



Jersey

RESTRICTION ON SMOKING (WORKPLACES) (JERSEY) REGULATIONS 2006

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Made

21st November 2006

Coming into force

4 a.m. on 2nd January 2007

THE STATES, in pursuance of Articles 1, 1AA, 1AB, 1C, 1D, 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 –

“1994 Law” means the Nursing and Residential Homes (Jersey) Law 1994²;

“ceiling” means a ceiling that is fixed or movable;

“Customs and Immigration premises” includes any place for the time being occupied by officers of the Impôts;

“designated area” means an area designated in accordance with Regulation 5(4);

“hospice” means premises that are used for the purpose of providing palliative care to persons who suffer from an illness or disease that is active, progressive and advanced in nature and who are no longer curable by means of the administration of existing or available medical treatments;

“occupier”, in relation to a workplace (or a part of a workplace), means –

- (a) if the workplace (or part) is –
 - (i) premises (other than premises referred to in sub-paragraph (ii) or (iii)) or a place, the occupier of those premises or the place,
 - (ii) licensed premises, the holder of the licence, or
 - (iii) premises registered under the 1948 Law³ or the 1967 Law⁴, the proprietor of those premises;
- (b) if the workplace (or part) is a tent, the occupier of the tent;

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- (c) if the workplace (or part) is a temporary structure or movable structure, the occupier of the temporary structure or movable structure;
 - (d) if the workplace (or part) is a ship or vessel, the owner or charterer of the ship or vessel;
 - (e) if the workplace is aircraft, the owner or charterer of the aircraft;
 - (f) if the workplace (or part) is a vehicle (whether a motor vehicle or otherwise), the owner of the vehicle; and
 - (g) if the workplace is a public service vehicle, the person to whom the public service vehicle licence has been granted in accordance with Article 9 of the Motor Traffic (Jersey) Law 1935⁵ for that public service vehicle;

“police station” means a police station used by the States of Jersey Police;

“principal Law” means the Restriction on Smoking (Jersey) Law 1973⁶;

“roof” means a roof that is fixed or movable;

“similar structures”, in relation to a wall or walls of a workplace (or of a part of a workplace) includes railings, partitions, windows and doors, gates or other means of access to and egress from the workplace (or the part).

2 Prohibition on smoking in certain workplaces

- (1) A person shall not smoke in a workplace if –
 - (a) the workplace is covered by a roof or ceiling; and
 - (b) more than 50% of the perimeter of the workplace is made up of one or more walls and similar structures (or either of them).
- (2) In a workplace that is divided into parts and any part of the workplace –
 - (a) is covered by a roof or ceiling; and
 - (b) more than 50% of the perimeter of the part is made up of one or more walls and similar structures (or either of them),a person shall not smoke in that part of the workplace.

3 Exemption for dwelling

- (1) Regulation 2(1) shall not apply to a workplace to which that paragraph refers if the workplace is a dwelling.
- (2) Where in any workplace to which Regulation 2(1) refers there is a part of the workplace that is used as a dwelling, Regulation 2(1) shall not apply to that part of the workplace.
- (3) Regulation 2(2) shall not apply to a part of a workplace to which that paragraph refers if the part is a dwelling.
- (4) Where in any part of a workplace to which Regulation 2(2) refers there is another part that is used as a dwelling, Regulation 2(2) shall not apply to that other part that is used as a dwelling.

4 Exemption for workplace of one person in certain circumstances

Regulation 2(1) shall not apply to a workplace to which that paragraph refers if, at all times –

- (a) it is a workplace in which one person (whether that person is an employee, a self-employed person or a volunteer) carries out his or her work;
- (b) no other person carries out work in that workplace (whether as an employee, a self-employed person or a volunteer); and
- (c) no member of the public has access to the workplace.

5 Smoking in certain workplaces

(1) This paragraph applies to –

- (a) a cell in the States of Jersey Prison at La Moye;
- (b) a room in a police station or in any Customs and Immigration premises that is used solely for the purpose of –
 - (i) detaining persons, or
 - (ii) interviewing persons;
- (c) a bedroom –
 - (i) in a workplace that is registered under the 1948 Law if it has been designated by the occupier of the workplace as a bedroom in which smoking is permitted, or
 - (ii) in a workplace that is not registered under the 1948 Law and in which the occupier carries on a business that includes the provision, in the workplace, of sleeping accommodation to the public if the bedroom has been designated by the occupier as a bedroom in which smoking is permitted; and
- (d) a room that –
 - (i) is in a laboratory of which the recognized activities include the conduct of scientific education in relation to, or research on, smoking,
 - (ii) is set apart exclusively for the testing of smoke,
 - (iii) has been assigned, by the person having the management or control of the laboratory, as a room in which smoking is permitted solely for scientific purposes,
 - (iv) has a ventilation system that does not ventilate into any other part of the laboratory (except any other room that has been assigned under clause (iii)), and
 - (v) has a notice on any entrance to the room in which smoking is permitted stating that smoking is permitted in the room solely for scientific purposes,

in respect of which Regulation 2 has effect.

