

ORDER IN COUNCIL

**IV
2012**

ratifying a Projet de Loi

ENTITLED

The Tobacco Products (Enabling Provisions) (Guernsey) Law, 2010

(Registered on the Records of the Island of Guernsey
on the 5th March, 2012.)



2012

ORDER IN COUNCIL



IN THE ROYAL COURT OF THE ISLAND OF GUERNSEY

5th day of March, 2012 before Sir Geoffrey Rowland, Bailiff; present:- Stephen Edward Francis Le Poidevin, Barbara Jean Bartie, David Osmond Le Conte, Stephen Murray Jones, Esquires, Claire Helen Le Pelley, Terry George Snell, David Percy Langley Hodgetts LVO, Niall David McCathie, Esquires, Margaret Ann Spaargaren, Terry John Ferbrache, David Allen Grut, Jonathan Grenfell Hooley, Esquires; Jurats.

The Bailiff having this day placed before the Court an Order of Her Majesty in Council dated 15th February, 2012 approving and ratifying a Projet de Loi entitled “The Tobacco Products (Enabling Provisions) (Guernsey) Law, 2010”, 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 be registered on the records of this Island.

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At the Court at Buckingham Palace

THE 15th DAY OF FEBRUARY 2012

PRESENT,

THE QUEEN'S MOST EXCELLENT MAJESTY
IN COUNCIL

The following report from the Committee of Council for the Affairs of Jersey and Guernsey was today read at the Board:

"In accordance with Your Majesty's General Order of Reference of 22nd February 1952 the Committee have considered a Petition of the States of Guernsey:

"That, in pursuance of their Resolutions of 12th March 2008 and 1st July 2010, the States of Deliberation at a meeting on 24th November 2010 approved a *Projet de Loi* entitled the Tobacco Products (Enabling Provisions) (Guernsey) Law, 2010 and requested the Bailiff to present a most humble Petition to Your Majesty in Council praying for Your Royal Sanction to it. That the *Projet de Loi* is as set forth in the attached Schedule. The Petition most humbly prays that Your Majesty might be graciously pleased to sanction the Tobacco Products (Enabling Provisions) (Guernsey) Law, 2010, and to order that it shall have force of law in the Islands of Guernsey, Herm and Jethou.

"The Committee have considered the *Projet de Loi* and have agreed to report that it may be advisable for Your Majesty to approve and ratify it".

Her Majesty, having taken the report into consideration, was pleased, by and with the advice of Her Privy Council, to approve and ratify the *Projet de Loi* (a copy of which is annexed to this Order) and to order that it, together with this Order, shall have the force of law in the Islands of Guernsey, Herm and Jethou and shall be entered on the Register of the Island of Guernsey and observed accordingly.

Her Majesty's Officers in the Bailiwick of Guernsey, and all others whom it may concern, are therefore to take notice of Her Majesty's Order and to proceed accordingly.

Richard Tilbrook

PROJET DE LOI

ENTITLED

The Tobacco Products (Enabling Provisions) (Guernsey) Law, 2010

ARRANGEMENT OF SECTIONS

1. General power to make Ordinances relating to tobacco products.
2. Specific matters for which Ordinances may make provision.
3. General provisions as to Ordinances, etc.
4. Meaning of "advertisement".
5. Meaning of "tobacco product".
6. Interpretation.
7. Citation.
8. Commencement.

Schedule 1: Specific matters for which an Ordinance may be made.

Schedule 2: Specific enactments that may be amended or repealed.

PROJET DE LOI

ENTITLED

The Tobacco Products (Enabling Provisions) (Guernsey) Law, 2010

THE STATES, in pursuance of their Resolutions of the 12th March, 2008^a and the 1st July, 2010^b 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, Herm and Jethou.

General power to make Ordinances relating to tobacco products.

1. The States may by Ordinance make such provision as they think fit concerning all or any of the following matters –

- (a) the importation, advertisement, sale, supply or consumption of tobacco products,
- (b) any activity, practice, act or omission, related to or in any way associated with the importation, advertisement, sale, supply or consumption of tobacco products, and
- (c) access or admission to regulated places.

