

PROJET DE LOI

ENTITLED

The Smoking (Prohibition in Public Places and Workplaces) (Guernsey) Law, 2005 *

[CONSOLIDATED TEXT]

NOTE

This consolidated version of the enactment incorporates all amendments listed in the footnote below. However, while it is believed to be accurate and up to date, it is not authoritative and has no legal effect, having been prepared in-house for the assistance of the Law Officers. No warranty is given that the text is free of errors and omissions, and no liability is accepted for any loss arising from its use. The authoritative text of the enactment and of the amending instruments may be obtained from Her Majesty's Greffier, Royal Court House, Guernsey, GY1 2PB.

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* No. V of 2006. See also the Tobacco Products (Enabling Provisions) (Guernsey) Law, 2010 (No. IV of 2012).

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ARRANGEMENT OF SECTIONS

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THE STATES, in pursuance of their Resolution of the 30th March, 2005^a, have approved the following provisions which, subject to the Sanction of Her Most Excellent Majesty in Council, shall have force of law in the Islands of Guernsey and Herm.

Prohibition on smoking.

1. The smoking of tobacco or other products –
 - (a) in any enclosed public place or enclosed workplace, or
 - (b) in any other class or description of premises specified by the States by Ordinance,

is prohibited.

NOTE

In accordance with the provisions of the Tobacco Products (Enabling Provisions) (Guernsey) Law, 2010, section 3, Schedule 2, with effect from 1st December, 2015, this Law is one of those enactments which may be amended, repealed or revoked by ordinance under the 2014 Law.

^a Article V of Billet d'État No. III of 2005.

Power to make Ordinances as to exemptions and notices.

2. (1) The States may, by Ordinance, make such provision as they think fit for the purpose of exempting any premises, or class or description of premises, or any part of any such premises or class or description of premises, from the provisions of this Law.

(2) The States may, by Ordinance, make such provision as they think fit for the purpose of requiring notices prohibiting smoking to be displayed in any premises, or class or description of premises, mentioned in section 1.

NOTE

The following Ordinances have been made under section 2:

*Smoking (Prohibition in Public Places and Workplaces)
(Exemptions and Notices) (Guernsey) Ordinance, 2006;*

*Smoking (Prohibition in Public Places and Workplaces)
(Exemptions and Notices) (Amendment) (Guernsey) Ordinance, 2013.*

Offences.

3. (1) A person who contravenes the prohibition set out in section 1 is guilty of an offence and liable, on summary conviction, to a fine not exceeding level 3 on the uniform scale.

(2) Where, in relation to an enclosed public place, there is a contravention of the prohibition set out in section 1, the occupier, manager and any other person for the time being in charge of the enclosed public place concerned shall each be guilty of an offence and liable, on summary conviction, to a fine not exceeding level 3 on the uniform scale.

(3) Where, in relation to an enclosed workplace, there is a contravention of the prohibition set out in section 1, the employer concerned shall be guilty of an offence and liable, on summary conviction, to a fine not exceeding level 3 on the uniform scale.

(4) In proceedings for an offence under this section, it shall be a defence for a person against whom such proceedings are brought to prove that he took all reasonably practicable measures to ensure compliance with the provisions of section 1.

(5) Where any such offence is committed by a body corporate and is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, any director, manager, secretary or other similar officer of the body corporate, or any person who was purporting to act in any such capacity, he as well as the body corporate shall be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

(6) Where the affairs of a body corporate are managed by its members, subsection (5) shall apply in relation to the acts and defaults of a member in connection with his functions of management as if he were a director of the body corporate.

(7) Where any such offence is alleged to have been committed by an unincorporated body, proceedings for the offence shall be brought in the name of that body and not in the name of any of its members.

(8) A fine imposed on an unincorporated body on its conviction of an offence under this section shall be paid from the funds of that body.

(9) Where an offence under this section is committed by an unincorporated body and is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of –

- (a) in the case of a partnership, any partner,
- (b) in the case of any other unincorporated body, any officer of that body who is bound to fulfil any duty whereof the offence is a breach or, if there is no such officer, any member of the committee or other similar governing body, or
- (c) any person purporting to act in any capacity described in paragraph (a) or (b),

he as well as the unincorporated body is guilty of the offence and may be proceeded against and punished accordingly.

Interpretation.

