

# STATES OF JERSEY

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## **DRAFT RESTRICTION ON SMOKING (AMENDMENT NO. 2) (JERSEY) LAW 200**

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**Lodged au Greffe on 4th April 2006  
by the Minister for Health and Social Services**

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**STATES GREFFE**





Jersey

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

### **European Convention on Human Rights**

The Minister for Health and Social Services has made the following statement –

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

(Signed) **Senator S. Syvret**

## **REPORT**

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

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

### **Financial/manpower considerations**

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

### **European Convention on Human Rights**

Article 16 of the Human Rights (Jersey) Law 2000 will, when brought into force by Act of the States, require the Minister in charge of a Projet de Loi to make a statement about the compatibility of the provisions of the Projet with the Convention rights (as defined by Article 1 of the Law). Although the Human Rights (Jersey) Law 2000 is not yet in force, on 4th April 2006 the Minister for Health and Social Services made the following statement before Second Reading of this Projet in the States Assembly –

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

## Explanatory Note

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

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

*Article 1* provides the interpretation of terms for this Law.

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

*Article 3* amends Article A1 of the 1973 Law which provides the interpretation provisions for that Law. Article A1 of the 1973 Law was inserted by the Restriction on Smoking (Amendment) (Jersey) Law 2006. *Article 3* provides an interpretation of the terms for the amendments to the 1973 Law that are effected by this Law. *Articles 3(1)* and *(2)* insert new definitions into Article A1. *Article 3(2)* includes a definition of workplace. *Article 3(3)*, extends the definition of smoking to include the smoking of substances that are not tobacco.

A workplace is defined as being any of the following –

- (a) premises in which, land on which, or place at which, a person carries out his or her work and is required to be in, on or at for that purpose;
- (b) any tent, temporary structure, or movable structure, in which a person carries out his or her work and is required to be in for that purpose;
- (c) any ship or vessel on which a person carries out his or her work and is required to be on for that purpose;
- (d) any vehicle, whether it is a motor vehicle or not, in which a person carries out his or her work and the vehicle is used solely for that purpose or in which a person is required to be for the purpose of carrying out his or her work, whether occasionally or otherwise, and the vehicle is used solely for that purpose;
- (e) any public transport vehicle in which a person carries out his or her work and is required to be in for that purpose (a public transport vehicle is defined as including a public service vehicle within the meaning of the Motor Traffic (Jersey) Law 1935 that is within a class of those vehicles set out in Article 5(1) of that Law and a motor vehicle to which Article 5(2) of that Law applies and the classes of vehicles are an omnibus service, a char-à-banc service and a cab service);
- (f) any stairwell, corridor or similar common area to which a person working has access to; and
- (g) any canteen, common room, toilet, changing room or similar facility that is provided for the use of a person carrying on his or her work.

If a person carries out work in premises or a place or on any land then those premises, the place or land will be treated as a workplace for the purposes of the Regulations. Similarly, if a person carries out work in a tent, temporary structure, movable structure, vehicle or public service vehicle then the tent, temporary structure, movable structure, vehicle or public service vehicle will be treated as a workplace. Similar provision is made for a ship or vessel on which a person carries out his or her work. The ship or vessel will also be treated as a workplace. The treatment of any of the foregoing as a workplace will apply whether or not the work is carried out occasionally or all the time and whether or not the public has access to the workplace.

The Regulations can exempt any workplace from the application of the Regulations, or a part of the Regulations, under Article 1AB. They can also exempt a dwelling or a workplace, or part of a workplace, if it is not enclosed.

The definitions also include a definition of “volunteer” which describes a voluntary worker. The Regulations will also apply to any place in which a volunteer works.

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

Article 1AA provides the States with the power to make Regulations to prohibit or restrict the smoking of tobacco or other substances in a workplace. It also allows the Regulations to prohibit or restrict the use of tobacco in a workplace (“use of tobacco” is defined in the 1973 Law as sucking, sniffing or chewing tobacco).

Article 1AA(2) is without prejudice to the generality of the wide range of workplaces to which the Regulations can apply. It lists a number of places to which the Regulations can apply including licensed premises, a club, premises registered under the Tourism (Jersey) Law 1948 or the Places of Refreshment (Jersey) Law 1967, cinema, theatre, concert hall, place of public entertainment or place normally used for indoor public entertainment and a hospital or other similar premises.

