

STATES OF JERSEY



DRAFT RESTRICTION ON SMOKING (WORKPLACES) (JERSEY) REGULATIONS 200-

**Lodged au Greffe on 22nd September 2006
by the Minister for Health and Social Services**

STATES GREFFE



Jersey

DRAFT RESTRICTION ON SMOKING (WORKPLACES) (JERSEY) REGULATIONS 200-

REPORT

These Regulations will prohibit smoking in a workplace, if the workplace is enclosed by a roof and is surrounded, for more than 50% of its perimeter, by walls and similar structures. The Regulations also set out limits on and exceptions to this prohibition. The Public Health department has undertaken two consultation exercises, throughout the drafting process, which have informed these Regulations.

I propose that the Restriction on Smoking (Workplaces) (Jersey) Regulations 200- come into effect at 4.00 a.m. on 2nd January 2007.

Financial and manpower considerations

There are financial and manpower implications arising from these Regulations. The appointment of a Tobacco Control Officer (to be located within the Health Protection Department) will ensure compliance. Funding required for this has been earmarked from the Health and Social Services core budget.

Explanatory Note

The effect of these Regulations is to prohibit smoking in a workplace if the workplace is enclosed by a roof and is surrounded, for more than 50% of its perimeter, by walls and similar structures. There are also limits on, and exemptions from, this prohibition.

Regulation 1 sets out the definitions of terms used in these Regulations. These include the terms “occupier” (which is fully described in the Explanatory Note to Regulation 7) and “similar structures” (which is described in the Explanatory Note to Regulation 2).

Regulation 2 provides that a person is prohibited from smoking in the type of workplace described in Regulation 2(1) and a part of a workplace described in Regulation 2(2).

Regulation 2(1) prohibits smoking in a workplace if the workplace is covered by a roof or a ceiling and more than 50% of its perimeter is made up of a wall or walls or similar structures (or a combination of walls and similar structures). The terms “roof” and “ceiling” are defined in Regulation 1. A roof is defined as a roof that is fixed or movable and a ceiling is defined as a ceiling that is fixed or movable. The term “similar structures” is defined in Regulation 1 as including railings, partitions, windows and doors, gates or other means of access and egress.

Regulation 2(2) provides that a person is prohibited from smoking in a part of a workplace if the part is covered by a roof or ceiling and more than 50% of the perimeter is made up of a wall or walls or similar structures (or a combination of walls and similar structures).

The term “workplace” is defined in the Restriction on Smoking (Jersey) Law 1973 as including any of the following (as well as the addition of “aircraft” to be made by Regulation 13 of these Regulations) –

- (a) premises in which, land on which, or place at which, a person carries out his or her work and is required to be in, on or at for that purpose;
- (b) any tent, temporary structure, or movable structure, in which a person carries out his or her work and is required to be in for that purpose;
- (c) any ship or vessel on which a person carries out his or her work and is required to be on for that purpose;
- (d) any vehicle, whether it is a motor vehicle or not, in which a person carries out his or her work and which is used solely for that purpose or in which a person is required to be for the purpose of carrying out his or her work, whether occasionally or otherwise, and the vehicle is used solely for that purpose;
- (e) any public service vehicle in which a person carries out his or her work and is required to be in for that purpose;
- (f) any stairwell, corridor or similar common area to which a person working has access to; and
- (g) any canteen, common room, toilet, changing room or similar facility that is provided for the use of a person carrying on his or her work.

So, if any of these different types of workplace listed in the definition is covered by a roof or a ceiling and is surrounded, for more than 50% of its perimeter, by walls or similar structures, a person is prohibited from smoking in it. Similarly if any part of a workplace is covered by a roof or ceiling and is surrounded, for more than 50% of its perimeter, by walls or similar structures, a person is prohibited from smoking in it.