4. (1) In this Law, unless the context requires otherwise –

"aircraft" means an aeroplane or helicopter which is either –

- (a) on the ground in Guernsey, or
- (b) flying to or from Guernsey and within territorial limits,

"cigarettes" includes cut tobacco rolled up in paper, tobacco leaf, or other material, in such form as to be capable of immediate use for oral smoking,

"contract of employment" means a contract of service or apprenticeship, whether express or implied and whether written or oral,

"employee" means an individual who has entered into or who works under (or, where the employment has ceased, who worked under) a contract of employment,

"employer", in relation to an employee, means the person by whom the employee is (or, where the employment has ceased, was) employed,

"enactment" includes any Law, Ordinance, Act of Parliament and Order in Council,

"enclosed public places" means premises –

- (a) which are covered, either wholly or substantially, by a fixed or moveable roof, ceiling or similar structure, whether permanent or temporary, and
- (b) which have one or more walls or similar structures, whether permanent or temporary, (inclusive of windows and doors, gates and other means of access or egress) for more than 50% of their perimeter, and
- (c) to which members of the public or any section of the public have access, whether on payment or otherwise,

as of right or by virtue of express or implied permission,

"enclosed workplaces" means premises –

- (a) which are covered, either wholly or substantially, by a fixed or moveable roof, ceiling or similar structure, whether permanent or temporary, and
- (b) which have one or more walls or similar structures, whether permanent or temporary, (inclusive of windows and doors, gates and other means of access or egress) for more than 50% of their perimeter, and
- (c) which are used as, or as part of, a place of work by persons who are employees,

"other product" means a product intended for oral smoking, or which is being orally smoked, but which contains no tobacco and, for the avoidance of doubt, excludes anything customarily used as incense,

"person" includes any unincorporated body,

"premises" includes any place and any vehicle, vessel, aircraft, stall, tent or moveable structure,

"smoking" means orally smoking, holding, or otherwise having control over any ignited tobacco or ignited other product, and related expressions shall be construed accordingly,

"States" means the States of Deliberation,

"territorial limits" means Guernsey and Herm and the territorial waters adjacent thereto (and the airspace above those waters),

"tobacco" means tobacco or any product containing tobacco and includes cigarettes, cigarette paper, cigars and pipe tobacco and smoking mixtures intended as a substitute for tobacco,

"vessel" means anything for the conveyance by water of people or of property, which is either –

- (a) moored in a port, harbour or other place in Guernsey or Herm, or
- (b) on passage to or from Guernsey or Herm and within territorial limits.

(2) Any reference in this Law to an enactment is a reference thereto as from time to time amended, re-enacted (with or without modification), extended or applied.

Power to amend by Ordinance and general provisions as to subordinate legislation.

5. (1) The States may by Ordinance amend any provision of this Law.

(2) An Ordinance under this Law –

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- (a) may be amended or repealed by a subsequent Ordinance hereunder, and
 - (b) may contain such transitional, consequential, incidental, supplementary and savings provisions as the States think fit, including (without limitation) provisions repealing, amending or disapplying any enactment.
- (3) Any power conferred by this Law to make an Ordinance may be exercised –
- (a) in relation to all cases to which the power extends, or in relation to all those cases subject to specified exceptions, or in relation to any specified cases or classes of cases,
 - (b) so as to make, as respects the cases in relation to which it is exercised –
 - (i) the full provision to which the power extends, or any lesser provision (whether by way of exception or otherwise),
 - (ii) the same provision for all cases, or different provision for different cases or classes of cases, or different provision for the same case or class of case for different purposes,

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- (iii) any such provision either unconditionally or subject to any prescribed conditions.

(4) Without prejudice to the generality of the foregoing provisions of this Law, an Ordinance under this Law –

- (a) may make provision in relation to the creation, trial (summarily or on indictment) and punishment of offences,
- (b) may make provision under the powers conferred by this Law notwithstanding the provisions of any enactment for the time being in force,
- (c) without prejudice to the generality of the foregoing, may make any such provision of any such extent as might be made by *Projet de Loi* (including provision amending any enactment), but may not make provision which imposes or increases taxation or which provides that a person is to be guilty of an offence as a result of any retrospective effect of the Ordinance.

NOTE

The following Ordinance has been made under section 5:

Smoking (Prohibition in Public Places and Workplaces) (Exemptions and Notices) (Amendment) (Guernsey) Ordinance, 2013.

Citation and commencement.

6. (1) This Law may be cited as the Smoking (Prohibition in Public Places and Workplaces) (Guernsey) Law, 2005.

(2) This Law shall come into force on the day and at the time appointed by Ordinance of the States; and different days and times may be appointed for different provisions or different purposes.

NOTE

The Law was brought into force at 4 a.m. on 2nd July, 2006 by the Smoking (Prohibition in Public Places and Workplaces) (Guernsey) Law, 2005 (Commencement) Ordinance, 2006, section 1.