Under Article 1AA(3)(a) Regulations can provide for different workplaces depending on whether the workforce is made up solely of employees, self-employed persons or voluntary workers or any mix of those groups. Article 1AA(3)(b) allows the Regulations to provide differently for a workplace on the basis of the number of employees, self-employed persons or volunteers who work in the workplace to which the Regulations apply. The Regulations can also, under Article 1AA(3)(c), apply to a workplace on the basis of whether or not there is public access to the workplace.

Article 1AA(4) allows the Regulations to impose a duty on any person or persons that relates to the prohibition or restriction in the Regulations. The duty can include, under Article 1AA(4)(b), a duty to take all reasonable steps to ensure compliance with the Regulations or a specific Regulation and to ensure compliance with the Regulations by any other person in the workplace.

Article 1AA(5) allows the Regulations to specify a period of time to which the prohibition is to apply.

Article 1AB(1) allows the Regulations to exempt a workplace from the prohibition or restriction. The power to do so is made in general terms but Article 1AB(2) specifically allows the Regulations to exempt a dwelling or any part of a workplace that comprises a dwelling.

Article 1AB(3) allows the Regulations to exempt a part of a workplace from some or all of the provisions of the Regulations.

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

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

*Article 5* amends Article 1D of the 1973 Law. Article 1D (Article 1D was inserted by the Restriction on Smoking (Amendment) (Jersey) Law 2006) provides for supplemental provisions for the making of Regulations generally under the 1973 Law. The effect of this Article is to apply Article 1D to the Regulations. Article 1D(1) allows the Regulations to include a requirement to display notices in premises. This is amended by *Article 5(a) to (d)* to allow Regulations made under Articles 1AA and 1AB to provide for a notice on the prohibition or restriction or smoking in workplaces or the exemption from the prohibition. *Article 5(e)* amends Article 1D(2) and allows the Regulations to make different provision for notices that are displayed in different workplaces.

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

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

*Article 6* amends Article 1F of the 1973 Law. Article 1F provides for the powers of authorized officers. Article 1F(4) is amended to allow an authorized officer to enter and inspect a workplace (*Articles 6(a) and (b)*), to take samples of articles or substances found in a workplace (*Article 6(c)*) and, if the authorized officer reasonably suspects a provision of the Regulations has been contravened, to request a person to state his or her name and address (*Article 6(d)*).

*Article 7* amends Article 2 of the 1973 Law (which was amended by the Restriction on Smoking (Amendment) (Jersey) Law 2006). Article 2 of the 1973 Law allows Regulations to provide for a person who contravenes specified provision of the Regulations to be guilty of an offence and to provide a penalty for a person found guilty of the offence. The amendment is to Article 2(1)(a) of the 1973 Law which provides that the fine will not exceed level 4 on the standard scale (under the Criminal Justice (Standard Scale of Fines) (Jersey) Law 1993 the standard scale of fine for Level 1 is £50, Level 2 is £500, Level 3 is £2,000 and Level 4 is £5,000). The amendment allows

Regulations made under Articles 1AA and 1AB to provide for an offence for contravention of a specified provision of the Regulations and a penalty in respect of it.

*Article 8* inserts a new Article 2B into the 1973 Law. It is a general provision for an offence under the 1973 Law or Regulations made under it. The provision deals with the circumstances in which a limited liability partnership or body corporate has been proved to have committed an offence with the consent or connivance of or to be attributable to the neglect of a partner of the partnership, a director, manager, secretary or other similar officer of the body corporate or any person purporting to act in such a capacity. Article 2B(1) provides for that person to be guilty of the offence and liable in the same way as the partnership or the body corporate. Article 2B(2) provides that where the affairs of the body corporate are managed by its members then the principle in Article 2B(1) will apply to a member of the body corporate as if the member was a director.

*Article 9* provides for the name of the Law and that it will come into force 7 days after it is registered.