Regulation 3 exempts a dwelling from the prohibition on smoking in Regulation 2. Regulation 3(1) exempts any workplace that is a dwelling from the prohibition on smoking in Regulation 2(1).

The term “dwelling” is defined in Regulation 14 and is to be inserted, by that Regulation, into the Law. It is defined as being a place in which a person resides and is the person’s private residence and it includes any garden, yard and other outhouse related to it. However if the dwelling is a part of a workplace that part only will be treated as a dwelling and any area, garden, yard, garage or outhouse used in common by that dwelling and the workplace will not be treated as being part of the dwelling.

Regulation 3(2) applies to a part of a workplace that is used as dwelling and exempts that part of the workplace only from the prohibition on smoking.

Regulations 3(3) and (4) apply to any part of a workplace that is enclosed by a roof or ceiling and surrounded by walls or similar structures for more than 50% of its perimeter. If that part is a dwelling, the prohibition on smoking does not apply to that part. Alternatively, if that part includes within it another part that is used as a dwelling, the prohibition on smoking will not apply to that other part comprising the dwelling.

Regulation 4 exempts a workplace in which one person works if, at all times, that person works alone in the same workplace, no other person works in that workplace at any other time and the public do not have access to the workplace.

Regulation 5 sets out limitations on the application of the prohibition on smoking under Regulation 2.

The effect of Regulation 5(1) and (2) is to permit smoking on a limited basis in any area of a workplace (or part of a workplace) that is specified in Regulation 5(1)(a) to (d) if Regulation 2 has effect in respect of it. In any of these areas a person who does not work in the workplace in which the area is located is permitted to smoke. A person who does work in the workplace in which the area is located or in the area itself is prohibited from smoking.

These areas are: a cell in the States of Jersey Prison at La Moye; a room in a police station used by the States of Jersey Police or a room in a Customs and Immigration premises that is used solely for interviewing or detaining persons; a bedroom in premises registered under the Tourism (Jersey) Law 1948, if the occupier of those premises has designated the bedroom as one in which smoking is permitted; a bedroom in a workplace that is not registered under the 1948 Law and in which sleeping accommodation is provided to the public, if the occupier has designated it as a bedroom in which smoking is permitted; and a room in a laboratory in which scientific testing of smoke is carried out.

The effect of Regulation 5(3) and (4) is to permit smoking on a limited basis in any part of a workplace specified in Regulation 5(3)(a) to (f) to which Regulation 2 has effect.

These workplaces are: a nursing home; a mental nursing home; a residential home; a hospice; any premises in which psychiatric treatment is administered to persons (whether or not dwelling accommodation is provided for those persons); and a workplace occupied by a charity and used for charitable purposes. As some of these workplaces will include dwelling accommodation the parts that comprise the dwelling accommodation will be exempt under Regulation 3. Regulation 5(3) and (4) apply to those remaining parts of these workplaces that are not the subject of the dwelling exemption (or any other exemption or limitation on the extent of the prohibition).

Under Regulation 5(4)(a) the occupier of any part of a workplace listed in Regulation 5(3)(a) to (f) may designate an area within that part in which smoking is permitted. However under Regulation 5(4)(b) the permission to smoke does not extend to a person who works in the workplace or part of a workplace in which the designated area is located. A person who works in that workplace cannot smoke in the designated area.

Regulation 5(5) exempts a bedroom from the prohibition on smoking in Regulation 2 if it is provided for a person in his or her workplace. The person whose bedroom it is can smoke in the bedroom if the occupier has designated the bedroom as a room in which smoking is permitted.

The effect of Regulation 5(6) to (8) is to permit smoking on the stage of a theatre by a cast member of a play or production in the theatre subject to the conditions that the smoking is required in the production and it is integral to the play or production. This also applies to a performance area in a place of indoor public entertainment. Smoking cannot take place during rehearsals. If smoking is to take place on stage the occupier of the theatre or place of entertainment must notify the audience of this prior to the performance.