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- (2) In a cell, room or bedroom to which paragraph (1) applies, Regulation 2 shall not have effect in respect of a person in the cell, room or bedroom except a person who works in –
- (a) the workplace in which the part is located; or
 - (b) the cell, room or bedroom,
- whether as an employee, a self-employed person or a volunteer.
- (3) This paragraph applies to any part of a workplace that is –
- (a) a nursing home within the meaning of the 1994 Law;
 - (b) a mental nursing home within the meaning of the 1994 Law;
 - (c) a residential care home within the meaning of the 1994 Law;
 - (d) a hospice;
 - (e) premises, whether administered by the Minister or otherwise, in which persons are receiving psychiatric treatment (including premises that provide, in conjunction with, or subsequent to, that treatment, dwelling accommodation); and
 - (f) a workplace occupied by a charity and used for charitable purposes,
- in respect of which Regulation 2 has effect.
- (4) In a part of a workplace to which paragraph (3) applies –
- (a) the occupier may designate an area in that part in which, subject to sub-paragraph (b), Regulation 2 shall not have effect; and
 - (b) in an area that is designated under sub-paragraph (a), Regulation 2 shall not have effect in respect of a person in that area except a person who works in the workplace or part in which that area is located, whether as an employee, a self-employed person or a volunteer.
- (5) Where, in a workplace or a part of a workplace in respect of which Regulation 2 has effect, a room is provided for use as sleeping accommodation –
- (a) for a person who carries out his or her work in, at or on the workplace; and
 - (b) solely for one person,
- Regulation 2 shall not have effect in respect of the person using that room as his or her sleeping accommodation if the room has been designated by the occupier of the workplace as a room in which smoking is permitted.
- (6) Subject to paragraphs (7) and (8), where –
- (a) in a theatre or indoor place of public entertainment in respect of which Regulation 2 has effect, smoking by a person is required in a play or other production; and
 - (b) the smoking is an integral part of the play or production,
- Regulation 2 shall not have effect in respect of the person who is required to smoke and in respect of the stage on, or area in, which the person's performance takes place if the smoking occurs solely in the course of the performance.

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- (7) Nothing in paragraph (6) shall be construed as permitting smoking during rehearsals for the performance concerned.
- (8) Where smoking is to take place in the course of a performance referred to in paragraph (6), the occupier of the theatre or indoor place of public entertainment shall, before the commencement of the performance, notify the audience that smoking will take place on the stage or other area in the course of the performance.
- (9) Subject to paragraph (10), where –
- (a) in a workplace in respect of which Regulation 2 has effect in which recording for film or television is carried out, smoking by a person is required for a production that is to be recorded; and
 - (b) the smoking is an integral part of the production being recorded in the workplace,
- Regulation 2 shall not have effect in respect of the person who is required to smoke, and in respect of the part of the workplace in which the film or television recording of the performance is carried out if the smoking occurs solely when the recording is being carried out.
- (10) Nothing in paragraph (9) shall be construed as permitting smoking during rehearsals for the recording concerned.

6 Duty of occupier to limit exposure to smoke

Where, in accordance with Regulation 5, smoking is permitted –

- (a) in an area of a workplace specified in Regulation 5(1);
- (b) in a designated area in a workplace specified in Regulation 5(3);
- (c) in a room specified in Regulation 5(5);
- (d) on a stage or in an area specified in Regulation 5(6); or
- (e) in a part of a workplace, specified in Regulation 5(9), in which recording is carried out,

the occupier of the workplace concerned shall take all reasonable steps to ensure that any person who is in that workplace but is not –

- (i) in the area referred to in paragraph (a);
- (ii) in the designated area referred to in paragraph (b);
- (iii) in the room referred to in paragraph (c);
- (iv) on the stage or in the area referred to in paragraph (d); or
- (v) in the part referred to in paragraph (e),

is not exposed to any smoke emanating from any area, designated area, room, stage or, as the case may be, part referred to in paragraph (a), (b), (c), (d) or, as the case may be, (e).

7 Duty of occupier, manager and person in charge of workplace

- (1) The occupier, manager and person for the time being in charge of a workplace to which Regulation 2(1) applies shall take all reasonable steps to ensure compliance with Regulation 2(1) by any person in the workplace to the extent that the latter person is required to so comply.
- (2) The occupier, manager and person for the time being in charge of a part of a workplace to which Regulation 2(2) applies shall take all reasonable steps to ensure compliance with Regulation 2(2) by any person in that part to the extent that the latter person is required to so comply.

8 Requirement to display notices

- (1) This Regulation shall apply to a workplace in respect of which Regulation 2(1) has effect, and to a part of a workplace in respect of which to which Regulation 2(2) has effect, that is –
 - (a) licensed premises;
 - (b) premises registered under the 1948 Law; and
 - (c) premises registered under the 1967 Law.
- (2) The occupier of a workplace or part of a workplace to which this Regulation applies shall keep displayed, at the main entrance to the workplace or part, a notice stating that smoking is prohibited in that workplace or part.