Jersey

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

### **Arrangement**

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#### **Article**

<u>1</u>	<u>Interpretation</u>
<u>2</u>	<u>Long title amended</u>
<u>3</u>	<u>Article A1 amended</u>
<u>4</u>	<u>Articles 1AA and 1AB inserted</u>
<u>5</u>	<u>Article 1D amended</u>
<u>6</u>	<u>Article 1F amended</u>
<u>7</u>	<u>Article 2 amended</u>
<u>8</u>	<u>Article 2B inserted</u>
<u>9</u>	<u>Citation and commencement</u>





Jersey

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

A LAW to further amend the Restriction on Smoking (Jersey) Law 1973.

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*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 –

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### **1 Interpretation**

In this Law, “principal Law” means the Restriction on Smoking (Jersey) Law 1973<sup>[1]</sup>.

### **2 Long title amended**

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

### **3 Article A1 amended**

(1) In Article A1 of the principal Law, before the definition “advertisement” there shall be inserted the following definitions –

“ ‘1948 Law’ means the Tourism (Jersey) Law 1948<sup>[2]</sup>;

‘1967 Law’ means the Places of Refreshment (Jersey) Law 1967<sup>[3]</sup>;

‘1989 Law’ means the Health and Safety at Work (Jersey) Law 1989<sup>[4]</sup>.”.

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

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

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

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

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

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

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

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

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

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

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

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

‘workplace’ includes any –

- (a) premises in which, land on which, or place at which, a person carries out his or her work and is required to be in, on or at for the purpose of carrying out his or her work;
- (b) tent, temporary structure, or movable structure, in which a person carries out his or her work and is required to be in for the purpose of carrying out his or her work;
- (c) ship or vessel on which a person carries out his or her work and is required to be on for the purpose of carrying out his or her work;
- (d) vehicle, whether it is a motor vehicle or otherwise, in which a person –
  - (i) carries out his or her work if the vehicle is used solely for that purpose, or
  - (ii) is required to be for the purpose of carrying out his or her work and the vehicle is used solely for that purpose;
- (e) public transport vehicle in which a person carries out his or her work and is required to be for the purpose of carrying out his or her work;
- (f) any stairwell, corridor or similar common areas to which a person referred to in paragraphs (a) to (e) has access when that person is at work; and
- (g) any canteen, common room, toilet, changing room or similar facility that is provided for the use of that person while that person is at work,

whether the work referred to in paragraphs (a) to (e) is carried out occasionally or otherwise and whether the public has access to the workplace.”.

(3) In Article A1 of the principal Law, in the definition “smoking” –

- (a) in sub-paragraph (a), the word “or” shall be deleted;
- (b) in sub-paragraph (b), for the word “ignited,” there shall be substituted the words “ignited; or”; and
- (c) after sub-paragraph (b), there shall be inserted the following sub-paragraph –

“(c) being in possession of a substance (or a mixture of substances) that is not tobacco and the substance (or mixture) is ignited, or being in possession of a pipe or other

smoking equipment in which a substance (or a mixture of substances) that is not tobacco is ignited,”.

#### **4 Articles 1AA and 1AB inserted**

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

##### **“1AA Regulations for workplaces**

- (1) The States may make Regulations to prohibit or restrict smoking tobacco or a substance (or a mixture of substances) other than tobacco, or the use of tobacco, in a workplace.
- (2) Without prejudice to the generality of paragraph (1), Regulations under this Article may prohibit a person from smoking, or prohibit the use of tobacco, in all or any of the following –
  - (a) licensed premises;
  - (b) a club;
  - (c) premises registered under the 1948 Law or the 1967 Law;
  - (d) a cinema, theatre, concert hall, place of public entertainment and any other place that is normally used for indoor public entertainment;
  - (e) a hospital or other similar premises providing care for persons who are sick.
- (3) Without prejudice to the generality of paragraph (1), Regulations under this Article may make –
  - (a) different provision for a workplace on the basis of whether it is a workplace in, on or at which employees, self-employed persons or volunteers (or all of them) work;
  - (b) different provision for a workplace on the basis of the number of employees, self-employed persons or volunteers (or all of them) that work in, at or on the workplace;
  - (c) different provision for a workplace according to whether or not the public has access to it.
- (4) Without prejudice to the generality of paragraph (1)–
  - (a) if the Regulations provide for a prohibition or restriction, Regulations made under this Article may provide for a duty to be placed on any person or persons in respect of the prohibition or restriction concerned; and
  - (b) Regulations made under this Article may include a duty, to which subparagraph (a) refers, to take all reasonable steps to ensure–
    - (i) compliance with the Regulations generally or any specified Regulation, and
    - (ii) compliance with the Regulations by any other person or persons in the workplace to which the Regulations apply.
- (5) Regulations may specify the period of time in respect of which the prohibition or restriction is to apply.

