

STATES OF JERSEY



DRAFT RESTRICTION ON SMOKING (VENDING MACHINES) (JERSEY) REGULATIONS 200-

**Lodged au Greffe on 28th February 2006
by the Minister for Health and Social Services**

STATES GREFFE



DRAFT RESTRICTION ON SMOKING (VENDING MACHINES) (JERSEY) REGULATIONS 200-

REPORT

These Regulations form part of a set of 3 Regulations which will set the legal context for implementing phase one of “A Tobacco Strategy for Jersey”. The Tobacco strategy was agreed by the States in November 2003. The law drafting approach has been to extend the existing Restriction on Smoking (Jersey) Law 1973, to accommodate the changes required by “A Tobacco Strategy for Jersey”. Furthermore, in drafting the legislation, the practicalities regarding its enforcement have been incorporated into the provisions.

These Regulations restrict where vending machines selling tobacco can be placed in premises where persons under 18 have access. They also restrict the operation of such vending machines at events held wholly or mainly for persons under the age of 18.

The purpose of these Regulations is to prevent children from buying tobacco products from vending machines. Under these new Regulations vending machines should not be placed where children can use them. If children are unable to buy cigarettes they are less likely to smoke. These Regulations will help reduce the high number of Jersey children who are smoking (33% of Jersey 14-15 year olds smoke compared to 25% in the South West of England).

Financial and manpower statement

There are no financial or manpower implications for the States arising from these draft Regulations.

Explanatory Note

These Regulations regulate where vending machines selling tobacco can be placed in premises, including licensed premises, to which persons under 18 have access. They also restrict the operation of vending machines selling tobacco at events held wholly or mainly for persons under 18.

Regulation 1 provides for the interpretation of terms used in the Regulations.

Regulation 2 describes the scope of the Regulations. They apply to premises, including licensed premises, in which there is a vending machine selling tobacco and where persons aged under 18 years have access to those premises (note that where persons under 18 years have access to licensed premises that access is in accordance with the Licensing (Jersey) Law 1974).

Regulation 3 requires that vending machines selling tobacco must be located in a place where the occupier of the premises (or in the case of licensed premises, the licence holder) or the occupier's (or licence holder's) employee can observe all persons using the machine.

Regulation 4 provides that if an event for persons under 18 is held on premises in which there is a vending machine selling tobacco, the occupier of those premises (or a licence holder if they are licensed premises) must ensure that the vending machine does not operate during the event.

Regulation 5 requires the occupier (or licence holder) to display a notice stating that it is prohibited for a person under 18 to use the vending machine to purchase tobacco. The notice must be permanently affixed and be in a prominent position on the vending machine.

Regulation 6 provides that it is an offence to contravene Regulation 3 (placing the vending machine in a place where all persons using it can be observed), 4 (requirement for vending machine not to operate at event for persons under 18) and 5 (display of notices).

The penalty is a fine of level 3 on the standard scale.

Under the Criminal Justice (Standard Scale of Fines) (Jersey) Law 1994, level 1 is £50, level 2 is £500, level 3 is £2,000 and level 4 is £5,000.

Article 13 of the Interpretation (Jersey) Law 1954 has the effect that –

- (a) where the penalty for an offence is expressed as a specified term of imprisonment or specified fine, a penalty not exceeding the specified term or amount may be imposed for the offence;
- (b) where no amount or level on the standard scale is specified for a fine, the fine is to be construed as a fine of an unlimited amount;
- (c) where the penalty for an offence is expressed as a term of imprisonment and a fine, either or both of the term of imprisonment and the fine may be imposed for the offence.

Regulation 7 provides for a defence for contravening Regulation 3 (placing of vending machine), 4 (requirement for vending machine not to operate at event for persons under 18) and 5 (display of notices). The defence is that the defendant took all reasonable steps to ensure compliance with the Regulation.

Regulation 8 provides for the title of these Regulations and that they will come into force on the same day as the Restriction on Smoking (Amendment) (Jersey) Law 2006 comes into force.



Jersey

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Regulation

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Made

[date to be inserted]

Coming into force

in accordance with Regulation 8(2)

THE STATES, in pursuance of Articles 1, 1B, 1D, 1G and 2 of the Restriction on Smoking (Jersey) Law 1973, ^[1] have made the following Regulations –

1 Interpretation

In these Regulations, unless the context otherwise requires –

“premises” includes licensed premises and any vehicle, stall or movable structure;

“principal Law” means the Restriction on Smoking (Jersey) Law 1973.

2 Application of Regulations

These Regulations shall apply to premises –

- (a) in which there is a vending machine that sells tobacco; and
- (b) to which a person under the age of 18 years –
 - (i) has access, or
 - (ii) in the case of licensed premises, is permitted access in accordance with the Law of 1974, whether on payment of a fee or otherwise (or is invited for any purpose or by virtue of membership of any club or society) and whether accompanied by a person over that age or otherwise.

3 Placement of vending machines

Where a vending machine that sells tobacco is installed in premises to which these Regulations apply, the occupier of those premises or, if those premises are licensed premises, the holder of the licence for those licensed premises, shall ensure that the vending machine is located in a position in those premises in respect of which –

- (a) the occupier or, as the case may be, the holder of the licence; or
- (b) an employee of the occupier or, as the case may be, of the holder of the licence, can observe all persons using that vending machine.

4 Requirement for vending machines not to operate at certain events

Where –

- (a) there is a vending machine in premises to which these Regulations apply; and
- (b) an event that is wholly or mainly for persons who are aged 18 years or less is held in those premises, the occupier of those premises or, in the case of licensed premises, the holder of the licence for those licensed premises, shall ensure that the vending machine does not operate so as to permit the sale or purchase of tobacco during the period in which the event takes place.

5 Display of notice

- (1) The occupier of premises to which these Regulations apply or, if those premises are licensed premises, the holder of a licence for those licensed premises, shall display or cause to be displayed on a vending machine in those premises a notice stating that it is prohibited for a person under the age of 18 to use the vending machine to purchase tobacco.
- (2) A notice referred to in paragraph (1) shall be permanently affixed in a prominent position on the vending machine.

6 Offence and penalty

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

7 Defences

In proceedings for an offence under Regulation 6 that relate to contravention of Regulation 3, 4 or 5, it shall be a defence for the defendant to show that he or she took all reasonable steps to ensure compliance with the Regulation concerned.

8 Citation and commencement

- (1) These Regulations may be cited as the Restriction on Smoking (Vending Machines) (Jersey) Regulations 200-.
- (2) These Regulations shall come into force on the same day as the Restriction on Smoking (Amendment) (Jersey) Law 2006 comes into force.