The effect of Regulation 5(9) and (10) is to permit a cast member to smoke in a workplace in which recording for television or film is carried on if the smoking is integral to the production being recorded. Smoking cannot take place during rehearsals.

Regulation 6 places a duty on the occupier of any workplace (or part of a workplace) referred to in Regulation 5 to take all reasonable steps to ensure that a person who is not in any place in the workplace in which smoking is permitted under Regulation 5 is not exposed to smoke that emanates from the smoking area.

Regulation 7 places a duty on specified persons to ensure that the smoking ban in a workplace under Regulation 2 is complied with by anyone in the workplace. The persons on whom this duty is imposed are the occupier, the manager and the person for the time being in charge of the workplace (or the part of the workplace). The term "occupier" is defined in Regulation 1 and, because of the wide range of workplaces to which the Regulations apply, has a different meaning for each of the classes of workplace set out in the definition of workplace in the Law.

If the workplace is premises or a place to which Regulation 2 applies, the occupier is the occupier of those premises or the place. If the workplace to which Regulation 2 applies is licensed premises, the occupier is the holder of the licence for those licensed premises. If the workplace to which Regulation 2 applies is premises registered under the Tourism (Jersey) Law 1948 or the Places of Refreshment (Jersey) Law 1967, the occupier is the proprietor of those premises.

If the workplace is a tent to which Regulation 2 applies, the occupier is the occupier of the tent. If the workplace is a temporary structure or movable structure to which Regulation 2 applies, the occupier is the occupier of the temporary structure or movable structure.

If the workplace is a ship or vessel to which Regulation 2 applies, the occupier is the owner or charterer of the ship or vessel. If the workplace is aircraft to which Regulation 2 applies, the occupier is the owner or charterer of the aircraft. If the workplace is a vehicle to which Regulation 2 applies, the occupier is the owner of the vehicle. If the workplace is a public service vehicle to which Regulation 2 applies, the occupier is the holder of the public service vehicle licence for that public service vehicle.

Regulation 7(2) relates to a part of a workplace in which smoking is prohibited by Regulation 2 and provides a similar duty on the occupier, manager and person in charge of the part of the workplace.

Regulation 8 provides that where Regulation 2 applies to a certain type of workplace or a part of it the occupier of the workplace must display a notice at the main entrance to the workplace or part stating that smoking is prohibited in the workplace or part.

The workplaces and parts to which this notice requirement applies are : licensed premises; premises registered under the Tourism (Jersey) Law 1948 and premises registered under the Places of Refreshment (Jersey) Law 1967.

Regulation 9 deals with the offences and penalties for contravening Regulations 2 (Prohibition on smoking in workplace) and 7 (Duty of occupier, manager and person in charge of workplace).

A person who smokes in a workplace (or a part of a workplace) to which Regulation 2 applies is guilty of an offence and liable to a fine of level 4 on the standard scale.

A person who contravenes the duty in Regulation 7 is guilty of an offence and liable to a fine of level 4 on the standard scale.

A person who fails to display a notice required under Regulation 8 is guilty of an offence and liable to a fine of level 3 on the standard scale.

Under the Criminal Justice (Standard Scale of Fines) (Jersey) Law 1994, level 1 is £50, level 2 is £500, level 3 is £2,000 and level 4 is £5,000.

Article 13 of the Interpretation (Jersey) Law 1954 has the effect that –

- (a) where the penalty for an offence is expressed as a specified term of imprisonment or specified fine, a penalty not exceeding the specified term or amount may be imposed for the offence;
- (b) where no amount or level on the standard scale is specified for a fine, the fine is to be construed as a fine of an unlimited amount;
- (c) where the penalty for an offence is expressed as a term of imprisonment and a fine, either or both of the term of imprisonment and the fine may be imposed for the offence.

Regulation 10 provides for statutory defences for the occupier, manager or person in charge of a workplace who is charged with the offence of contravening Regulation 7 (Duty of occupier, manager and person in charge of workplace).

