

ORDER IN COUNCIL

ratifying a Projet de Loi

ENTITLED

The Tobacco Advertising (Guernsey) Law, 1997

(Registered on the Records of the Island of Guernsey
on the 6th October, 1997.)



1997

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ORDER IN COUNCIL



IN THE ROYAL COURT OF THE ISLAND OF GUERNSEY

*The 6th day of October, 1997 before Sir Graham Dorey, Bailiff;
present:- Stanley Walter John Jehan, Leonard Arthur Moss, John
Edward Morris, Charles Anthony Spensley, Lawrence Oscar
Ozanne, John Richard Rowe Henry, David Charles Lowe,
Esquires, Mrs. Eileen May Glass, Laurence Lenfestey Guille,
Derek Martin Le Page, Stephen Edward Francis Le Poidevin
and Alan Cecil Bisson, Esquires, Jurats.*

The Bailiff having this day placed before the Court an Order of Her Majesty in Council dated the 22nd July, 1997, approving and ratifying a *Projet de Loi* entitled "The Tobacco Advertising (Guernsey) Law, 1997", THE COURT, after the reading of the said Order in Council and after having heard Her Majesty's Procureur thereon, ORDERED that the said Order in Council be registered on the records of this Island of which Order in Council the tenor followeth:-

At the Court at Buckingham Palace

The 22nd day of July 1997

PRESENT.

The Queen's Most Excellent Majesty in Council

WHEREAS there was this day read at the Board a Report from the Right Honourable the Lords of the Committee of Council for the Affairs of Guernsey and Jersey dated the 8th day of July 1997 in the words following, viz.:-

"YOUR MAJESTY having been pleased, by Your General Order of Reference of the 22nd day of February 1952, to refer unto this Committee the humble Petition of the States of the Island of Guernsey setting forth:-

"1. That, in pursuance of their Resolution of the 27th day of June 1996, the States of Deliberation at a meeting held on the 30th day of January 1997 approved a Bill or "Projet de Loi" entitled "The Tobacco Advertising (Guernsey) Law, 1997", and requested the Bailiff to present a most humble Petition to Your Majesty in Council praying for Your Royal Sanction thereto. 2. That the said Bill or "Projet de Loi" is as set forth in the Schedule hereunto annexed. And most humbly praying that Your Majesty might be graciously pleased to grant Your Royal Sanction to the Bill or "Projet de Loi" of the States of Guernsey entitled "The Tobacco Advertising (Guernsey) Law, 1997", and to order that the same shall have force of law in the Island of Guernsey."

"THE LORDS OF THE COMMITTEE, in obedience to Your Majesty's said Order of Reference, have taken the said Petition and the said Projet de Loi into consideration and do this day agree humbly to report, as their opinion, to Your Majesty, that it may be advisable for Your Majesty to comply with the prayer of the said Petition and to approve of and ratify the said Projet de Loi."

HER MAJESTY, having taken the said Report into consideration, is pleased, by and with the advice of Her Privy Council, to approve of and ratify the said Projet de Loi, and to order, and it is hereby ordered, that the same shall have the force of Law within the Island of Guernsey.

AND HER MAJESTY doth hereby further direct that this Order, and the said Projet de Loi (a copy whereof is hereunto annexed), be entered upon the Register of the Island of Guernsey and observed accordingly.

AND the Lieutenant Governor and Commander-in-Chief of the Island of Guernsey, the Bailiff and Jurats, and all other Her Majesty's Officers for the time being in the said Island, and all other persons whom it may concern, are to take notice and govern themselves accordingly.

N. H. Nicholls

PROJET DE LOI

ENTITLED

The Tobacco Advertising (Guernsey) Law, 1997

THE STATES, in pursuance of their Resolution of 27th June, 1996(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 Island of Guernsey.

Tobacco advertising

1. (1) Subject to subsection (2), any person who in the course of business publishes, distributes to the public, or displays in a public place, any tobacco advertisement in Guernsey is guilty of an offence.

(2) This section does not apply to

- (a) a tobacco advertisement which -
 - (i) is produced outside Guernsey, and
 - (ii) is not primarily addressed to people in Guernsey;
- (b) a tobacco advertisement contained within any printed material which is primarily addressed to people travelling to or from Guernsey;
- (c) any package or carton containing a tobacco product and complying with any regulations made under section 3(1)(a);
- (d) a tobacco advertisement displayed inside premises where tobacco products are offered or exposed for sale, if the advertisement -

- (i) is directly adjacent to a place where those products are offered or exposed for sale, and
- (ii) is not visible from a place outside those premises, and
- (iii) complies as to its contents and the manner of its display with any regulations made under section 3(1)(b).

Free samples

2. Any person who, in the course of business and for the purpose of promoting the sale of tobacco products, gives a free sample of a tobacco product to a member of the public in Guernsey is guilty of an offence.