##### **1AB Exemptions in Regulations for workplaces**

- (1) Regulations under Article 1AA may provide for exemptions from the application of part or all of the Regulations or from a specified prohibition or restriction imposed by those Regulations.
- (2) Notwithstanding Articles 1AA(1) and (2) and without prejudice to the generality of paragraph (1), the Regulations may exempt from the application of part or all of those

Regulations –

- (a) a dwelling; and
  - (b) any part of a workplace that comprises a dwelling.
- (3) Notwithstanding Articles 1AA(1) and (2) and without prejudice to the generality of paragraph (1), the Regulations may exempt from the application of all or part of those Regulations, different parts of a workplace.
- (4) Without prejudice to the generality of this Article, the Regulations may exempt from the application of part or all of those Regulations a workplace that is not enclosed or any part of a workplace that is not enclosed, and the Regulations may define the meaning of enclosed.
- (5) Without prejudice to the generality of this Article, an exemption under this Article may include an exemption from the application of all or part of the Regulations in respect of the workplace on the basis of all or any of the following –
- (a) whether it is a workplace in, on or at which employees, self-employed persons or volunteers, or all of them, work;
  - (b) the number of employees, self-employed persons or volunteers (or all of them) that work in, on or at the workplace;
  - (c) whether the public has access to the workplace to which the Regulations apply.”.

## 5 Article 1D amended

In Article 1D of the principal Law–

- (a) in the heading, after the words “1A” there shall be inserted the words “, 1AA, 1AB”;
- (b) in paragraph (1), after the words “1A” there shall be inserted the words “, 1AA, 1AB”;
- (c) in paragraph (1)(a), for the words “apply; and” there shall be substituted the word “apply;”;
- (d) in paragraph (1), after sub-paragraph (a) there shall be inserted the following sub-paragraph –
  - “(aa) a requirement to display notices in respect of –
    - (i) the prohibition or restriction in a workplace to which Regulations made under Article 1AA have effect, and
    - (ii) the exemption (if any) under Article 1AB from the application of all or part of the Regulations,and where appropriate, to display notices specifying where or when the prohibition or restriction applies or the exemption (if any) from the prohibition or restriction; and”;
- (e) in paragraph (2), after the words “(or a part of those premises)” there shall be inserted the words “and, in the case of Regulations made under Articles 1AA and 1AB, the Regulations may make differer provision for notices to be displayed in different classes of workplaces”;
- (f) in paragraph (3), for the words “Articles 1(1)(b)(i) and 1A,” there shall be substituted the words “Articles 1(1)(b)(i), 1A, 1AA and 1AB”;
- (g) in paragraph (3)(a), after the word “1A” there shall be inserted the words “, 1AA or 1AB”;
- (h) in paragraph (3)(a), for the words “apply; and” there shall be substituted the word “apply;”;
- (i) for paragraph (3)(b) there shall be substituted the following sub-paragraph –
  - “(b) Articles 1(1)(b)(i), 1AA and 1AB may provide for the liability (howsoever arising) of a person who contravenes a provision of the Regulations to pay for any goods or services supplied to or ordered by that person whether or not –
    - (i) the goods had been used or consumed in whole or in part, or

- (ii) the service had been supplied or provided in whole or in part.”.

## **6 Article 1F amended**

In Article 1F of the principal Law –

- (a) in paragraph (4)(a) for the words “Article 1A,” there shall be substituted the words “Article 1A or 1AA,”;
- (b) in paragraph (4)(a)(i), after the words “(other than a dwelling)” there shall be inserted the words “, or enter and inspect a workplace,”;
- (c) in paragraph (4)(a)(ii), after the words “in premises” there shall be inserted the words “, or a workplace,”; and
- (d) in paragraph (4)(a)(iii), after the words “those premises” there shall be inserted the words “or the workplace”.

## **7 Article 2 amended**

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

## **8 Article 2B inserted**

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

### **“2B General provisions as to offences**

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

## **9 Citation and commencement**

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

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