Regulation 10(1) provides that the defendant can show as a defence that he or she (or another person working in the workplace or part) took all reasonable steps to ensure compliance with Regulation 7 and, if the defendant (or that other person) did not know that a person was smoking in the workplace, that there is the defence that the defendant (or that other person) could not reasonably be expected to have known that someone was smoking in the workplace or the part of the workplace. The other person working in the workplace includes an employee, a self-employed person or a volunteer.

Under Regulation 10(2) the defendant may show as a defence that he or she took all reasonable steps to ensure compliance with Regulation 7 and when the defendant (or another person working in the workplace) became aware that someone was smoking in the workplace or the part of the workplace, the defendant (or that other person) asked the smoker to stop smoking and informed the smoker that it is an offence to smoke in the workplace or part.

Regulation 11 provides that nothing in the Regulations shall be interpreted as affecting the liability of any person to pay for any food, beverage, service or other thing where that liability exists. The liability to pay may arise from an enactment, contract or other source. If the liability to pay exists the liability will not be affected by non-consumption, partial consumption, non-supply or partial supply of the food, beverage, service or other thing that is the subject of the liability.

Regulation 12 states that an exemption from, or a limitation on, the prohibition on smoking that is provided by Regulation 3, 4 or 5 does not prevent the occupier of the workplace from prohibiting smoking in the workplace or part of the workplace that is exempted or restricted under those Regulations.

Regulation 13 amends the definition of workplace in the Restriction on Smoking (Jersey) Law 1973. The definition is amended in paragraph (c) (which provides that a ship or vessel in which a person carries out work is to be treated as a workplace). The amendment in Regulation 13(a) is required to give effect to Jersey's international obligation under the United Nations Convention on the Law of the Sea. These words are inserted in order to ensure that Jersey's international obligations are met. The amendment is linked to a similar provision in Article 49 of the Shipping (Jersey) Law 2002.

By virtue of this amendment the Restriction on Smoking (Jersey) Law 1973 will not apply to a "qualifying foreign ship" (which is defined in the 2002 Law), if the ship is exercising the right of innocent passage in Jersey's territorial waters. As the 2002 Law provides the meaning for the terms "qualifying foreign ship", "right of innocent passage" and "Jersey waters" those terms will have the same meaning in the 1973 Law as they have in the 2002 Law.

Regulation 13(b) amends the definition of workplace so that it includes aircraft.

Regulation 13(c) substitutes the words "public service vehicle" for "public transport vehicle".

Regulation 14 provides for the insertion of new definitions into the 1973 Law and amends some of the existing definitions in the Law.

Under Regulation 14(a) a definition of "aircraft" (which is defined as being an aeroplane or a helicopter that is on the ground in Jersey or flying to or from Jersey in Jersey airspace) is to be inserted into the 1973 Law.

Under Regulation 14(b) a definition of “dwelling” is inserted.

This definition describes a dwelling and describes the extent of a dwelling that is located within a workplace. Areas used in common by the workplace and the dwelling will not be treated as part of the dwelling.

The combined effect of Regulation 14(c) and (d) is to replace the definition of “public transport vehicle” (a workplace under the Law) with a definition of “public service vehicle”. “Public service vehicle” is defined as being a public service vehicle that falls within a class specified in Article 5(1) of the Motor Traffic (Jersey) Law 1935. The classes are an omnibus service, a char-à-banc service and a cab service.

Regulation 14(e) inserts a definition of “ship or vessel” (a workplace for the purposes of the 1973 Law). The definition of “ship or vessel” is any ship, vessel or boat of any description that is used in navigation and is in Jersey’s territorial sea or in a harbour, port or other place in Jersey.

