

STATES OF JERSEY



DRAFT RESTRICTION ON SMOKING (WARNING NOTICES) (JERSEY) REGULATIONS 201-

**Lodged au Greffe on 22nd October 2010
by the Minister for Health and Social Services**

STATES GREFFE



Jersey

DRAFT RESTRICTION ON SMOKING (WARNING NOTICES) (JERSEY) REGULATIONS 201-

REPORT

Background

Smoking is the greatest single cause of preventable illness and premature death in Jersey, killing around 150 Islanders a year. Half of all those people who continue to smoke for most of their lives are likely to die as a result of their habit.

As part of a comprehensive series of measures aimed at reducing the prevalence of smoking locally, the States of Jersey Tobacco Strategy (2003) committed to introduce a series of legislative changes to reduce the harm caused by tobacco. The most recent change being the Restriction on Smoking (Workplaces) (Jersey) Regulations 2006 which has coincided with a continued drop in smoking rates to an all time low of 19% in adults and 17% in children under 16 years old.

Extending health warnings

Health warnings on tobacco packs are now an established method for informing smokers of the health risks associated with smoking and, as such, are an integral element of Jersey's tobacco control programme.

There are two benefits for locating health warnings on tobacco packaging. The first is frequency of exposure – an individual who smokes one pack a day is potentially exposed to a health warning 7300 times a year – and secondly, the location on the actual pack means the consumer is confronted with the warning when deciding to smoke or to purchase a tobacco product. Effective health warnings create a situation of informed consent whereby smokers will be aware of the potential health effects of their actions.

Tobacco packaging is also a key marketing tactic for tobacco companies. The more of the pack that is given over to health warnings, the less impact brand imagery is likely to have.

Policy aims of the Regulations

- To reinforce the current written warnings with pictorial images of the harm caused by tobacco.
- To discourage the number of young people from starting to smoke.
- To provide encouragement to smokers to quit.

How is the law to achieve that effect?

The Restriction on Smoking (Jersey) Law 1973 allows provision for the States of Jersey to make further Regulations concerning warning notices on cigarettes or tobacco products imported to or manufactured in Jersey, warning of the danger to health of smoking and the use of tobacco. In summary the regulations require tobacco products intended for sale in Jersey to –

- to carry the specified written and pictorial health warnings that are consistent with existing regulatory requirements in the United Kingdom and European Union;
- meet the specific size and appearance of those warnings;
- requires packets of cigarettes to carry a statement of nicotine, tar and carbon monoxide yields.

These Regulations also prohibit the supply of tobacco products that carry any name, text or other representation or sign that suggests the product is less harmful than others.

A specific picture schedule is set out for tobacco sold in the travel retail sector.

Public consultation

A joint period of public consultation took place in January 2008. The public were consulted on three aspects of the regulatory proposals. Firstly, which pictures they would like to see on tobacco packaging, secondly, the timeline for implementation and finally the lead for enforcement.

Fourteen pictures have now been identified from the European Commission library. These pictures are the same as those required by current UK regulations. It is proposed that the last date of sale for all cigarettes (with written warnings only) will be 12 months after regulations are laid and a further 12 months before the last date of sale for all other tobacco products.

Financial and manpower implications

There will be limited manpower implications for the Health and Social Services Department which will be met within existing resources. Compliance with the new Regulations will continue to be led by the Customs and Excise Department and Trading Standards Department as part of their existing duties.

Explanatory Note

These Regulations are made under the Restriction on Smoking (Jersey) Law 1973 (“the Law”). They require producers of packets of tobacco to ensure that written and picture warning notices are printed on such packets.

Regulation 1 is an interpretation provision. It defines a producer of a packet of tobacco as a person who imports a packet of tobacco into Jersey or who manufactures or brands such a packet with a view to the tobacco being supplied for consumption in Jersey (including through duty free outlets in Jersey). “Tobacco” is defined in the Law to include cigarettes and anything consisting in whole or in part of tobacco.