^a Article XIII of Billet d'État No. III of 2008.

^b Article VI of Billet d'Etat No. XV of 2010.

Specific matters for which Ordinances may make provision.

2. Without limiting the generality of section 1, an Ordinance under that section may make provision in relation to all or any of the matters set out in Schedule 1.

General provisions as to Ordinances, etc.

3. (1) An Ordinance made under this Law –
- (a) may be amended or repealed by a subsequent Ordinance,
 - (b) may amend in any manner, repeal or revoke –
 - (i) an enactment specified in Schedule 2, or
 - (ii) any Ordinance or subordinate legislation made under such an enactment, and
 - (c) may contain such consequential, incidental, supplementary, transitional and savings provisions as may appear to be necessary or expedient (including, without limitation, provision making consequential amendments to this Law and any other enactment).
- (2) Any power to make an Ordinance under this Law may be exercised –
- (a) in relation to all cases to which the power extends, or in relation to all those cases subject to prescribed exceptions, or in relation to any prescribed cases or

classes of cases, and

(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,

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

(iv) different provision for different classes or descriptions of –

(A) activities, practices, acts, or omissions,

(B) tobacco products,

(C) regulated places or other places, or

(D) persons.

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

- (a) may, subject to subsection (5), make provision in relation to the creation, trial (summarily or on indictment) and punishment of offences,
- (b) may empower the Department, any other department of the States, any other body or authority (including, without limitation, any court in the Island), or any person to –

- (i) make subordinate legislation, or

- (ii) issue codes or guidance,

in relation to any matter for which an Ordinance may be made under this Law,

- (c) may make provision for the purpose of dealing with matters arising out of or related to matters set out in section 1,
- (d) may provide that no liability is incurred by any person in respect of anything done or omitted to be done in the discharge or purported discharge of any of his functions unless the thing is done or omitted to be done in bad faith,
- (e) may make provision under the powers conferred by this Law despite the provisions of any enactment for the time being in force,

- (f) may repeal, replace, amend, extend, adapt, modify or disapply any rule of custom or law, and
- (g) without prejudice to the generality of the foregoing, may make any provision of any such extent as might be made by Projet de Loi, but may not provide that a person is to be guilty of an offence as a result of any retrospective effect of the Ordinance.

(4) Subordinate legislation (other than rules or an order of a court or tribunal) under this Law shall be laid before a meeting of the States as soon as possible after being made; and, if at that or the next meeting the States resolve that the subordinate legislation be annulled, then it shall cease to have effect, but without prejudice to anything done under that legislation or to the making of new subordinate legislation.

(5) An Ordinance under this Law may not –

- (a) provide for offences to be triable only on indictment,
- (b) authorise the imposition, on summary conviction of an offence, of a term of imprisonment or a fine exceeding the limits of jurisdiction for the time being imposed on the Magistrate's Court by section 9(1)(a) or (2) of the Magistrate's Court (Guernsey) Law, 2008^c, or

^c Order in Council No. XVIII of 2009; as amended by Ordinance No. XXII of 2009.

- (c) authorise the imposition, on conviction on indictment of an offence, of a term of imprisonment exceeding 2 years.

Meaning of "advertisement".

4. (1) In this Law, the "**advertisement**" of tobacco products means the publication, distribution, display, issue, or sending or making (in any form or medium whatsoever) of a message or representation that meets the condition specified in subsection (2); and cognate expressions are to be construed accordingly.

(2) The condition is that a purpose or an effect (whether direct or indirect) of the message or representation is to advertise, publicise, or promote to people who see, hear, or otherwise receive it –

- (a) tobacco products in general,
- (b) tobacco products of any description,
- (c) any particular tobacco product,
- (d) any consumption of tobacco products, or
- (e) any activity, practice, act or omission, related to or in any way associated with the consumption of tobacco products.

