes, or
    - (ii) hand-rolling tobacco; and
  - (c) complies with the requirements specified in the following paragraphs.
- (3) Those requirements are –
- (a) the advertisement is not visible from outside of the premises of the specialist tobacconist; and
  - (b) the advertisement includes an area (the “information area”) in which are displayed –
    - (i) a health warning as specified in paragraph (4), and
    - (ii) the following information (“health information”) –  
“Jersey Smokers Quitline: 0800 735 1155”.
- (4) The health warning must state –
- (a) in a case where half or more of the area of a tobacco advertisement other than the information area (“the advertisement area”) is used to advertise tobacco products which are intended to be smoked –  
“Smoking kills” or  
“Smoking seriously harms you and others round you”; and
  - (b) in any other case –  
“Tobacco products can damage your health and are addictive”.
- (5) The information area referred to in paragraph (3) must be –
- (a) in a case where the total area of the advertisement exceeds 75 square centimetres, at least 22.5 square centimetres; and
  - (b) in any other case, not less than 30% of the total area of the advertisement.
- (6) For the purposes of paragraph (5), the total area of the advertisement means the advertisement area and the information area.
- (7) The health warning and health information which are required to be displayed under paragraph (3)(b) must be –
- (a) indelible;
  - (b) legible;
  - (c) printed in black Helvetica bold type on a white background;
  - (d) in a font size consistent throughout the text which ensures that the text occupies the greatest possible proportion of the information area;
  - (e) in upper case and lower case type as used in the health information in paragraph (3)(b)(ii) or, as the case may be, in the relevant health warning referred to in paragraph (4);
  - (f) centred in the area in which the text is required to be printed;
  - (g) displayed parallel to the floor;

- (h) surrounded by a black border outside the information area, such border being not less than 3 millimetres and not more than 4 millimetres in width and not interfering with the text of the health warning or health information; and
- (i) irremovably printed on the advertisement or affixed to the advertisement by means of an irremovable sticker.

## **7 Exclusions for tobacco trade**

- (1) A person does not contravene Regulation 5 in respect of a tobacco advertisement that is, or is contained in, a communication made in the course of a business which is part of the tobacco trade for the purposes of that trade and directed solely at persons who –
  - (a) are engaged in, or employed by, a business that is also part of that trade; and
  - (b) are persons to whom paragraph (2) applies,  
when carrying on their functions for the purposes of that trade.
- (2) This paragraph applies to a person who –
  - (a) is responsible for making decisions on behalf of the business referred to in paragraph (1)(a) about the purchase of tobacco that is to be sold in the course of that business;
  - (b) occupies a position in the management structure of the business referred to in paragraph (1)(a) which is equivalent in seniority to, or of greater seniority than, the position of any person responsible for making decisions described in sub-paragraph (a); or
  - (c) is the person responsible for the conduct of the business in question or is a member of the board of directors or other body of persons (however described) which is so responsible.
- (3) An invoice, letterhead, price list or other document that is ordinarily used in the course of a business which is part of the tobacco trade is not a tobacco advertisement for the purpose of these Regulations if its primary purpose is to identify the business and not to advertise, publicize or promote the habit of smoking or tobacco.

## **8 Exclusion for communications for particular requests**

- (1) A person does not contravene Regulation 5 in respect of a tobacco advertisement which is, or is contained in, a communication made in reply to a particular request by an individual for information about a tobacco product.
- (2) Paragraph (1) applies to a communication made by means of an information society service only if the request was made –
  - (a) by means of an information society service which does not advertise any tobacco product to persons –
    - (i) who have not made any such request, or

- (ii) who have not initiated a process by which a tobacco product may be purchased by means of that service; or
  - (b) without using an information society service.
- (3) The supply of information to an individual is not a tobacco advertisement for the purpose of these Regulations if –
  - (a) an information society service provides a means by which tobacco products may be purchased which includes the provision of information about such products; and
  - (b) the information becomes available to the individual only after the individual has initiated the process of making a purchase.

## **9 Exclusion for information society service conduits**

- (1) These Regulations do not apply to a service provider in respect of anything done in the course of providing so much of an information society service as consists in –
  - (a) the provision of access to a communication network; or
  - (b) the transmission in a communication network of information provided by a recipient of the service,if the transmission condition is satisfied.
- (2) The transmission condition is that the service provider does not –
  - (a) initiate the transmission;
  - (b) select the recipient of the transmission; or
  - (c) select or modify the information contained in the transmission.
- (3) Paragraph (1)(b) does not apply if the information is information to which Regulation 10 applies.
- (4) For the purposes of paragraphs (1) and (2), the provision of access to a communication network and the transmission of information in the network includes automatic, intermediate and transient storage of information for the purpose of carrying out the transmission in the network.
- (5) Paragraph (4) does not apply if the information is stored for longer than is reasonably necessary for the transmission.

