



Jersey

RESTRICTION ON SMOKING (AMENDMENT No. 2) (JERSEY) LAW 2006

Arrangement

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RESTRICTION ON SMOKING (AMENDMENT No. 2) (JERSEY) LAW 2006

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

Adopted by the States

16th May 2006

Sanctioned by Order of Her Majesty in Council

14th November 2006

Registered by the Royal Court

17th November 2006

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 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 1948²;

‘1967 Law’ means the Places of Refreshment (Jersey) Law 1967³;

‘1989 Law’ means the Health and Safety at Work (Jersey) Law 1989⁴.”.

- (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 1935⁵ 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 sub-paragraph (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 different 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 2006 and shall come into force on the seventh day following its registration.

A.H. HARRIS

Deputy Greffier of the States

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