(3) For the avoidance of doubt, a "**message**" or "**representation**" for the purposes of subsection (1) may be contained in or constituted by any of the following –

- (a) any form of communication, whether using printed or written words, designs, still or moving pictures or images, or any other devices, or otherwise,
 - (b) any medium of communication, whether tangible or intangible, by way of image projection or sound reproduction, computer communication, radio, television or similar broadcast, or otherwise,
 - (c) the use of a brand name, trade mark, emblem or other distinctive feature associated with a tobacco product, even if there is no mention of that product,
 - (d) invoices, letterheads, price lists and other documents ordinarily used in the course of a business, and
 - (e) inscriptions marked or exhibited on vehicles or business premises.
- (4) Nothing in subsection (3) limits the generality of subsection (1).

Meaning of "tobacco product".

5. (1) In this Law, "tobacco product" –

- (a) means any product intended or designed to be smoked, inhaled, sniffed, sucked, chewed, eaten, drunk, otherwise orally used, or otherwise consumed in any way, which has as a substantial ingredient -

- (i) tobacco, or
 - (ii) a regulated ingredient, and
- (b) includes –
- (i) any imitation tobacco product, and
 - (ii) any part, material, device or other product used or associated with, or in any way related to, a product described in paragraph (a), for example any packet or packaging, lighter, paper, pipe, filter, filter wrapper, over-wrapper, rod or portion pouch, even if sold separately,

if deemed by the States by Ordinance to be a "**tobacco product**" for the purposes of this Law.

(2) In subsection (1)(a)(ii), "**regulated ingredient**" means –

- (a) nicotine, or
- (b) any substance, compound or chemical derived wholly or partly from tobacco or nicotine,

if deemed by the States by Ordinance to be a "**regulated ingredient**" for the purposes of this Law.

Interpretation.

6. (1) In this Law, unless the context requires otherwise -

"advertisement" has the meaning given by section 4,

"consumption", in relation to a tobacco product, includes smoking, inhaling, sniffing, sucking, chewing, eating, drinking, absorbing, and any form of oral or any other use; and cognate expressions are to be construed accordingly,

"Department" means the States of Guernsey Health and Social Services Department,

"enactment" means any Law, Ordinance or subordinate legislation,

"functions" includes powers and duties,

"imitation tobacco product" means any confectionery, food product, toy or other thing that resembles or is designed to resemble a tobacco product,

"importation" –

(a) means removal into the Island from any place outside the Island, and

(b) includes shipping as stores,

"Island" includes Herm and Jethou,

"this Law" includes –

- (a) any Ordinance made under this Law, and
- (b) any subordinate legislation made under any such Ordinance,

"person" includes any body or authority,

"place" includes vehicle, vessel or aircraft,

"prescribed" means prescribed in any manner (including by class or description) by or under an Ordinance,

"regulated place" means any place at or from which the importation, advertisement, sale, supply or consumption of tobacco products is prohibited, controlled, regulated or permitted, by or under an Ordinance made under this Law,

"sale" includes –

- (a) selling for resale (including as a constituent part of another article),
- (b) offering or attempting to sell,
- (c) receiving for sale,
- (d) displaying or otherwise exposing for sale,

- (e) having in possession for sale,
- (f) agreeing for sale,
- (g) sending or delivering for sale,
- (h) causing or permitting to be sold, offered, or exposed for sale,
- (i) barter,
- (j) supplying the article concerned under an agreement, together with other articles or services or both, in consideration of an inclusive charge for the article and the other articles or services,
- (k) offering as a public prize or reward, or giving away for the purpose of advertisement or in the furtherance of any trade or business, and
- (l) every other method of disposition for valuable consideration,

and cognate expressions are to be construed accordingly,

"subordinate legislation" –

- (a) means any regulation, rule, order, rule of court, resolution, scheme, byelaw or other instrument made under any enactment and having legislative effect in

the Island, and

- (b) includes any provision or portion of such an instrument,

"supply" includes –

- (a) sell, give, exchange, distribute, convey, consign, deliver, furnish, or transfer possession of or title to, or arrange, offer, or agree to do so, whether for a fee or other consideration or without charge,
- (b) have in one's possession for the purpose of doing any of the things specified in paragraph (a), and
- (c) doing any of the things specified in paragraph (a) by way or by use of a vending machine or other device, and

"tobacco product" has the meaning given by section 5.