## **10 Exclusion for information society service caching**

- (1) These Regulations do not apply to a service provider in respect of anything done in the course of providing so much of an information society service as consists in the transmission in a communication network of information to which paragraph (2) applies if –
  - (a) the service provider does not modify the information;
  - (b) the service provider complies with any conditions attached to having access to the information; and
  - (c) in a case to which paragraph (3) applies, the service provider expeditiously removes the information or disables access to it.

- 
- (2) This paragraph applies to information which –
    - (a) is provided by a recipient of an information society service; and
    - (b) is the subject of automatic, intermediate and temporary storage which is solely for the purpose of making the onward transmission of the information to other recipients of the service at their request more efficient.
  - (3) This paragraph applies if the service provider obtains actual knowledge that –
    - (a) the information at the initial source of the transmission has been removed from the network; or
    - (b) access to it has been disabled.

## **11 Exclusion for information society hosting**

These Regulations do not apply to a service provider in respect of anything done in the course of providing so much of an information society service as consists in the storage of information provided by a recipient of the service if –

- (a) the service provider did not know when the information was provided that it contained a tobacco advertisement; or
- (b) upon obtaining actual knowledge that the information contained a tobacco advertisement, the service provider expeditiously removed the information or disabled access to it.

## **12 Television and radio broadcasting**

- (1) These Regulations do not apply in relation to anything included in a service to which paragraph (2), (3) or (4) applies.
- (2) This paragraph applies to –
  - (a) a service falling within section 211(1) of the Communications Act 2003 of the United Kingdom as extended to Jersey by the Communications (Jersey) Order 2003<sup>5</sup> such service not being an additional television service (within the meaning of Part 3 of that Act); and
  - (b) an additional television service comprised in the public teletext service (within the meaning of that Part).
- (3) This paragraph applies to a service which falls within section 245(1) of the Communications Act 2003 of the United Kingdom as extended to Jersey by the Communications (Jersey) Order 2003<sup>6</sup>, not being a digital additional sound service (within the meaning of Part 3 of that Act).
- (4) This paragraph applies to a service provided by the British Broadcasting Corporation.

## **13 Prohibition on free distribution**

- (1) A person shall not give, or cause or permit another person to give, a product (whether or not a tobacco product) or coupon away to a member

of the public in Jersey in the course of that first person's business if the purpose or effect of giving that item is to promote either or both of the following –

- (a) the habit of smoking; or
  - (b) a tobacco product.
- (2) For the purposes of paragraph (1), “coupon” means a document or other thing which (whether by itself or not) can be redeemed for a product or service or for cash or for any other benefit.
- (3) Paragraph (1) shall not apply where –
- (a) the business referred to in that paragraph is part of the tobacco trade;
  - (b) the product or coupon is given away for the purposes of that trade;
  - (c) each person to whom the product or coupon is given –
    - (i) is engaged in or employed by a business which is also part of the tobacco trade, and
    - (ii) is a person to whom paragraph (4) applies; and
  - (d) the product or coupon is given to each such person in his or her capacity as such a person.
- (4) This paragraph applies to a person if –
- (a) he or she is responsible for making decisions on behalf of the business described in paragraph (3)(c)(i) about the purchase of tobacco that is to be sold in the course of that business;
  - (b) occupies a position in the management structure of the business referred to in paragraph (3)(c)(i) which is equivalent in seniority to, or of greater seniority than, the position of any person responsible for making decisions described in sub-paragraph (a); or
  - (c) is the person responsible for the conduct of the business in question or is a member of the board of directors or other body of persons (however described) which is so responsible.
- (5) A person who contravenes this Regulation shall be guilty of an offence and liable to a fine.
- (6) A person does not contravene this Regulation if –
- (a) that person did not know and had no reason to suspect that the purpose of giving away the product or coupon was to promote any of the things mentioned in sub-paragraph (a) or (b) of paragraph (1); or
  - (b) that person could not reasonably have foreseen that the effect of giving away the product or coupon was to promote any of the things mentioned in sub-paragraph (a) or (b) of paragraph (1).