Packaging and in-store advertising

3. (1) The Board may by regulations made under this section -

- (a) prescribe the form, content, size and other characteristics of warnings to be exhibited on the packaging of tobacco products;
- (b) prescribe the manner in which tobacco advertisements may be displayed inside premises where tobacco products are offered or exposed for sale, and the form, content, size and other characteristics of warnings to be exhibited as part of or in conjunction with such permitted advertisements.

(2) Regulations made under this section

- (a) may be amended or revoked by subsequent regulations so made;
- (b) may contain consequential, incidental, supplementary and transitional provisions;

- (c) shall be laid before a meeting of the States as soon as possible, and shall if at that or the next meeting the States resolve to annul them cease to have effect, but without prejudice to anything done under them or to the making of new regulations.

(3) The power conferred on the Board by this section to make regulations 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;
 - (ii) the same provision for all cases, or different provision for different cases or classes of cases, or for different purposes;
 - (iii) any such provision either unconditionally, or subject to any prescribed conditions, including conditions requiring persons to obtain and comply with the approval or permission of the Board.

(4) A person who

- (a) sells, or offers or exposes for sale, a tobacco product in packaging which does not comply with such regulations as are mentioned in subparagraph (1)(a); or

- (b) displays inside premises a tobacco advertisement otherwise than in accordance with such regulations as are mentioned in subparagraph (1)(b),

is guilty of an offence.

Penalties

4. A person found guilty of an offence under section 1(1), 2, or 3(4) is liable:
 - (a) to a fine not exceeding level 5 on the uniform scale, and
 - (b) to a further fine of such amount, not exceeding level 2 on the uniform scale, as the Court may impose on convicting him, in respect of each day on which the offence continues to be committed by him, whether before or after the date of conviction.

Offences by bodies corporate

5. Where an offence under section 1(1), 2 or 3(4) committed by a body corporate is proved to have been committed with the consent or connivance of, or to have been facilitated by neglect on the part of, any officer of that body or any person purporting to act as such, he as well as the body corporate is guilty of the offence and may be proceeded against and punished accordingly.

Meaning of "tobacco advertisement"

6. (1) For the purposes of this Law a tobacco advertisement is a message or representation of which
 - (a) the purpose, or one of the purposes, or
 - (b) the effect, or one of the effects (whether direct or indirect)

is to advertise, publicise or promote to people who see, hear, or otherwise receive it, tobacco products in general, tobacco products of any description, or any particular tobacco product.

(2) A tobacco advertisement may be contained within any form of communication whether using printed or written words, designs, still or moving pictures or images, or any other devices; and whether the medium of communication is tangible, by way of image projection or sound reproduction, computer communication, radio, television or similar broadcast, or otherwise.

(3) The use of a brand name, trade mark, emblem or other distinctive feature associated with a tobacco product, whether

- (a) in a design marked or exhibited on a vehicle, building or object, or
- (b) in printed or written material, or
- (c) in a film, broadcast, or other visible material,

may be a message or representation within subsection (1) even without any express mention of that product.

(4) For the avoidance of doubt

- (a) tobacco products themselves,
- (b) invoices, letterheads, price lists^b and other documents ordinarily used in the course of business, the primary purpose of which is to identify the business and not to advertise, publicise or promote any tobacco product,

- (c) inscriptions marked or exhibited on business premises or vehicles, the primary purpose of which is to identify the business and not to advertise, publicise or promote any tobacco product,

are not tobacco advertisements.

General interpretation

- 7. In this Ordinance

"the Board" means the States of Guernsey Board of Health;

"the public" includes any section of the public however selected;

"public place" includes any shop, cinema, theatre, catering establishment, sports facility or vehicle used by members of the public, and any other place to which members of the public have access, or are invited for any purpose, whether or not on payment of a charge;

"tobacco product" means any product intended to be smoked, sniffed, sucked or chewed, of which tobacco is a substantial ingredient, but does not include products designed exclusively for therapeutic purposes (including assistance with overcoming addiction);

"vehicle" includes a boat and an aeroplane.

Transitional provision

- 8. It is a defence for a person charged with a contravention of section 1 of this Law in respect of a tobacco advertisement marked or exhibited on premises where tobacco products are offered or exposed for sale to prove

- (a) that the advertisement was permanently affixed to the premises before the coming into force of this Law, and

- (b) that it has not been so marked or exhibited at any time following the expiration of 12 months after the coming into force of this Law.

Citation

9. This Law may be cited as the Tobacco Advertising (Guernsey) Law, 1997.

Commencement

10. This Law shall come into force one month after it is registered on the records of the Island of Guernsey.

K. H. TOUGH,
Her Majesty's Greffier.