Regulation 14(f) amends a part of the definition of smoking in the Law that applies to smoking substances that are not tobacco. That part of the definition of smoking refers to a person being in possession of an ignited substance that is not tobacco. The purpose of this amendment would be to exclude from that description (being in possession of an ignited substance that is not tobacco) a substance that is customarily used as incense.

Regulation 15 revokes the Restriction on Smoking (Public Transport) (Jersey) Regulations 1982.

Regulation 16 provides for the name of these Regulations and that they will come into force at 4 a.m. on 2nd January 2007.



Jersey

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Arrangement

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Jersey

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Made [date to be inserted]

Coming into force [date to be inserted]

THE STATES, in pursuance of Articles 1, 1AA, 1AB, 1C, 1D, 1G and 2 of the Restriction on Smoking (Jersey) Law 1973¹, have made the following Regulations –

1 Interpretation

In these Regulations, unless the context otherwise requires –

“1994 Law” means the Nursing and Residential Homes (Jersey) Law 1994²;

“ceiling” means a ceiling that is fixed or movable;

“Customs and Immigration premises” includes any place for the time being occupied by officers of the Impôts;

“designated area” means an area designated in accordance with Regulation 5(4);

“hospice” means premises that are used for the purpose of providing palliative care to persons who suffer from an illness or disease that is active, progressive and advanced in nature and who are no longer curable by means of the administration of existing or available medical treatments;

“occupier”, in relation to a workplace (or a part of a workplace), means –

- (a) if the workplace (or part) is –
 - (i) premises (other than premises referred to in sub-paragraph (ii) or (iii)) or a place, the occupier of those premises or the place,
 - (ii) licensed premises, the holder of the licence, or
 - (iii) premises registered under the 1948 Law³ or the 1967 Law⁴, the proprietor of those premises;
- (b) if the workplace (or part) is a tent, the occupier of the tent;

- (c) if the workplace (or part) is a temporary structure or movable structure, the occupier of the temporary structure or movable structure;
- (d) if the workplace (or part) is a ship or vessel, the owner or charterer of the ship or vessel;
- (e) if the workplace is aircraft, the owner or charterer of the aircraft;
- (f) if the workplace (or part) is a vehicle (whether a motor vehicle or otherwise), the owner of the vehicle; and
- (g) if the workplace is a public service vehicle, the person to whom the public service vehicle licence has been granted in accordance with Article 9 of the Motor Traffic (Jersey) Law 1935⁵ for that public service vehicle;

“police station” means a police station used by the States of Jersey Police;

“principal Law” means the Restriction on Smoking (Jersey) Law 1973⁶;

“roof” means a roof that is fixed or movable;

“similar structures”, in relation to a wall or walls of a workplace (or of a part of a workplace) includes railings, partitions, windows and doors, gates or other means of access to and egress from the workplace (or the part).

2 Prohibition on smoking in certain workplaces

- (1) A person shall not smoke in a workplace if –
 - (a) the workplace is covered by a roof or ceiling; and
 - (b) more than 50% of the perimeter of the workplace is made up of one or more walls and similar structures (or either of them).
- (2) In a workplace that is divided into parts and any part of the workplace –
 - (a) is covered by a roof or ceiling; and
 - (b) more than 50% of the perimeter of the part is made up of one or more walls and similar structures (or either of them),a person shall not smoke in that part of the workplace.

3 Exemption for dwelling

- (1) Regulation 2(1) shall not apply to a workplace to which that paragraph refers if the workplace is a dwelling.
- (2) Where in any workplace to which Regulation 2(1) refers there is a part of the workplace that is used as a dwelling, Regulation 2(1) shall not apply to that part of the workplace.
- (3) Regulation 2(2) shall not apply to a part of a workplace to which that paragraph refers if the part is a dwelling.
- (4) Where in any part of a workplace to which Regulation 2(2) refers there is another part that is used as a dwelling, Regulation 2(2) shall not apply to that other part that is used as a dwelling.