#### **14 Prohibition on sponsorship.**

- (1) A person who is a party to a sponsorship agreement shall not do anything under that agreement if the purpose or effect of anything done as a result of the agreement is to promote in Jersey either or both of the following –

- 
- (a) the habit of smoking; or
  - (b) a tobacco product.
- (2) For the purposes of this Article, a 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 any other form (for example, the provision of services or of contributions in kind).
  - (3) A person who contravenes paragraph (1) shall be guilty of an offence and liable to a fine.
  - (4) A person does not contravene paragraph (1) if –
    - (a) that person did not know and had no reason to suspect that the purpose of what was done as a result of the agreement was to promote anything mentioned in sub-paragraph (a) or (b) of paragraph (1);
    - (b) that person could not reasonably have foreseen that the effect of what was done as a result of the agreement was to promote anything mentioned in sub-paragraph (a) or (b) of paragraph (1); or
    - (c) that person did not know and had no reason to suspect that the contribution under the agreement was made in the course of a business.

### **PART 3**

#### **BRANDSHARING**

##### **15 Prohibition on brandsharing**

- (1) A person is prohibited from brandsharing in the course of a business where the purpose or effect of that brandsharing is to promote either or both of the following in Jersey –
  - (a) the habit of smoking; or
  - (b) a tobacco product.
- (2) A person who contravenes paragraph (1) shall be guilty of an offence and liable to a fine.

##### **16 Exceptions**

- (1) A person does not contravene Regulation 15(1) if it was not the purpose of the person to use brandsharing to promote anything mentioned in sub-paragraph (a) or (b) of paragraph (1) of Regulation 15 and any of paragraphs (2) to (4) apply.
- (2) The person could not reasonably have foreseen that the effect of the brandsharing would be anything mentioned in sub-paragraph (a) or (b) of paragraph (1) of Regulation 15.
- (3) The person –

- 
- (a) is not employed or commissioned by –
    - (i) a tobacco producer or promoter,
    - (ii) a company in the same group of companies as a tobacco producer or promoter, or
    - (iii) a company which has a common holding body with a tobacco producer or promoter; and
  - (b) does not use the feature involved in the brandsharing under any agreement or licence to which at least one party is a tobacco producer or promoter.
- (4) The use of the feature involved in brandsharing does not make it appear that the same person, firm or company is responsible for the branding of both the tobacco and the service or product unrelated to tobacco (whether that is in fact so or not).
- (5) A person who does not contravene Regulation 15 in the circumstances described in paragraph (1) does not contravene Regulation 5, 13 or 14 in respect of the use of the feature or features involved in the brandsharing.

## **PART 4**

### **DISPLAY**

#### **17 Prohibition of display of tobacco**

- (1) A person shall not, in the course of a business, display or cause the display of tobacco products in any premises where such items are sold or offered for sale.
- (2) A person who contravenes paragraph (1) shall be guilty of an offence and liable to a fine.

#### **18 Exemptions for the tobacco trade, specialist tobacconists and bulk tobacconists**

No offence is committed under Regulation 17 if –

- (a) the display is in premises –
  - (i) which are accessible only to persons who are engaged in, or employed by, a business which is part of the tobacco trade, and
  - (ii) from which the prices of tobacco products are not visible from outside of the premises;
- (b) the display –
  - (i) is in the course of a business which is part of the tobacco trade,
  - (ii) is for the purposes of that trade, and
  - (iii) is accessible only to persons who are engaged in, or employed by, a business which is also part of that trade;
- (c) the display –
  - (i) is in the premises of a specialist tobacconist, and



- (ii) is not visible from the outside of those premises; or
- (d) the display is in a bulk tobacconist and the following conditions are satisfied –
  - (i) the display –
    - (A) is in a part of the shop (the “tobacco area”) containing tobacco products and smoking accessories only, and
    - (B) is not visible from outside of the tobacco area,
  - (iii) a notice is exhibited at the entrance to the tobacco area, such notice complying with the following conditions –
    - (A) it exhibits the statement “It is illegal to sell tobacco products to anyone under the age of 18”,
    - (B) each character in the statement is not less than 36 millimetres high,
    - (C) it does not contain any other statement, and
    - (D) it is not less than 297 millimetres by 420 millimetres, and
  - (iv) the shop is designed so that customers who wish to buy products other than tobacco products or smoking accessories are not required or encouraged to pass through the tobacco area.

