

STATES OF JERSEY



DRAFT RESTRICTION ON SMOKING (AMENDMENT No. 3) (JERSEY) LAW 201-

**Lodged au Greffe on 7th February 2013
by the Minister for Health and Social Services**

STATES GREFFE



Jersey

DRAFT RESTRICTION ON SMOKING (AMENDMENT No. 3) (JERSEY) LAW 201-

European Convention on Human Rights

In accordance with the provisions of Article 16 of the Human Rights (Jersey) Law 2000 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. 3) (Jersey) Law 201- are compatible with the Convention Rights.

Signed: **Deputy A.E. Pryke of Trinity**

Minister for Health and Social Services

Dated: 4th February 2013

REPORT

Children are most likely to take up smoking during their teenage years. It is estimated that someone who starts smoking at the age of 15 is 3 times more likely to die of smoking-related cancer, than someone who starts in their late 20s. Approximately 17% of young people smoke tobacco. In Jersey the number of young people who describe themselves as ‘smoking regularly’, doubles between the ages of 13 and 16 years of age.

Tobacco vending machines continue to represent an accessible and ready supply of tobacco for children under the legal age of purchase. Despite increased retailer vigilance and increased restrictions on their placement, a significant number of children still report buying tobacco from vending machines. Approximately 6% of underage tobacco purchases by 14 – 15 year-olds came from tobacco vending machines¹. Anecdotal evidence from young people would suggest that the extent to which tobacco vending allows access to tobacco is under-represented in the survey.

A more detailed picture is offered by a survey by the Local Authority Regulatory Standards reporting on test purchases by young people under the supervision of trading standards officers. The research found that young people were able to buy cigarettes from coin-operated vending machines on more than 4 in 10 occasions, with a number of Councils reporting a 100% successful purchase rate.

Some Councils found that where children were successfully prevented from purchasing from vending machines it was because the machine was broken rather than because they were challenged. It also suggests that vending machines are likely to be a common source of cigarettes for 16–18 year-olds and underlines the need to prohibit sales from this source. A similar outcome was found in a test purchase exercise in south-west England, where 73% of attempts by 15 year-olds to purchase tobacco were successful.

Currently, 22 countries in Europe ban or have never allowed sales from vending machines of tobacco. Prohibiting the sale of tobacco products from vending machines will bring Jersey in line with the majority of European nations and will reduce children’s access to tobacco. The sale of tobacco products from vending machines became illegal in England from 1st October 2011. Prohibition of the sale of tobacco products from vending machines was included as part of the Health Act 2009.

The States of Jersey Tobacco Control Strategy (2010 – 2015) identifies the prohibition of tobacco vending as a key action. It is a crucial step to meeting the headline targets for reducing the number of children under 16 years old who smoke to under 5%.

The effect of the Law

The proposed amendment to the Law would allow Regulations to be made which would prohibit the sale of tobacco from vending machines.

Conclusion

The number of children smoking in Jersey is falling. In order to keep this trend in the future it is important that we take measures that are consistent with the overall aim of reducing the number of children who smoke.

¹ Health Related Behaviour Survey 2010

This action will compliment the ongoing efforts of parents, teachers and health advisors, who are constantly encouraging children away from tobacco and towards a smoke-free and healthy life.

Financial and manpower implications

The draft Law will impose additional enforcement duties on the Health Protection Department, but these will be managed within 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 4th February 2013 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. 3) (Jersey) Law 201- are compatible with the Convention Rights.

References

- Test Purchasing of Tobacco Products, Results from Local Authority Trading Standards, 1st October 2007 to 31st March 2008. Local Government Regulation (formerly LACORS) is the organisation responsible for overseeing local authority regulatory services in the U.K.
- Thomas, P., Tobacco Vending Machines – Regulatory and Compliance Survey. Presentation to the APPG on Smoking and Health. June 2009.
- The European Tobacco Control report, World Health Organisation 2007.

Explanatory Note

This draft Law would amend the Restriction on Smoking (Jersey) Law 1973 (“principal Law”). The main change is to allow Regulations to be made to ban the sale of tobacco from a vending machine. This Law would also make changes with respect to the penalties for contravention of Regulations made under the principal Law.