Regulation 2 makes it a requirement for packets of tobacco to include specified written and picture warning notices. The picture warning notices, including the technical requirements for such notices, are set out in *Schedule 1*.

Regulation 3 sets out the required size for written and picture warning notices.

Regulation 4 requires packets of cigarettes to include a statement of nicotine, tar and carbon monoxide yields.

Regulation 5 requires written warning notices and the yield statement required by Regulation 4 to comply with the technical requirements relating to their appearance set out in *Schedule 2*.

Regulation 6 prohibits any person from producing or supplying tobacco with packaging that suggests that it contains tobacco that is less harmful than other tobacco.

Regulation 7 provides that packets of tobacco from an EEA state that comply with the labelling requirements of Article 5 of Directive 2001/37/EC concerning the manufacture, presentation and sale of tobacco products shall be taken to comply with Regulations 3, 4 and 5. These requirements relate to the size and technical requirements of the warning notices and the yield statement. The content of the written and picture warning notices must be as set out in Regulation 2 and Schedule 1.

Regulation 8 makes it an offence for any person to produce or supply a packet of tobacco in breach of Regulations 2, 3, 4, 5 or 6 and specifies a penalty of a fine of level 4 on the standard scale. This means that a fine can imposed of an amount up to level 4, that is £5,000. This is because under Article 13 of the Interpretation (Jersey) Law 1954, where a penalty is specified in respect of an offence, the offence is punishable by a penalty not exceeding the penalty specified.

Regulation 9 is a transitional provision. It provides that these Regulations shall not apply to any producer or supplier of a packet of tobacco, such packet being in existence before the date that these Regulations come into force where, in the case of a packet of cigarettes, that packet is supplied to an end-user within the period of 12 months after the date that these Regulations come into force and, in the case of any other packet of tobacco, is supplied to an end user within the period of 24 months after the date that these Regulations come into force.

Regulation 10 sets out the title of the Regulations and provides that they will come into force 7 days after they are made.

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

Level 1 £50

Level 2 £500

Level 3 £2,000

Level 4 £5,000



Jersey

DRAFT RESTRICTION ON SMOKING (WARNING NOTICES) (JERSEY) REGULATIONS 201-

Arrangement

Regulation

1	Interpretation	9
2	Requirements for warning notices.....	10
3	Size of warnings	11
4	Requirement for yield statement on packets of cigarettes.....	11
5	Appearance of written warning notices and yield statements	12
6	Descriptions on packets.....	12
7	Imports from EEA states	12
8	Offences	12
9	Transitional provisions	12
10	Citation and commencement.....	12

SCHEDULE 1 **13**

PICTURE WARNING NOTICES		13
1	List of picture warning notices.....	13
2	Alternative picture warning notice for travel retail sector.....	16
3	Technical specifications	16

SCHEDULE 2 **18**

APPEARANCE OF WRITTEN WARNING NOTICE AND YIELD STATEMENT		18
1	Requirements.....	18



Jersey

DRAFT RESTRICTION ON SMOKING (WARNING NOTICES) (JERSEY) REGULATIONS 201-

Made [date to be inserted]

Coming into force [date to be inserted]

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

1 Interpretation

In these Regulations, unless the context otherwise requires –

“back”, in relation to a packet of tobacco, refers to the external surface opposite the front;

“EEA state” means any of the following –

- (a) a member State of the European Union;
- (b) a Contracting Party to the Agreement on the European Economic Area signed at Oporto on 2nd May 1992 as adjusted by the Protocol signed at Brussels on 17th March 1993;

“front”, in relation to a packet of tobacco, means the external surface of the packet which is, or is equal in area to, the largest surface and either –

- (a) faces a person opening that packet; or
- (b) where no surface faces a person opening the packet, carries most prominently the name, trademark or other distinguishing mark of the brand of tobacco;

“Law” means the Restriction on Smoking (Jersey) Law 1973²;

“packet”, in relation to tobacco, means any box, package, container, wrapping or other receptacle which contains the tobacco, and in which the tobacco is, or is intended to be, presented for retail supply, excluding any additional transparent outer wrapping which may be discarded on opening and excluding any wrapping of individual cigars or cigarillos, and where any receptacle is or is to be contained in another receptacle (excluding such outer wrapping), includes each such receptacle;