4 Exemption for workplace of one person in certain circumstances

Regulation 2(1) shall not apply to a workplace to which that paragraph refers if, at all times –

- (a) it is a workplace in which one person (whether that person is an employee, a self-employed person or a volunteer) carries out his or her work;
- (b) no other person carries out work in that workplace (whether as an employee, a self-employed person or a volunteer); and
- (c) no member of the public has access to the workplace.

5 Smoking in certain workplaces

(1) This paragraph applies to –

- (a) a cell in the States of Jersey Prison at La Moye;
- (b) a room in a police station or in any Customs and Immigration premises that is used solely for the purpose of –
 - (i) detaining persons, or
 - (ii) interviewing persons;
- (c) a bedroom –
 - (i) in a workplace that is registered under the 1948 Law if it has been designated by the occupier of the workplace as a bedroom in which smoking is permitted, or
 - (ii) in a workplace that is not registered under the 1948 Law and in which the occupier carries on a business that includes the provision, in the workplace, of sleeping accommodation to the public if the bedroom has been designated by the occupier as a bedroom in which smoking is permitted; and
- (d) a room that –
 - (i) is in a laboratory of which the recognized activities include the conduct of scientific education in relation to, or research on, smoking,
 - (ii) is set apart exclusively for the testing of smoke,
 - (iii) has been assigned, by the person having the management or control of the laboratory, as a room in which smoking is permitted solely for scientific purposes,
 - (iv) has a ventilation system that does not ventilate into any other part of the laboratory (except any other room that has been assigned under clause (iii)), and
 - (v) has a notice on any entrance to the room in which smoking is permitted stating that smoking is permitted in the room solely for scientific purposes,

in respect of which Regulation 2 has effect.

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- (2) In a cell, room or bedroom to which paragraph (1) applies, Regulation 2 shall not have effect in respect of a person in the cell, room or bedroom except a person who works in –
- (a) the workplace in which the part is located; or
 - (b) the cell, room or bedroom,
- whether as an employee, a self-employed person or a volunteer.
- (3) This paragraph applies to any part of a workplace that is –
- (a) a nursing home within the meaning of the 1994 Law;
 - (b) a mental nursing home within the meaning of the 1994 Law;
 - (c) a residential care home within the meaning of the 1994 Law;
 - (d) a hospice;
 - (e) premises, whether administered by the Minister or otherwise, in which persons are receiving psychiatric treatment (including premises that provide, in conjunction with, or subsequent to, that treatment, dwelling accommodation); and
 - (f) a workplace occupied by a charity and used for charitable purposes,
- in respect of which Regulation 2 has effect.
- (4) In a part of a workplace to which paragraph (3) applies –
- (a) the occupier may designate an area in that part in which, subject to sub-paragraph (b), Regulation 2 shall not have effect; and
 - (b) in an area that is designated under sub-paragraph (a), Regulation 2 shall not have effect in respect of a person in that area except a person who works in the workplace or part in which that area is located, whether as an employee, a self-employed person or a volunteer.
- (5) Where, in a workplace or a part of a workplace in respect of which Regulation 2 has effect, a room is provided for use as sleeping accommodation –
- (a) for a person who carries out his or her work in, at or on the workplace; and
 - (b) solely for one person,
- Regulation 2 shall not have effect in respect of the person using that room as his or her sleeping accommodation if the room has been designated by the occupier of the workplace as a room in which smoking is permitted.
- (6) Subject to paragraphs (7) and (8), where –
- (a) in a theatre or indoor place of public entertainment in respect of which Regulation 2 has effect, smoking by a person is required in a play or other production; and
 - (b) the smoking is an integral part of the play or production,
- Regulation 2 shall not have effect in respect of the person who is required to smoke and in respect of the stage on, or area in, which the person's performance takes place if the smoking occurs solely in the course of the performance.

