

THE STATES OF DELIBERATION
of the
ISLAND OF GUERNSEY

THE TOBACCO PRODUCTS (GUERNSEY) (AMENDMENT) ORDINANCE, 2024

The States are asked to decide:-

Whether they are of the opinion to approve the draft Ordinance entitled "The Tobacco Products (Guernsey) (Amendment) Ordinance, 2024" and to direct that the same shall have effect as an Ordinance of the States.

EXPLANATORY MEMORANDUM

This Ordinance amends the Tobacco Products (Guernsey) Ordinance, 2010 to create offences relating to smoking in motor vehicles when a child is present.

It will be an offence for an adult (18 years or older) to smoke in a motor vehicle when a child is present. There is a defence if the adult reasonably believed that all occupants were adults, or if the vehicle was mobile living accommodation parked overnight.

Where any person (whether or not an adult) smokes in a motor vehicle when a child is present, the driver as well as any person present and in charge of the vehicle also commits an offence, unless the driver or person in charge is under 18. There is a defence if the driver or person in charge reasonably believed that all occupants were at least 18 years old, or if the vehicle was mobile living accommodation parked overnight. There are further defences if the driver or person in charge took reasonable steps to stop the person smoking or had a reasonable excuse for not doing so.

This Ordinance also gives police officers power to enter and search a parked motor vehicle, and require the name and address of any person believed to be committing or have committed one of these offences; it will be an offence to fail to give one's name and address if so required.

Finally, this Ordinance amends the Offences (Fixed Penalties) (Guernsey) Law, 2009 to make each of the new offences a Band C fixed penalty offence.

The Tobacco Products (Guernsey) (Amendment) Ordinance, 2024

ARRANGEMENT OF SECTIONS

1. Amendment of Ordinance of 2014.
2. Insertion of new sections 31A to 31C in the principal Ordinance.
3. Amendment of section 56 of the principal Ordinance.
4. Insertion of new entries in Schedule 3 to the principal Ordinance.
5. Amendment of the Offences (Fixed Penalties) (Guernsey) Law, 2009.
6. Citation.
7. Commencement.

The Tobacco Products (Guernsey) (Amendment) Ordinance, 2024

THE STATES, in pursuance of their Resolution of 22nd May, 2024^a, and in exercise of the powers conferred on them by sections 1, 2 and 3 of the Tobacco Products (Enabling Provisions) (Guernsey) Law, 2010^b, section 7 of the Offences (Fixed Penalties) (Guernsey) Law, 2009^c and all other powers enabling them in that behalf, hereby order:-

Amendment of Ordinance of 2014.

1. The Tobacco Products (Guernsey) Ordinance, 2014^d ("**the principal Ordinance**") is amended as set out in sections 2 to 4.

Insertion of new sections 31A to 31C in the principal Ordinance.

2. Immediately after section 31 of the principal Ordinance, insert the following cross-headings and sections -

"Smoking in vehicles with children

Prohibition of smoking in vehicles with children.

31A. (1) This subsection applies where -

^a Article IX of Billet d'État No. VII of 2024.

^b Order in Council No. IV of 2012; this enactment has been amended.

^c Order in Council No. XV of 2010; this enactment has been amended.

^d Ordinance No. LI of 2014; this enactment has been amended.

(a) a person ("**B**") smokes a tobacco product in an enclosed motor vehicle, and

(b) there is a child in the vehicle.

(2) Where subsection (1) applies, B is guilty of an offence unless B is under 18 years of age.

(3) It is a defence for a person ("**the accused**") charged with an offence under subsection (2) to prove on the balance of probabilities that at the relevant time -

(a) the accused reasonably believed that all occupants of that vehicle were at least 18 years of age, or

(b) the vehicle -

(i) was parked and was for the time being used as living accommodation at least overnight,

(ii) contained, as permanently installed equipment, the facilities which were reasonably necessary for enabling that vehicle to provide mobile living accommodation, and

(iii) was the accused's sole or principal place of residence (whether in

Guernsey or elsewhere).