“picture warning notice” means the warning consisting of the photograph, illustration or other graphic under each heading in paragraphs 1 and 2 of Schedule 1;

“producer”, in relation to a packet of tobacco, means a person who in the course of a business –

- (a) manufactures it;
- (b) puts a name, trademark or other distinguishing mark on it, by which he or she holds himself out to be its manufacturer or originator; or
- (c) imports it into Jersey,

with a view to the tobacco that the packet contains being supplied for consumption in Jersey or through the travel retail sector, and “produce” shall be construed accordingly;

“tobacco for oral use” means any product made wholly or partly of tobacco which is –

- (a) intended for oral use, unless intended for smoking or chewing; and
- (b) either –
 - (i) in powder or particulate form or any combination of these forms, whether presented in sachet portions or porous sachets or in any other way, or
 - (ii) presented in a form resembling a food product;

“travel retail sector” means retail outlets in Jersey at which duty free packets of tobacco may be purchased only by people who are travelling on journeys to destinations outside Jersey.

2 Requirements for warning notices

- (1) A producer of packets of tobacco other than tobacco for oral use and smokeless tobacco shall ensure that each packet produced by him or her carries –
 - (a) on its front the following written warning notice –
 - (i) “Smoking kills”, or
 - (ii) “Smoking seriously harms you and others around you”; and
 - (b) on its back a picture warning notice from the list of picture warning notices in paragraph 1 of Schedule 1 or, where it applies, paragraph 2 of Schedule 1, printed in accordance with the technical specifications set out in paragraph 3 of that Schedule.
- (2) A producer of a packet of tobacco intended only for supply in the travel retail sector may use the picture warning notice in paragraph 2 of Schedule 1 instead of the picture warning notice set out in paragraph 1(14) of that Schedule.
- (3) A producer of a packet of a brand of tobacco other than tobacco for oral use and smokeless tobacco shall ensure that –
 - (a) the text of each notice set out in paragraph (1)(a) appears on between 47.5 % and 52.5 % of the total number of the packets of

tobacco of that brand that the producer produces over any period of 12 months; and

- (b) each picture warning notice described in paragraph (1)(b) appears on between 4.16 % and 8.33 % of the total number of the packets of tobacco of that brand that the producer produces over any period of 12 months.
- (4) In the case of packets of tobacco other than packets which immediately enclose the tobacco, the period for measuring the frequency of the picture warning notices as described in paragraph (3)(b) shall be 3 years instead of 12 months.
- (5) A producer of packets of smokeless tobacco shall ensure that each packet carries on its front the warning notice “This tobacco product can damage your health and is addictive”.

3 Size of warnings

- (1) A producer of a packet of tobacco shall ensure that, subject to paragraph (2), in relation to each packet of tobacco produced by him or her –
 - (a) the text specified in Regulation 2(1)(a) or in Regulation 2(5) covers an area amounting to at least 30 % of the front of the packet; and
 - (b) the picture warning notice referred to in Regulation 2(1)(b) covers an area amounting to at least 40 % of the back of the packet.
- (2) Where the front of the packet of a tobacco, other than the front of a packet of cigarettes, exceeds 75 cm², the areas specified in paragraph (1) shall not apply and instead the text or picture warning notice, as the case requires, must each cover an area of at least 22.5 cm².

4 Requirement for yield statement on packets of cigarettes

- (1) A producer of a packet of cigarette shall ensure that each packet he or she produces carries a statement of the nicotine, tar and carbon monoxide yields of the cigarettes contained in it.
- (2) The statement –
 - (a) as to the tar yield, shall be shown as a figure rounded to the nearest whole number and expressed in the form “x mg tar”;
 - (b) as to the nicotine yield, shall be shown as a figure rounded to one decimal place and expressed in milligrams in the form “x.y mg nicotine”;
 - (c) as to the carbon monoxide yield, shall be shown as a figure rounded to the nearest whole number and expressed in the form “x mg carbon monoxide”.
- (3) The statement of the yields shall –
 - (a) be printed on one side of the packet; and
 - (b) cover an area amounting to at least 10 % of that side of the packet.