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- (7) Nothing in paragraph (6) shall be construed as permitting smoking during rehearsals for the performance concerned.
- (8) Where smoking is to take place in the course of a performance referred to in paragraph (6), the occupier of the theatre or indoor place of public entertainment shall, before the commencement of the performance, notify the audience that smoking will take place on the stage or other area in the course of the performance.
- (9) Subject to paragraph (10), where –
- (a) in a workplace in respect of which Regulation 2 has effect in which recording for film or television is carried out, smoking by a person is required for a production that is to be recorded; and
 - (b) the smoking is an integral part of the production being recorded in the workplace,
- Regulation 2 shall not have effect in respect of the person who is required to smoke, and in respect of the part of the workplace in which the film or television recording of the performance is carried out if the smoking occurs solely when the recording is being carried out.
- (10) Nothing in paragraph (9) shall be construed as permitting smoking during rehearsals for the recording concerned.

6 Duty of occupier to limit exposure to smoke

Where, in accordance with Regulation 5, smoking is permitted –

- (a) in an area of a workplace specified in Regulation 5(1);
- (b) in a designated area in a workplace specified in Regulation 5(3);
- (c) in a room specified in Regulation 5(5);
- (d) on a stage or in an area specified in Regulation 5(6); or
- (e) in a part of a workplace, specified in Regulation 5(9), in which recording is carried out,

the occupier of the workplace concerned shall take all reasonable steps to ensure that any person who is in that workplace but is not –

- (i) in the area referred to in paragraph (a);
- (ii) in the designated area referred to in paragraph (b);
- (iii) in the room referred to in paragraph (c);
- (iv) on the stage or in the area referred to in paragraph (d); or
- (v) in the part referred to in paragraph (e),

is not exposed to any smoke emanating from any area, designated area, room, stage or, as the case may be, part referred to in paragraph (a), (b), (c), (d) or, as the case may be, (e).

7 Duty of occupier, manager and person in charge of workplace

- (1) The occupier, manager and person for the time being in charge of a workplace to which Regulation 2(1) applies shall take all reasonable steps to ensure compliance with Regulation 2(1) by any person in the workplace to the extent that the latter person is required to so comply.
- (2) The occupier, manager and person for the time being in charge of a part of a workplace to which Regulation 2(2) applies shall take all reasonable steps to ensure compliance with Regulation 2(2) by any person in that part to the extent that the latter person is required to so comply.

8 Requirement to display notices

- (1) This Regulation shall apply to a workplace in respect of which Regulation 2(1) has effect, and to a part of a workplace in respect of which to which Regulation 2(2) has effect, that is –
 - (a) licensed premises;
 - (b) premises registered under the 1948 Law; and
 - (c) premises registered under the 1967 Law.
- (2) The occupier of a workplace or part of a workplace to which this Regulation applies shall keep displayed, at the main entrance to the workplace or part, a notice stating that smoking is prohibited in that workplace or part.

9 Offences and penalties

- (1) A person who contravenes –
 - (a) Regulation 2(1) or (2); or
 - (b) Regulation 7(1) or (2),shall be guilty of an offence and liable to a fine of level 4 on the standard scale.
- (2) A person who contravenes Regulation 8(2) shall be guilty of an offence and liable to a fine of level 3 on the standard scale.

10 Defences

- (1) In proceedings for an offence under Regulation 9 that relate to a contravention of Regulation 7, it shall be a defence for the defendant to show that the defendant or another person working in the workplace or part of the workplace (whether as an employee, self-employed person or volunteer) –
 - (a) took all reasonable steps to ensure compliance with Regulation 7; and
 - (b) could not reasonably be expected to have known that the person was smoking in the workplace or part.
- (2) In proceedings for an offence under Regulation 9 that relate to a contravention of Regulation 7, it shall be a defence for the defendant to

show that the defendant or another person working in the workplace or part of the workplace (whether as an employee, self-employed person or volunteer) –

- (a) took all reasonable steps to ensure compliance with Regulation 7; and
- (b) when the defendant or that other person working in the workplace or part became aware that a person was smoking in the workplace or part, the defendant or that other person working in the workplace or part –
 - (i) requested the person who was smoking to stop smoking, and
 - (ii) informed the person who was smoking that it is an offence to smoke in the workplace or the part.

