

THE STATES OF DELIBERATION
of the
ISLAND OF GUERNSEY

PROJET DE LOI

Entitled

THE VAPING PRODUCTS (ENABLING PROVISIONS) (GUERNSEY) LAW, 2024

The States are asked to decide:-

Whether they are of the opinion to approve the draft Projet de Loi entitled "The Vaping Products (Enabling Provisions) (Guernsey) Law, 2024", and to authorise the Bailiff to present a most humble petition to His Majesty praying for His Royal Sanction thereto.

EXPLANATORY MEMORANDUM

This Law empowers the States to make Ordinances relating to the importation, advertisement, sale, supply and consumption of vaping products, as well as related activities. It defines "vaping products" and "advertisement".

It sets out examples of matters for which Ordinances may be made. These include the creation and punishment of offences, and authorising the Committee to make regulations in relation to any matter for which an Ordinance may be made.

PROJET DE LOI

ENTITLED

The Vaping Products (Enabling Provisions) (Guernsey) Law, 2024

ARRANGEMENT OF SECTIONS

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

SCHEDULE: Specific matters for which an Ordinance may be made

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The Vaping Products (Enabling Provisions) (Guernsey) Law, 2024

THE STATES, in pursuance of their Resolution of the 22nd May 2024^a, have approved the following provisions which, subject to the Sanction of His 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 vaping 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 vaping products,
- (b) any activity, practice, act or omission, related to or in any way associated with the importation, advertisement, sale, supply or consumption of vaping products, and

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

- (c) access or admission to regulated places.

Meaning of "vaping product".

2. (1) In this Law, "**vaping product**", means -

- (a) a device which -
 - (i) is intended to enable a person to inhale any vapour through a mouthpiece, or
 - (ii) otherwise vaporises any substance for the purpose of inhalation by a person through a mouthpiece,

where the vapour or (as the case may be) substance is not exclusively a tobacco product or medicinal product,

- (b) an item (such as a cartridge or mechanical or electrical component) which is intended to form part of or be used in a device within paragraph (a),
- (c) a substance which is intended to be vaporised by a device within paragraph (a), and any item containing such a substance, or
- (d) any thing presented, or represented, expressly or implicitly, as a device, item or substance of a kind described in paragraph (a), (b) or (c).

(2) For the purposes of this Law, a vaping product includes a product which can (or is intended to) be used only once as well as one which can (or is intended to) be used more than once.

(3) Despite subsection (1), the following are not vaping products -

- (a) a tobacco product,
- (b) a medicinal product,
- (c) a medical device,
- (d) a battery.

(4) In this section -

"medical device" means a medical device, within the meaning given by regulation 2 of the Medical Devices Regulations 2002^b, that is registered with the Medicines and Healthcare products Regulatory Agency in the United Kingdom,

"medicinal product" has the meaning given by section 133 of the Medicines (Human and Veterinary) (Bailiwick of Guernsey) Law, 2008^c,

^b UK S.I. 2002/618.

^c Order in Council No. V of 2009; this enactment has been amended.

"**tobacco product**" has the meaning given by section 5 of the Tobacco Products (Enabling Provisions) (Guernsey) Law, 2010^d, and

"**vaporises**" includes aerosolises (and "**vapour**" is to be construed accordingly).

(5) The Committee may make regulations to amend all or any part of subsections (1) to (4).

(6) Regulations made under subsection (5) must 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 regulations be annulled, then they shall cease to have effect, but without prejudice to anything done under them or to the making of new regulations.

Specific matters for which Ordinances may make provision.

3. Without limiting the generality of section 1, an Ordinance under that section -

- (a) may make provision in relation to all or any of the matters set out in the Schedule to this Law, and
- (b) may apply any provision of the Tobacco Products (Guernsey) Ordinance, 2014^e or any other enactment, subject to any modifications.

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

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

General provisions as to Ordinances.

4. (1) Without limiting the generality of any other provision of this Law, an Ordinance under section 1 may -

- (a) subject to subsection (2), make provision in relation to the creation, trial (summarily or on indictment) and punishment of offences,
- (b) empower the Committee, any other committee 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) make provision for the purpose of dealing with matters arising out of or related to matters set out in section 1,
- (d) 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 the person's functions unless the thing is done or omitted to be done in bad faith,

- (e) make provision under the powers conferred by this Law despite the provisions of any enactment for the time being in force,
 - (f) repeal, replace, amend, extend, adapt, modify or disapply any rule of custom or law, and
 - (g) without prejudice to the generality of the foregoing, 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.
- (2) 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^f*, or
 - (c) authorise the imposition, on conviction on indictment of an offence, of a term of imprisonment exceeding two years.

^f Order in Council No. XVIII of 2009; this enactment has been amended.

(3) For the avoidance of doubt, an Ordinance made under section 1 may authorise the Committee to -

- (a) make regulations to prohibit or restrict the importation, advertisement, sale, supply or consumption of vaping products, and
- (b) make provision in relation to the creation, trial (summarily or on indictment) and punishment of offences in connection with such prohibitions and restrictions.

Meaning of "advertisement".

5. (1) In this Law, the "**advertisement**" of vaping 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) vaping products in general,
- (b) vaping products of any description,
- (c) any particular vaping product,
- (d) any consumption of vaping products, or

- (e) any activity, practice, act or omission, related to or in any way associated with the consumption of vaping products.

(3) For the avoidance of doubt, a "**message**" or "**representation**" for the purposes of this section 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,
- (e) inscriptions marked or exhibited on vehicles or business premises.

(4) Nothing in subsection (3) limits the generality of subsection (1).

Interpretation.

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

"**advertisement**": see section 5,

"**consumption**", in relation to a vaping product, includes inhalation by, through or from a vaping product, and any other use by an individual of a vaping product,

"**the Committee**" means the Committee for Health & Social Care,

"**importation**" -

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

(b) includes shipping as stores,

"**the 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,

"**place**" includes a 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 vaping 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,

"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

"vaping product": see section 2.

Citation.

7. This Law may be cited as the Vaping Products (Enabling Provisions) (Guernsey) Law, 2024.

Commencement.

8. This Law shall come into force on the day appointed by Ordinance of the States; and different dates may be appointed for different provisions and for different purposes.

SCHEDULE

Section 3

SPECIFIC MATTERS FOR WHICH AN ORDINANCE MAY BE MADE

1. The importation, advertisement, sale or supply of vaping products -
 - (a) under licence,
 - (b) at or from prescribed places, or
 - (c) in prescribed circumstances.
2. The sale or supply of vaping products –
 - (a) by prescribed persons,
 - (b) to prescribed persons, or
 - (c) at prescribed prices.
3. The possession or consumption of vaping products –
 - (a) by prescribed persons,
 - (b) at prescribed places, or
 - (c) in prescribed circumstances.
4. Providing for or establishing 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 vaping products,
 - (b) the grant, renewal, suspension and revocation of licences for the importation, advertisement, sale or supply of vaping 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 that imports, advertises, sells, supplies or consumes vaping 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.