

STATES OF JERSEY

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DRAFT PROTECTION OF CHILDREN (RESTRICTION ON SUPPLY OF GOODS) (JERSEY) LAW 200

**Lodged au Greffe on 27th November 2008
by the Minister for Economic Development**

STATES GREFFE



Jersey

DRAFT PROTECTION OF CHILDREN (RESTRICTION ON SUPPLY OF GOODS) (JERSEY) LAW 200

European Convention on Human Rights

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

In the view of the Minister for Economic Development the provisions of the Draft Protection of Children (Restriction on Supply of Goods) (Jersey) Law 200- are compatible with the Convention Rights.

(Signed) **Senator P.F.C. Ozouf**

REPORT

1. Introduction

In early 2006, the States debated a proposition by Deputy Geoffrey Southern which sought an ‘in principle’ decision that it should become an offence for any person to sell cigarette lighter refill canisters containing butane to any person under the age of 18 years. The States were unanimous in supporting the proposition which also requested the Minister for Economic Development, in consultation with the Minister for Home Affairs, to bring forward for approval the necessary legislation to give effect to the proposal. This draft Law now concludes that process.

2. Background

As mentioned in the proposition at the time, the introduction of legislation to control the sale of cigarette lighter refill canisters containing butane would bring Jersey into line with the United Kingdom where similar legislation has existed for some years. Controls are exercised via a Regulation made under powers contained in the Consumer Protection Act 1987. As Jersey does not have similar legislation it was considered, initially, that Order-making powers provided in the Consumer Safety (Jersey) Law 2006 may be able to be used to introduce a ban on sales to under-eighteens.

However, advice from the Law Officers determined that the Consumer Safety Law was not an appropriate mechanism to deal with age restrictions on the sale of butane refill canisters, as they are safe products if used as intended by the producers. The Law was not designed to intervene in the sale of safe products to a certain category of buyer because of a potential misuse by that buyer.

3. The Draft Law

Therefore, it was considered that there were 2 options available to introduce the necessary legislation to ban sales of cigarette lighter refill canisters containing butane to under-eighteens –

- draft a Law to deal specifically with the refill canisters
- draft an enabling Law with a power for the States to make Regulations which could be used to age restrict sales of not just refill canisters, but any other goods if the need arises.

It was decided that the second option would in the longer term be more efficient and effective as it would introduce a relatively easy mechanism to control the sale of specific goods to children. For example, the UK also age restricts the sales of products like solvent-based glues, marker pens, correction fluid and aerosol paints.

The draft Law consists of only 6 Articles with Article 2 providing the States with the power to make Regulations to restrict the supply of certain goods to persons under the age of 18. If the Law is adopted, then Regulations dealing with retail sales of cigarette lighter refill canisters containing butane would be drafted, lodged and debated to enable them to come into force shortly after the Law.

The other key provisions include enforcement powers for Trading Standards Officers (authorized persons in Article 1) and penalties for traders found guilty of committing offences under the Law.

Financial and manpower implications

There are no financial or manpower implications for the States arising from this draft Law. (The additional work will be undertaken within Trading Standards’ existing resources.)

European Convention on Human Rights

Article 16 of the Human Rights (Jersey) Law 2000 requires 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). On 26th November 2008 the Minister for Economic Development made the following statement before Second Reading of this Projet in the States Assembly –

In the view of the Minister for Economic Development the provisions of the Draft Protection of Children (Restriction on Supply of Goods) (Jersey) Law 200- are compatible with the Convention Rights.

Explanatory Note

This Law enables the prohibition of or restriction on the supply of certain goods to persons under full age.

Article 1 is an interpretation provision.

Article 2 gives the States power to make Regulations, in the interests of promoting public health or public safety, prohibiting or restricting the supply of goods prescribed in the Regulations to prescribed persons under the age of 18 in prescribed circumstances.

Article 3 gives authorized persons (trading standards officers) appropriate powers to enter premises and to carry out investigations and examinations for the purpose of ensuring compliance with any Regulations made under the Law. Anyone who impersonates an authorized person for the purpose of this Law is guilty of an offence and liable to imprisonment for up to 6 months and to a maximum fine of £5,000.

Article 4 makes it an offence to supply goods in contravention of Regulations made under this Law punishable by imprisonment for up to 12 months and an unlimited fine. However it is a defence for the accused to adduce evidence (which the prosecution fail to disprove) that he or she exercised due diligence. The obstruction of an authorized person or the failure to give required information to an authorized person are each made offences and each carries liability to imprisonment for up to 6 months and a maximum fine of £5,000. Knowingly or recklessly giving false information is an offence and carries liability to imprisonment for up to 12 months and an unlimited fine.