11 Liability of person smoking to pay for food, beverage or service

Nothing in these Regulations shall be construed as affecting any liability (whether arising under any enactment, contract or otherwise) of any person to pay for any food, beverage, service or other thing supplied to or ordered by that person (whether or not consumed (or partly consumed) or supplied (or partly supplied)).

12 Extent of exemption or restriction

Nothing in Regulation 3, 4 or 5 shall be construed as preventing the occupier of the workplace or part of the workplace to which the provision applies from prohibiting smoking in the workplace or part to which the exemption or restriction applies.

13 Definition of workplace in principal Law amended

In Article A1 of the principal Law, in the definition “workplace” –

- (a) in paragraph (c), after the words “ship or vessel on which a person carries out his or her work and is required to be on for the purpose of carrying out his or her work” there shall be inserted the words “(but does not include a qualifying foreign ship, within the meaning of the Shipping (Jersey) Law 2002⁷, if it is exercising the right of innocent passage, within the meaning of that Law, in Jersey waters, within the meaning of that Law)”;
- (b) after paragraph (c), there shall be inserted the following paragraph –
 - “(ca) aircraft in which a person carries out his or her work and is required to be for the purpose of carrying out his or her work;”;
- (c) in paragraph (e), for the words “public transport vehicle” there shall be substituted the words “public service vehicle”.

14 Definitions in principal Law amended

In Article A1 of the principal Law –

- (a) after the definition “advertisement”, there shall be inserted the following definition –
- “ ‘aircraft’ means any aeroplane or helicopter that is –
- (a) on the ground in Jersey; or
 - (b) flying to or from Jersey in the airspace above Jersey and the territorial sea adjacent to Jersey;”;
- (b) after the definition “club”, there shall be inserted the following definition –
- “ ‘dwelling’ means any place (whether it is premises or otherwise) in which a person resides that is the private residence of that person and includes, in relation to that place, any –
- (a) garden and yard; and
 - (b) garage and outhouse,
- but in the case of a dwelling that is located within a workplace (or a part of a workplace), does not include any area, garden, yard, garage or outhouse used in common with the workplace (or part);”;
- (c) after the definition “public” there shall be inserted the following definition –
- “ ‘public service vehicle’ means a public service vehicle within the meaning of the Motor Traffic (Jersey) Law 1935 that is within a class specified in Article 5(1) of that Law;”;
- (d) the definition “public transport vehicle” shall be deleted;
- (e) after the definition “self-employed person” there shall be inserted the following definition –
- “ ‘ship or vessel’ means –
- (a) any ship, vessel or boat of any description that is used in navigation and is within the territorial sea adjacent to Jersey; and
 - (b) any ship, vessel or boat of any description that is used in navigation and is in a harbour, port or other place in Jersey;”;
- (f) in the definition “smoking”, in paragraph (c), after the words “that is not tobacco”, in both places where they appear, there shall be inserted the words “nor anything customarily used as incense”.

15 Revocation

The Restriction on Smoking (Public Transport) (Jersey) Regulations 1982⁸ shall be revoked.

16 Citation and commencement

These Regulations may be cited as the Restriction on Smoking (Workplaces) (Jersey) Regulations 200- and shall come into force at 4 a.m. on 2nd January 2007.

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- ¹ *chapter 20.825*
 - ² *chapter 20.725*
 - ³ *chapter 05.850*
 - ⁴ *chapter 11.600*
 - ⁵ *chapter 25.200*
 - ⁶ *chapter 20.825*
 - ⁷ *chapter 19.885*
 - ⁸ *chapter 20.825.30 (R&O.7073)*