(2) Unless the context requires otherwise, references to any enactment are references thereto as amended, varied, re-enacted (with or without modification), extended or applied.

Citation.

7. This Law may be cited as the Tobacco Products (Enabling Provisions) (Guernsey) Law, 2010.

Commencement.

8. This Law comes into force on the date appointed by Ordinance of the States; and the States may appoint different dates for different provisions of this Law and for different purposes.

J. TORODE,
Her Majesty's Greffier.

SCHEDULE 1

Section 2

SPECIFIC MATTERS FOR WHICH AN ORDINANCE MAY BE MADE

1. The importation, advertisement, sale or supply of tobacco products –
 - (a) under licence,
 - (b) at or from prescribed places, or
 - (c) in prescribed circumstances.
2. The sale or supply of tobacco products –
 - (a) by prescribed persons,
 - (b) to prescribed persons, or
 - (c) at prescribed prices.
3. The possession or consumption of tobacco products –
 - (a) by prescribed persons,
 - (b) at prescribed places, or
 - (c) in prescribed circumstances.

4. Providing for an office, body or other authority, with functions in relation to all or any of the following –
 - (a) the importation, advertisement, sale, supply or consumption of tobacco products,
 - (b) the grant, renewal, suspension and revocation of licences for the importation, advertisement, sale or supply of tobacco products,
 - (c) the creation or variation of conditions of such licences,
 - (d) the holders of such licences,
 - (e) regulated places,
 - (f) the administration of this Law, and
 - (g) any related or incidental matters.
5. The imposition of levies, fees and charges.
6. The duties and obligations of –
 - (a) holders of licences,
 - (b) owners or occupiers of regulated places, or

- (c) any person who imports, advertises, sells, supplies or consumes tobacco products.
- 7. Powers of entry, inspection, testing and examination, search, seizure, forfeiture and disposal, arrest and detention, and any other powers considered necessary or expedient.
- 8. Any other matters necessary or expedient for giving full effect to this Law and for its due administration.

SCHEDULE 2

Section 3(1)(b)(i)

SPECIFIC ENACTMENTS THAT MAY BE AMENDED OR REPEALED

Laws.

Tobacco Advertising (Guernsey) Law, 1997^d.

Smoking (Prohibition in Public Places and Workplaces) (Guernsey) Law, 2005^e.

Ordinances.

The Ordinance entitled "Ordonnance portant défense de vendre ou de donner aux Mineurs du tabac, des cigares, des cigarettes ou du papier à cigarettes"^f.

The Smoking (Prohibited Buildings and Vehicles) Ordinance, 1971^g.

The Sale of Tobacco (Amendment) Ordinance, 1997^h.

The Notice of Smoking in Public Places Ordinance, 2004ⁱ.

^d Ordres en Conseil Vol. XXXVII, p. 313; amended by Recueil d'Ordonnances Tome XXIX, p. 406.

^e Order in Council No. V of 2006.

^f Recueil d'Ordonnances Tome V, p. 225; as amended by Tome XXVII, p. 158 and Tome XXIX, p. 437; see also Ordres en Conseil Vol. XXXI, p. 278 and Recueil d'Ordonnances Tome XXXI, p. 542.

^g Recueil d'Ordonnances Tome XVII, p. 337.

^h Recueil d'Ordonnances Tome XXVII, p. 158.

ⁱ Recueil d'Ordonnances Tome XXIX, p. 435.

The Sale of Tobacco (Amendment) Ordinance, 2004^j.

The Smoking (Prohibition in Public Places and Workplaces) (Guernsey) Law, 2005
(Commencement) Ordinance, 2006^k.

The Smoking (Prohibition in Public Places and Workplaces) (Exemptions and
Notices) (Guernsey) Ordinance, 2006^l.

^j Recueil d'Ordonnances Tome XXIX, p. 437.

^k Recueil d'Ordonnances Tome XXXI, p. 538.

^l Recueil d'Ordonnances Tome XXXI, p. 528.

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