## **19 Exemptions and defence for requested displays**

- (1) In this Regulation “requested display” means a display to an individual following a particular request by the individual to purchase a tobacco product or for information about a tobacco product or for information about the particular tobacco products sold by a person.
- (2) No offence is committed under Regulation 17 if –
  - (a) the display is a requested display to an individual (“A”) aged 18 or over;
  - (b) the display is of tobacco products in a storage unit to individuals other than A, where –
    - (i) the display –
      - (A) is solely as a consequence of a requested display, and
      - (B) lasts for no longer than is necessary to remove from the storage unit the tobacco product which A asked to purchase or for information about, and
    - (ii) the area of the storage unit displayed does not exceed 1.5 square metres; or
  - (c) the display is of tobacco products other than in a storage unit to individuals other than A where the display –
    - (i) is solely as a consequence of the requested display, and
    - (ii) lasts for no longer than the requested display.
- (3) Where a person (“D”) is charged with an offence under Regulation 17 by reason of D having displayed the tobacco product in a case where the

- display is a requested display to an individual aged under 18 it is a defence that –
- (a) D believed that the individual was aged 18 or over; and
  - (b) either –
    - (i) D had taken all reasonable steps to establish the individual's age, or
    - (ii) from the individual's appearance nobody could have reasonably suspected that the individual was aged under 18.
- (4) For the purposes of paragraph (3), a person is treated as having taken all reasonable steps to establish an individual's age if –
- (a) the person asked the individual for evidence of the individual's age; and
  - (b) the evidence would have convinced a reasonable person.
- (5) Where D is charged with an offence under Regulation 17 by reason of D having caused the display of a tobacco product in a case where the display is a requested display to an individual aged under 18, it is a defence that D exercised all due diligence to avoid committing the offence.

## **20 Exemptions for incidental activities**

- (1) No offence is committed under Regulation 17 by reason of a display of tobacco products in a storage unit if that display complies with the requirements of paragraph (2).
- (2) Those requirements are that –
  - (a) the display –
    - (i) occurs in the course of an activity listed in paragraph (3) being actively carried out in the ordinary course of business in relation to tobacco products,
    - (ii) is solely as a consequence of the activity being carried out, and
    - (iii) lasts for no longer than is necessary in order to allow that activity to be carried out; and
  - (b) the area of the storage unit displayed does not exceed 1.5 square metres.
- (3) The activities referred to in paragraph (2)(a)(i) are –
  - (a) assessing stock levels for the purposes of stock control;
  - (b) restocking;
  - (c) staff training;
  - (d) cleaning of the storage unit;
  - (e) maintenance of the storage unit;
  - (f) refurbishment of the storage unit.
- (4) No offence is committed under Regulation 17 by reason of a display of tobacco products outside a storage unit during restocking if –

- 
- (a) the tobacco products are displayed only in the course of being placed in the storage unit; and
  - (b) the display lasts for no longer than is necessary to place the products in the storage unit.

## **21 Exemption for enforcement officers**

No offence is committed under Regulation 17 if the display is requested by any of the following acting in the course of his or her duty –

- (a) an authorized officer;
- (b) a police officer;
- (c) an officer within the meaning of the Customs and Excise (Jersey) Law 1999<sup>7</sup>.

## **PART 5**

### **DISPLAY OF PRICES**

## **22 Display of prices**

- (1) A display of prices for tobacco products shall –
  - (a) in all cases, comply with the requirements specified in Regulation 23; and
  - (b) comply with the requirements specified in –
    - (i) Regulation 24, in relation to a price list on general display (if any),
    - (ii) Regulation 25, in relation to any prices displayed on storage units (if any), or
    - (iii) Regulation 26, in relation to any price list that is only available on request (if any).
- (2) Without prejudice to the requirements relating to display of prices in Regulations under the Price and Charge Indicators (Jersey) Law 2008<sup>8</sup>, prices must be displayed in accordance with Regulation 24 or Regulation 25 (and may be displayed in accordance with both Regulations).
- (3) Prices may, in addition be displayed in accordance with Regulation 26.
- (4) A person who contravenes this Regulation is guilty of an offence and liable to a fine.
- (5) A display of prices that complies with the requirements of this Regulation is not to be treated as a tobacco advertisement for the purposes of this Law.

**23 Requirements for the display of prices in all cases**

- (1) A display of prices for tobacco products shall be limited to the following information –
  - (a) the brand-name of the product;
  - (b) where pre-packed, the number of units in the packet or, where sold by weight, the net weight of the product;
  - (c) in relation to cigars only, the country of origin and the dimensions;
  - (d) in relation to pipe tobacco only, the cut and type of tobacco; and
  - (e) the price of the product.
- (2) Except as provided in Regulation 26(2)(d), the display must not contain any feature other than that provided for in this Part.
- (3) For the purposes of paragraph (2), “feature” means a logo, trademark, symbol, motto, type-face, colour or pattern of colour, picture, artwork, imagery, appearance, message or other indication that constitutes all or part of the recognisable identity of a brand of tobacco but does not include a bar code or stock number.