5 Appearance of written warning notices and yield statements

A producer of a packet of tobacco shall ensure, in relation to each packet of tobacco produced by him or her, that the written warning notice required under Regulation 2(1)(a) and any statement required under Regulation 4 comply with the requirements of Schedule 2.

6 Descriptions on packets

No person shall produce or supply a packet of tobacco the packaging of which carries any name, brand name, text, trademark or pictorial or any other representation or sign which suggests that the tobacco it contains is less harmful to health than other tobacco.

7 Imports from EEA states

A person who imports into Jersey any packet of tobacco from an EEA State with a view to that tobacco being supplied for consumption in Jersey shall be regarded as complying with Regulations 3, 4 and 5 or any of them, if the packet complies with Article 5 of Directive 2001/37/EC of the European Parliament and of the Council of 5th June 2001 on the approximation of the laws, regulations and administrative provisions of the member States concerning the manufacture, presentation and sale of tobacco products (O.J. No. L 194 18.7.2001, p.26) as amended up to 7th August 2009³ and with any requirements imposed by that EEA State pursuant to that Directive.

8 Offences

Any person who contravenes Regulation 2, 3, 4, 5 or 6 shall be guilty of an offence and liable to a fine of level 4 on the standard scale.

9 Transitional provisions

These Regulations shall not apply to any producer or supplier in respect of a packet of tobacco in existence before the date that these Regulations come into force, such packet –

- (a) in the case of a packet of cigarettes, being supplied to an end user before the date that is 12 months after the date that these Regulations come into force; and
- (b) in the case of any other packet of tobacco, being supplied to an end user before the date that is 24 months after the date that these Regulations come into force.

10 Citation and commencement

- (1) These Regulations may be cited as the Restriction on Smoking (Warning Notices) (Jersey) Regulations 201-.
- (2) These Regulations shall come into force 7 days after they are made.

SCHEDULE 1

(Regulation 2)

PICTURE WARNING NOTICES

Note

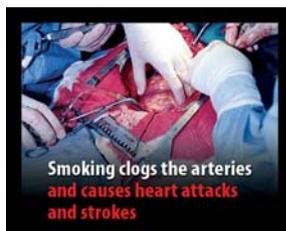
- (1) All photographs, images and textual illustrations (© European Community) in this Schedule have been developed for use on tobacco packets in accordance with Commission Decision of 5th September 2003 (2003/641/EC) on the use of colour photographs or other illustrations as health warnings on tobacco packages⁴ (O.J. No. L 226 10.9.2003, p.24).
- (2) A CD with the required images and a European Commission guidance document on editing the images is available from the Department of Health and Social Services and is available by e-mailing health.promotion@health.gov.je or writing to the Head of Health Improvement, Public Health Department, Le Bas Centre, St Saviours Road, St Helier, Jersey, JE1 4HR.

1 List of picture warning notices

- (1) Smokers die younger



- (2) Smoking clogs the arteries and causes heart attacks and strokes



- (3) Smoking causes fatal lung cancer



- (4) Smoking is highly addictive, don't start



- (5) Stopping smoking reduces the risk of fatal heart and lung diseases



- (6) Smoking can cause a slow and painful death



- (7) Smoking causes ageing of the skin



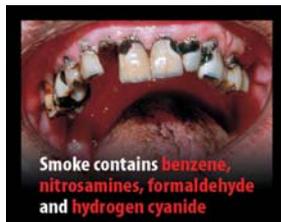
- (8) Smoking can damage the sperm and decreases fertility



- (9) Smoking may reduce the blood flow and cause impotence



- (10) Smoking contains benzene, nitrosamines, formaldehyde and hydrogen cyanide



- (11) Smoking when pregnant harms your baby



- (12) Protect children: don't make them breathe your smoke



- (13) Your doctor or your pharmacist can help you stop smoking



- (14) Get help to stop smoking



2 Alternative picture warning notice for travel retail sector

Your doctor or your pharmacist can help you stop smoking.