Article 5 contains standard provisions concerning parties to offences when an offence is committed by a limited liability partnership or body corporate.

Article 6 sets out the name of the Law and provides for it to come into force 7 days after registration.



Jersey

DRAFT PROTECTION OF CHILDREN (RESTRICTION ON SUPPLY OF GOODS) (JERSEY) LAW 200

Arrangement

Article

- 1 [Interpretation](#)
- 2 [Power to make Regulations prohibiting or restricting the supply of certain goods to children](#)
- 3 [Compliance with Regulations](#)
- 4 [Offences for contravention of Regulations and obstruction](#)
- 5 [Parties to offences](#)
- 6 [Citation and commencement](#)



Jersey

DRAFT PROTECTION OF CHILDREN (RESTRICTION ON SUPPLY OF GOODS) (JERSEY) LAW 200

A LAW to enable the prohibition of or restriction on the supply of certain goods to persons under full age and for connected purposes.

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 –

“authorized person” means any person who is a consumer safety inspector within the meaning of the Consumer Safety (Jersey) Law 2006^[1];

“prescribed” means prescribed by Regulations.

2 Power to make Regulations prohibiting or restricting the supply of certain goods to children

- (1) The States may, in the interests of promoting public health or public safety, make Regulations prohibiting or restricting the supply of such goods as may be prescribed to such persons or categories of persons, being persons under full age, as may be prescribed in such circumstances as may be prescribed.
- (2) Regulations under this Article may –
 - (a) define the meaning of “supply” and different meanings may be given to meet different circumstances or different classes of circumstances; and
 - (b) contain such incidental, supplemental or transitional provisions as appear to the States to be necessary or expedient.

3 Compliance with Regulations

- (1) An authorized person may, for the purpose of ensuring compliance with any Regulations made under this Law, and subject to the production if so required, of evidence of that authorized person’s authority, at any reasonable time enter any premises (other than premises used only as a dwelling) –
 - (a) to ascertain whether there has been contravention of any Regulations made under this Law;
 - (b) to make such examination and investigation as may in the circumstances be necessary;

- (c) to take such photographs and make such recordings as the authorized person considers necessary for the purpose of any examination or investigation;
 - (d) to require the production of, inspect, take copies of, or copies of any entry in, any books or documents which it is necessary for the authorized person to see for the purposes of any examination or investigation by the authorized person;
 - (e) to require any person to afford the authorized person such reasonable facilities and reasonable assistance with respect to any matters or things within that person's control, or in relation to which that person has responsibilities, as are necessary to enable the authorized person to exercise any of the powers conferred on him or her by this Article;
 - (f) to do any other thing which is reasonable necessary or incidental for the purpose of carrying out his or her powers under this Article.
- (2) A person who is not an authorized person who purports to act as such for the purposes of this Law is guilty of an offence and liable to imprisonment for a term of 6 months and to a fine of level 4 on the standard scale.

4 Offences for contravention of Regulations and obstruction

- (1) A person who supplies any goods in contravention of any Regulations made under this Law shall be guilty of an offence and liable to imprisonment for a term of 12 months and to a fine.
- (2) A person who –
 - (a) intentionally obstructs any authorized person acting in pursuance of any provision of this Law; or
 - (b) without reasonable cause fails to give any authorized person who is so acting any assistance or information that the authorized person may reasonably require for the purposes of the exercise of his or her functions under this Law,
 is guilty of an offence and liable to imprisonment for a term of 6 months and to a fine of level 4 on the standard scale.
- (3) A person is guilty of an offence if, in giving any information which is required of the person by virtue of paragraph (2)(b), the person–
 - (a) makes any statement that the person knows is false in a material particular; or
 - (b) recklessly makes a statement that is false in a material particular.
- (4) A person guilty of an offence under paragraph (3) is liable to imprisonment for a term of 12 months and to a fine.
- (5) It shall be a defence for a person charged with an offence under paragraph (1) to prove that he or she took all reasonable precautions and exercised all due diligence to avoid the commission of the offence.
- (6) If the person charged adduces evidence that is sufficient to raise an issue with respect to the matters to be proved under paragraph (5), the court shall treat the defence as proved unless the prosecutor proves beyond reasonable doubt that it is not.

5 Parties to offences

- (1) Where an offence under this Law committed by a limited liability partnership or body corporate is proved to have been committed with the consent or connivance 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 is also 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 the member's functions of management as if he or she were a director of the body corporate.
- (3) A person who aids, abets, counsels or procures the commission of an offence under this Law is also guilty of an offence and liable in the same manner as a principal offender to the penalty provided for that offence.

6 Citation and commencement

This Law may be cited as the Protection of Children (Restriction on Supply of Goods) (Jersey) Law 200- and shall come into force 7 days after it is registered.