**24 Price list on general display**

- (1) A display of prices on general display for tobacco must be in the form of a price list.
- (2) The price list –
  - (a) must have the title “Tobacco products price list”;
  - (b) must be worded with characters which are no higher than 7 millimetres;
  - (c) must not include the price of any other item or product;
  - (d) must not have a border or frame; and
  - (e) must not exceed 1250 square centimetres in size.
- (3) The price list may include any of the following sub-headings –
  - (a) “cigarettes”;
  - (b) “hand rolling tobacco”;
  - (c) “cigars”;
  - (d) “pipe tobaccos”;
  - (e) “other tobacco products”.
- (4) The information described in paragraphs (2) and (3) shall be printed –
  - (a) in black Helvetica plain type on a white background;
  - (b) in a type which has a consistent size throughout the text; and
  - (c) in lower case type, except that the first letter of a word may be in upper case type.
- (5) There must only be one price list for each separate area where tobacco products are both located and can be purchased.

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**25 Display of prices on a storage unit**

- (1) A display of prices on a storage unit where a tobacco product is kept pending sale must –
  - (a) be such that each character is no higher than 10 millimetres;
  - (b) be in a style that is consistent with displays of prices on storage units for non-tobacco products on sale in the same premises (if any); and
  - (c) be limited to one display for each separate location in a storage unit where a particular tobacco product is held.
- (2) For the purposes of paragraph (1)(b), “style” includes type and size of font and colour.

**26 Price lists available on request**

- (1) A display of prices that is only available on request must be in the form of a price list which is made available to an individual aged 18 or over following a particular request by the individual for information about tobacco products for sale in the place where the request is made.
- (2) The price list must be made available only if the following requirements are met –
  - (a) all reasonable steps are taken to ensure that the individual making the request is aged 18 or over before such a display takes place;
  - (b) the display lasts for no longer than is needed for the individual to obtain the information sought by that individual;
  - (c) the wording on the price list must be –
    - (i) such that no character is greater than 7 millimetres high,
    - (ii) in black Helvetica plain type on a white background,
    - (iii) in a type which has a consistent size throughout the text, and
    - (iv) in lower case type, except that the first letter of a word may be in upper case type;
  - (d) the only other feature displayed is a picture of the actual tobacco product, as packaged for sale, provided that the size of such picture does not exceed 50 square centimetres; and
  - (e) the price list is limited in number to –
    - (i) one price list for each separate area where tobacco products both are located and can be purchased, or
    - (ii) where there is more than one till at any such location, one price list for each till.
- (3) For the purposes of paragraph (2)(a), a person is treated as having taken all reasonable steps to establish that the individual is aged 18 or over if either –
  - (a) from the individual’s appearance nobody could reasonably have suspected that the individual was aged under 18; or

- (b) the person asked the individual for evidence of the individual's age and the evidence would have convinced a reasonable person.

## **27 Specialist and bulk tobacconists**

- (1) Except as provided by paragraphs (2) and (3), Regulation 22 shall not apply to a specialist tobacconist or a bulk tobacconist.
- (2) A display of prices of tobacco products which is visible from –
  - (a) the outside of the premises of a specialist tobacconist; or
  - (b) the outside of the tobacco area of a bulk tobacconist,shall comply with the requirements of paragraph (3).
- (3) Those requirements are that such a display –
  - (a) complies with the requirements for the display of prices in all cases under Regulation 23;
  - (b) complies with Article 24(2) and (3); and
  - (c) is limited in number to one display for each premises.
- (4) For the purposes of paragraph (2)(b), the tobacco area is the part of the shop containing tobacco products and smoking accessories only.

## **PART 6**

### **GENERAL**

## **28 General provisions relating to offences**

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

## **29 Citation and commencement**

- (1) These Regulations may be cited as the Restriction on Smoking (Advertising, Promotion and Display) (Jersey) Regulations 201-.

- (2) These Regulations shall come into force 18 months after the date that they are made.

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- 1 *chapter 20.825*
  - 2 *chapter 13.125*
  - 3 *chapter 20.825*
  - 4 *chapter 13.125*
  - 5 *chapter 06.117*
  - 6 *chapter 06.117*
  - 7 *chapter 24.660*
  - 8 *chapter 05.610*