**3 Technical specifications**

- (1) Each picture warning notice shall be surrounded by a black border outside the area specified in Regulation 3 which shall –
 - (a) be not less than 3 mm and more than 4 mm in width; and
 - (b) not interfere with the picture warning notice.
- (2) In the case of packets of cigarettes, each picture warning notice shall be irremovably printed on the packet.
- (3) In the case of packets of tobacco other than packets of cigarettes, each picture warning notice may be either irremovably printed on the packet or affixed to the packet by means of an irremovable sticker.
- (4) Subject to sub-paragraph (5), each picture warning notice shall –
 - (a) be in the format and proportions of the pictures and text set out in paragraph 1 or 2, as the case requires, and adopt the graphical integrity of those pictures and text;
 - (b) occupy the entire area reserved for the picture warning notice;
 - (c) be positioned parallel to the top edge of the packet, and in the same direction as the other information on the packet; and
 - (d) be printed in four-colour/-CMYK-/screen 133 lines per inch, as a minimum requirement.
- (5) Where the size of the packet so requires, the picture warning notice can be modified according to the following rules –
 - (a) the graphical editing of the textual elements shall be done by varying the font size and line breaks to ensure high readability;
 - (b) for picture warning notices where the illustration is a text, the graphical editing shall be done by varying font size and line breaks, however the relative surfaces occupied by text as an illustration and the corresponding text of the picture warning notice must be respected;
 - (c) for picture warning notices where a photograph or other illustration is an image, the graphical editing shall be done by proportionate scaling of the photograph or other illustration and varying of the relative surfaces occupied by the photograph or other illustration and the corresponding text of the picture warning notice;
 - (d) when the proportion between the height and the width of the picture warning notice is lower than 0.8, the corresponding text of the picture warning notice, if placed under the photograph or other

- illustration in paragraph 1 or 2, may be moved to the right of the photograph or other illustration; and
- (e) when the proportion between the height and the width of the picture warning notice exceeds 1.2, the corresponding text of the picture warning notice, if placed to the side of the photograph or other illustration in paragraph 1 or 2, may be moved under the photograph or illustration.
- (6) A picture warning notice must not –
- (a) be printed on the tax stamps on any packet of tobacco;
 - (b) be hidden, obscured or interrupted by –
 - (i) other written or pictorial matter, or
 - (ii) the opening of the packet.

SCHEDULE 2

(Regulation 5)

**APPEARANCE OF WRITTEN WARNING NOTICE AND YIELD
STATEMENT****1 Requirements**

- (1) The written warning notice required under Regulation 2(1)(a) and the yield statement required under Regulation 4 shall 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 area specified in Regulation 3(1)(a) or Regulation 4(3)(b);
 - (e) in lower case type, except for the first letter of the text;
 - (f) centred in the area in which the text is required to be printed, parallel to the top edge of the packet;
 - (g) surrounded by a black border outside the area specified in Regulation 3(1)(a) or Regulation 4(3)(b) being a border which shall –
 - (i) be not less than 3 mm and not more than 4 mm in width, and
 - (ii) not interfere with the text of the written warning notice or the yield statement, as the case requires; and
 - (h) subject to paragraph 2, be irremovably printed on the packet.
- (2) In the case of packets of tobacco other than cigarettes, the written warning notice required under Regulation 2(1)(a) and the yield statement required under Regulation 4 may be affixed to the packet by means of an irremovable sticker.
- (3) The written warning notice and yield statement must not –
 - (a) be printed on the tax stamps on any packet of tobacco; or
 - (b) be hidden, obscured or interrupted by –
 - (i) other written or pictorial matter, or
 - (ii) the opening of the packet.

-
- ¹ *chapter 20.825*
² *chapter 20.825*
³ [EUR-Lex - 32001L0037R\(01\) – EN](#)
⁴ [EUR-Lex - 32003D0641 – EN](#)