

ORDER IN COUNCIL

**XXIII
2009**

ratifying a Projet de Loi

ENTITLED

The Smoking (Prohibition in Public Places and Workplaces) (Alderney) Law, 2008

(Registered on the Records of the Island of Guernsey
on the 9th November, 2009.)



2009

ORDER IN COUNCIL



IN THE ROYAL COURT OF THE ISLAND OF GUERNSEY

9th day of November, 2009 before Sir Geoffrey Rowland, Bailiff; present:- Derek Martin Le Page, Stephen Edward Francis Le Poidevin and Alan Cecil Bisson, Esquires, The Reverend Peter Gerald Lane, Michael John Tanguy, Esquire, Susan Mowbray, Barbara Jean Bartie, Stephen Murray Jones, Esquire, Claire Helen Le Pelley, Peter Sean Trueman Girard, Esquire, Constance Helyar-Wilkinson and Terry George Snell, Esquire, Jurats

The Bailiff having this day placed before the Court an Order of Her Majesty in Council dated 15th October 2009 approving and ratifying a Projet de Loi entitled “The Smoking (Prohibition in Public Places and Workplaces) (Alderney) Law, 2008”, THE COURT, after the reading of the said Order in Council and after having heard Her Majesty’s Procureur thereon, ORDERED:

1. That the said Order in Council be registered on the records of this Island;
and
2. That an extract of this present Act, together with a copy of the said Order in Council be sent by Her Majesty’s Greffier to the Greffier of the Court of Alderney for registration on the records of that Island.



At the Court at Buckingham Palace

THE 15th DAY OF OCTOBER 2009

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 Alderney:

"That, at a meeting of the States of Alderney on 23rd April, 2008, the States approved a Project de Loi entitled the Smoking (Prohibition in Public Places and Workplaces) (Alderney) Law, 2008 and requested the President 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 Smoking (Prohibition in Public Places and Workplaces) (Alderney) Law, 2008 and to order that it shall have force of law in the Island of Alderney.

"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 Island of Alderney; 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.

Judith Simpson

PROJET DE LOI

ENTITLED

The Smoking (Prohibition in Public Places and Workplaces) (Alderney) Law, 2008

THE STATES OF ALDERNEY, in pursuance of their Resolution of the 21st day March 2007 and the 23rd day of April, 2008, 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 Alderney.

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.

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.

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 Alderney, or

(b) flying to or from Alderney and within territorial limits,

"**Alderney**" means the Island of Alderney,

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

"**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,

"subordinate legislation" means any regulation, rule, order, rule of court, resolution, scheme, byelaw or other instrument made under any enactment and having legislative effect,

"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 Alderney,

"territorial limits" means Alderney and the territorial waters (including the airspace above Alderney and those waters),

"territorial waters" means the territorial sea adjacent to Alderney, the breadth thereof being measured from the baselines established by the Territorial Waters Order in Council 1964^a,

"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, and

^a Order in Council of the 25th September 1964.

"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 Alderney,
or
- (b) on passage to or from Alderney and within territorial
limits.

(2) Unless the context requires otherwise, 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.

(3) The Interpretation (Guernsey) Law, 1948^b shall apply to the interpretation of this Law as it applies to the interpretation of an enactment in force in Guernsey.

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 -

- (a) may be amended or repealed by a subsequent Ordinance hereunder, and

^b Ordres en Conseil Vol. XIII, p. 355.

- (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,

- (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.

Extent.

- 6. This Law extends to the territorial limits.

Citation and commencement.

- 7. (1) This Law may be cited as the Smoking (Prohibition in Public Places and Workplaces) (Alderney) Law, 2008.

- (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.

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

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