Article 1 defines “principal Law”.

Article 2 amends Article 1 of the principal Law relating to the general Regulation-making powers of the States to make provision against health risks due to smoking. The amendments remove the provisions set out in Article 1 that would allow the sale of tobacco by vending machines in specified circumstances.

Article 3 substitutes the current specific Regulation making power in Article 1B of the principal Law allowing the sale of tobacco by vending machines. The provision allows the States by Regulations to prohibit the sale of tobacco by vending machines.

Article 4 substitutes the current provisions in the principal Law relating to the powers of authorized officers to take enforcement action in relation to the sale of tobacco from vending machines with more general provisions that are consistent with the new provisions referred to in Article 3.

Article 5 substitutes the current provision in the principal Law setting out the maximum penalties for offences for breach of any Regulations. Currently, Regulations made under specified provisions in the principal Law are subject to a maximum penalty of level 4 on the standard scale (that is £5,000) or to an unlimited fine depending on which provision in the principal Law the relevant Regulation is made under. The substituted Article allows Regulations made under any provision in the principal Law to make breach of any Regulation an offence subject to a maximum term of imprisonment of 2 years and to an unlimited fine.

Article 6 sets out the title of the Regulations and provides that they will come into force on such day as the States may by Act appoint.



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Arrangement

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Jersey

DRAFT RESTRICTION ON SMOKING (AMENDMENT No. 3) (JERSEY) LAW 201-

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

Adopted by the States [date to be inserted]

Sanctioned by Order of Her Majesty in Council [date to be inserted]

Registered by the Royal Court [date to be inserted]

THE STATES, subject to the sanction of Her Most Excellent Majesty in Council, have adopted the following Law –

1 Interpretation

In this Law “principal Law” means the Restriction on Smoking (Jersey) Law 1973¹.

2 Article 1 amended

In Article 1 of the principal Law –

- (a) in paragraph (1)(b)(iii) the words “including the sale of tobacco to those persons by means of a vending machine” shall be deleted;
- (b) in paragraph (4)(c) the words “(including a premises in which tobacco is sold by means of a vending machine)” shall be deleted.

3 Article 1B substituted

For Article 1B of the principal Law there shall be substituted the following Article –

“1B Prohibition on sales of tobacco from vending machines

The States may by Regulations make provision for the sale of tobacco by means of a vending machine to be prohibited.”

4 Article 1F amended

For Article 1F(4)(b) of the principal Law there shall be substituted the following sub-paragraph –

- “(b) Regulations made under Article 1B, an authorized officer may at all reasonable times –
- (i) enter premises (other than a dwelling) in respect of which the Regulations have effect,
 - (ii) make such examination and investigation as may, in the circumstances, be necessary,
 - (iii) take such photographs and make such recordings as the authorized officer considers necessary for the purposes of any examination or investigation,
 - (iv) require the licence holder or occupier of those premises, as the case may be, to produce any documents that are necessary for the purposes of any examination or investigation by the authorized officer,
 - (v) inspect and take copies of, or copies of any entry in, those documents,
 - (vi) where the authorized officer reasonably suspects that a provision of the Regulations is being, or has been contravened, require any person on those premises to state his or her name and address;”.

5 Article 2 amended

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

“2 Offences, defences and penalties

- (1) Regulations under this Law may provide that a person who contravenes a specified provision of the Regulations shall be guilty of an offence and liable to either or both of the following –
 - (a) imprisonment for a length of time specified in the Regulations not exceeding 2 years;
 - (b) a fine (whether specified to be on the standard scale or otherwise).
- (2) Regulations under this Law may provide for a defence in proceedings for an offence under the Regulations either generally or in specified circumstances and for offences by a limited liability partnership, a separate limited partnership and a body corporate.”.

6 Citation and commencement

This Law may be cited as the Restriction on Smoking (Amendment No. 3) (Jersey) Law 201- and will come into force on such day as the States may by Act appoint.

¹ *chapter 20.825*