

# PROJET DE LOI

ENTITLED

## **The Tobacco Advertising (Guernsey) Law, 1997 \***

[CONSOLIDATED TEXT]

### **NOTE**

*This consolidated version of the enactment incorporates all amendments listed in the footnote below. It has been prepared for the Guernsey Law website and is believed to be accurate and up to date, but it is not authoritative and has no legal effect. 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. XX of 1997 (Ordres en Conseil Vol. XXXVII, p. 313); as amended by the Machinery of Government (Transfer of Functions) (Guernsey) Ordinance, 2003 (No. XXXIII of 2003, Recueil d'Ordonnances Tome XXIX, p. 406); the Tobacco Products (Guernsey) Ordinance, 2014 (No. LI of 2014); the Organisation of States' Affairs (Transfer of Functions) Ordinance, 2016 (No. IX of 2016). See also the Tobacco Products (Enabling Provisions) (Guernsey) Law, 2010 (No. IV of 2012).

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## **The Tobacco Advertising (Guernsey) Law, 1997**

### ARRANGEMENT OF SECTIONS

1. Tobacco advertising.
2. Free samples.
3. Packaging and in-store advertising.
4. Penalties.
5. Offences by bodies corporate.
6. Meaning of "tobacco advertisement".
7. General interpretation.
8. Transitional provision.
9. Citation.
10. Commencement.

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## **The Tobacco Advertising (Guernsey) Law, 1997**

**THE STATES**, in pursuance of their Resolution of 27<sup>th</sup> June, 1996<sup>a</sup>, 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,

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<sup>a</sup> On Article 1 of Billet d'État No. XII of 1996.

- (c) any package or carton containing a tobacco product and complying with any regulations made under section 3(1)(a),
- [(d) any display excepted or exempted from the offence in subsection (1) by regulations made under section 26(1)(b) of the Tobacco Products (Guernsey) Ordinance, 2014.]

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## NOTES

*In section 1, paragraph (d) of subsection (2) was substituted by the Tobacco Products (Guernsey) Ordinance, 2014, section 53(2), with effect from 1st June, 2015.*

*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.*

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### **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 Committee] 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) ...

(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 Committee] 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 Committee].

(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) ...

is guilty of an offence.

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## NOTES

*In section 3,*

*the words "T/the Committee" in square brackets, wherever occurring, were substituted by the Organisation of States' Affairs (Transfer of Functions) Ordinance, 2016, section 5(1), Schedule 3, paragraph 6, with effect from 1st May, 2016;*

*paragraph (b) of subsection (1) and paragraph (b) of subsection (4) were repealed by the Tobacco Products (Guernsey) Ordinance, 2014, section 53(3), with effect from 1st June, 2015.*

*The following Regulations have been made under section 3:*

*Tobacco Advertising and Related Activities (Guernsey) Regulations, 2021.*

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**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 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 Committee]" means the States of Guernsey [Committee for Health & Social Care],

"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.

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**NOTES**

*In section 7, the words in the first and second pairs of square brackets in the definition of the expression "the Committee" were substituted by the Organisation of States' Affairs (Transfer of Functions) Ordinance, 2016, respectively section 5(1), Schedule 3, paragraph 6 and section 2, Schedule 1, paragraph 5, with effect from 1st May, 2016.<sup>1</sup>*

*The functions, rights and liabilities of the Health and Social Services Department and of its Minister or Deputy Minister arising under or by virtue of this Law were transferred to and vested in, respectively, the Committee for Health & Social Care and its President or Vice-President by the Organisation of States' Affairs (Transfer of Functions) Ordinance, 2016, section 1, Schedule 1, paragraph 5, with effect from 1st May, 2016, subject to the savings and transitional provisions in section 3 of the 2016 Ordinance.<sup>2</sup>*

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**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.

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**NOTE**

*The Law was registered on the Records of the Island of Guernsey on 6th October, 1997.*

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<sup>1</sup> The words "Committee for Health & Social Care" were previously substituted by the Machinery of Government (Transfer of Functions) (Guernsey) Ordinance, 2003, section 2, Schedule 1, paragraph 4, with effect from 6th May, 2004.

<sup>2</sup> The functions, rights and liabilities of the Health and Social Services Department and its Minister arising under or by virtue of this Law were previously transferred to and vested in them, respectively, from the Board of Health and its President by the Machinery of Government (Transfer of Functions) (Guernsey) Ordinance, 2003, section 1, Schedule 1, paragraph 4, with effect from 6th May, 2004, subject to the savings and transitional provisions in section 4 of the 2003 Ordinance.