(4) In this section and sections 31B and 31C -

"enclosed motor vehicle" means a motor vehicle which is enclosed wholly or partly by a roof and by any door or window that may be opened,

"motor vehicle" has the meaning given by section 14(1) of the Road Traffic (Guernsey) Ordinance, 2019,

"the relevant time" means the time when the smoking took place, and

"roof" -

- (a) includes any fixed or movable structure or device which is capable of covering all or part of the motor vehicle, including any canvas, fabric or other covering, but
- (b) excludes any fixed or movable structure which is completely stowed away so that it does not cover all or any part of the motor vehicle.

Offence committed by driver or person in charge.

31B. (1) This subsection applies where –

- (a) a person smokes a tobacco product in an enclosed motor vehicle, and

(b) there is a child in the vehicle.

(2) Where subsection (1) applies, each of the following is guilty of an offence -

(a) the driver of that vehicle, unless the driver is under 18 years of age,

(b) a person ("C") who is present and in charge of the vehicle at the relevant time, unless C is under 18 years of age.

(3) It is a defence for a person ("**the accused**") charged with an offence under subsection (2) to prove on the balance of probabilities that at the relevant time -

(a) the accused reasonably believed that all occupants of that vehicle were at least 18 years of age,

(b) the vehicle -

(i) was parked and was for the time being used as living accommodation at least overnight,

(ii) contained, as permanently installed equipment, the facilities which were reasonably necessary for enabling that

vehicle to provide mobile living accommodation, and

(iii) was the sole or principal place of residence (whether in Guernsey or elsewhere) of the person smoking,

(c) the accused took reasonable steps to cause the person smoking to stop smoking, or

(d) the accused had a reasonable excuse for not causing the person smoking to stop smoking.

Powers to enter and require information.

31C. (1) A police officer may enter and search a motor vehicle which is parked in order to ascertain whether an offence under section 31A or 31B has been or is being committed there.

(2) This subsection applies where a police officer -

(a) reasonably believes that a person is committing or has committed an offence under section 31A(2) or 31B(2), and

(b) requires that person to give the officer that person's name and address.

(3) Where subsection (2) applies, and that person fails without reasonable excuse to comply with the requirement, that person is guilty of an offence."

Amendment of section 56 of the principal Ordinance.

3. In the table in section 56 of the principal Ordinance, insert each of the following rows in the appropriate alphabetical order –

"enclosed motor vehicle	Section 31A(4)",
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"motor vehicle	Section 31A(4)",
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"the relevant time	Section 31A(4)",
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"roof	Section 31A(4)".
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Insertion of new entries in Schedule 3 to the principal Ordinance.

4. Schedule 3 to the principal Ordinance is amended by inserting, immediately after the entry relating to section 31 of that Ordinance, the following entries -

"Section 31A(2)	Smoking in an enclosed motor vehicle with a child present	Upon summary conviction, a fine not exceeding level 3 on the uniform scale.
Section 31B(2)	Being the driver or person in charge when smoking in an enclosed motor vehicle with a child present takes place	Upon summary conviction, a fine not exceeding level 3 on the uniform scale.
Section 31C(3)	Failing without reasonable excuse to comply with a requirement made under section 31C(2)(b)	Upon summary conviction, a fine not exceeding level 3 on the uniform scale."

Amendment of the Offences (Fixed Penalties) (Guernsey) Law, 2009.

5. (1) The Offences (Fixed Penalties) (Guernsey) Law, 2009 is amended as follows.

(2) In the Schedule to that Law, immediately after the entry relating to offences against section 1 of the Road Traffic (Restriction on Use of Mobile Telephones) (Guernsey) Ordinance, 2003^e, insert the following entry -

"Offences against section 31A(2), 31B(2) or 31C(3) of the Tobacco Products (Guernsey) Ordinance, 2014	Respectively: smoking in an enclosed motor vehicle with a child present; being the driver or person in charge when smoking in an enclosed motor vehicle with a child present takes place; failing without reasonable excuse to comply with a requirement made under section 31C(2)(b).	C	£125	£115".
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Citation.

6. This Ordinance may be cited as the Tobacco Products (Guernsey) (Amendment) Ordinance, 2024.

^e Recueil d'Ordonnances Tome XXIX, p. 388.

Commencement.

7. This Ordinance shall come into force on the 1st November, 2024.