9 Offences and penalties

- (1) A person who contravenes –
 - (a) Regulation 2(1) or (2); or
 - (b) Regulation 7(1) or (2),shall be guilty of an offence and liable to a fine of level 4 on the standard scale.
- (2) A person who contravenes Regulation 8(2) shall be guilty of an offence and liable to a fine of level 3 on the standard scale.

10 Defences

- (1) In proceedings for an offence under Regulation 9 that relate to a contravention of Regulation 7, it shall be a defence for the defendant to show that the defendant or another person working in the workplace or part of the workplace (whether as an employee, self-employed person or volunteer) –
 - (a) took all reasonable steps to ensure compliance with Regulation 7; and
 - (b) could not reasonably be expected to have known that the person was smoking in the workplace or part.
- (2) In proceedings for an offence under Regulation 9 that relate to a contravention of Regulation 7, it shall be a defence for the defendant to

show that the defendant or another person working in the workplace or part of the workplace (whether as an employee, self-employed person or volunteer) –

- (a) took all reasonable steps to ensure compliance with Regulation 7; and
- (b) when the defendant or that other person working in the workplace or part became aware that a person was smoking in the workplace or part, the defendant or that other person working in the workplace or part –
 - (i) requested the person who was smoking to stop smoking, and
 - (ii) informed the person who was smoking that it is an offence to smoke in the workplace or the part.

11 Liability of person smoking to pay for food, beverage or service

Nothing in these Regulations shall be construed as affecting any liability (whether arising under any enactment, contract or otherwise) of any person to pay for any food, beverage, service or other thing supplied to or ordered by that person (whether or not consumed (or partly consumed) or supplied (or partly supplied)).

12 Extent of exemption or restriction

Nothing in Regulation 3, 4 or 5 shall be construed as preventing the occupier of the workplace or part of the workplace to which the provision applies from prohibiting smoking in the workplace or part to which the exemption or restriction applies.

13 Definition of workplace in principal Law amended

In Article A1 of the principal Law, in the definition “workplace” –

- (a) after paragraph (c), there shall be inserted the following paragraph –
 - “(ca) aircraft 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;”;
- (b) in paragraph (e), for the words “public transport vehicle” there shall be substituted the words “public service vehicle”.

14 Definitions in principal Law amended

In Article A1 of the principal Law –

- (a) after the definition “advertisement”, there shall be inserted the following definition –
 - “ ‘aircraft’ means any aeroplane or helicopter that is –
 - (a) on the ground in Jersey; or

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- (b) flying to or from Jersey in the airspace above Jersey and the territorial sea adjacent to Jersey;”;
- (b) after the definition “club”, there shall be inserted the following definition –
- “ ‘dwelling’ means any place (whether it is premises or otherwise) in which a person resides that is the private residence of that person and includes, in relation to that place, any –
- (a) garden and yard; and
- (b) garage and outhouse,
- but in the case of a dwelling that is located within a workplace (or a part of a workplace), does not include any area, garden, yard, garage or outhouse used in common with the workplace (or part);”;
- (c) after the definition “public” there shall be inserted the following definition –
- “ ‘public service vehicle’ means a public service vehicle within the meaning of the Motor Traffic (Jersey) Law 1935 that is within a class specified in Article 5(1) of that Law;”;
- (d) the definition “public transport vehicle” shall be deleted;
- (e) after the definition “self-employed person” there shall be inserted the following definition –
- “ ‘ship or vessel’ means –
- (a) a Jersey ship within the meaning of Article 2 of the Shipping (Jersey) Law 2002 that is –
- (i) within the territorial sea adjacent to Jersey, or
- (ii) in a harbour, port or other place in Jersey; or
- (b) any ship, vessel or boat of any description that is used in navigation, to which paragraph (a) does not apply, that is –
- (i) wholly owned by a person ordinarily resident in Jersey or by a company incorporated in Jersey,
- (ii) not registered under the law of the United Kingdom, any of the other Channel Islands, the Isle of Man or any other country outside Jersey, and
- (iii) within the territorial sea adjacent to Jersey or in a harbour, port or other place in Jersey;”;
- (f) in the definition “smoking”, in paragraph (c), after the words “that is not tobacco”, in both places where they appear, there shall be inserted the words “nor anything customarily used as incense”.

15 Revocation

The Restriction on Smoking (Public Transport) (Jersey) Regulations 1982⁷ shall be revoked.

16 Citation and commencement

These Regulations may be cited as the Restriction on Smoking (Workplaces) (Jersey) Regulations 2006 and shall come into force at 4 a.m. on 2nd January 2007.

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- 1 *chapter 20.825*
 - 2 *chapter 20.725*
 - 3 *chapter 05.850*
 - 4 *chapter 11.600*
 - 5 *chapter 25.200*
 - 6 *chapter 20.825*
 - 7 *chapter 20.825.30 (R&O.7073)*