

The Smoking in Regulated Premises (Sark) Ordinance, 2011

THE CHIEF PLEAS OF SARK, in pursuance of their Resolution of the 4th May, 2011, and in exercise of the powers conferred on them by section 37 of the Reform (Sark) Law, 2008^a and all other powers in that behalf, hereby order:-

Prohibition on smoking.

1. (1) Subject to section 3, the smoking of any tobacco product or other product in any regulated premises is prohibited.

(2) In this Ordinance, "**regulated premises**" means –

- (a) any enclosed catering premises,
- (b) any enclosed licensed premises, or
- (c) any enclosed area within catering premises or licensed premises.

Requirement to display notices.

2. Subject to section 3, the person responsible for any regulated premises must at all times display sufficient notices, in such places and manner as

^a Order in Council No. V of 2008; amended by Nos. VI and XXVII of 2008, and No. XIV of 2010.

to be obvious to persons entering or present in any part of the premises to which section 1 applies, that it is illegal by virtue of this Ordinance to smoke there.

Hotel bedrooms and self-catering units may be exempted by designation.

3. (1) Neither section 1(1) nor section 2 applies to a hotel bedroom or self-catering unit designated as a place where smoking is permitted.

(2) In subsection (1), "**designated**" means designated in writing by –

(a) the manager or person in charge of the hotel bedroom or self-catering unit concerned, or

(b) his authorised representative.

Breach of smoking prohibition to be an offence.

4. (1) A person who contravenes the prohibition in section 1(1) is guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the Sark uniform scale.

(2) If there is a contravention of the prohibition in section 1(1) in any regulated premises, each person responsible for the premises concerned is guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the Sark uniform scale.

Breach of display requirement to be an offence.

5. A person who contravenes section 2 is guilty of an offence and liable on summary conviction –

- (a) for a first offence, to a fine not exceeding level 1 on the Sark uniform scale, and
- (b) for a second or subsequent offence, to a fine not exceeding level 3 on the Sark uniform scale.

General defence and other provisions relating to offences.

6. (1) It is a defence for a person against whom proceedings for an offence are brought to prove that he took all reasonably practicable measures to ensure compliance with the relevant provisions.

(2) Where an 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 is guilty of that offence and is liable to be proceeded against and punished accordingly.

(3) Where the affairs of a body corporate are managed by its members, subsection (2) applies 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.

(4) Where an offence is alleged to have been committed by an unincorporated body, proceedings for the offence must be brought in the name of that body and not in the name of any of its members.

(5) A fine imposed on an unincorporated body on its conviction of an offence must be paid from the funds of that body.

(6) Where an offence 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 is liable to be proceeded against and punished accordingly.

(7) In this section -

"an offence" means an offence under section 4 or section 5,

"the relevant provisions" -

- (a) in relation to an offence under section 4, means the prohibition in section 1(1), and
- (b) in relation to an offence under section 5, means section 2.

Interpretation.

7. (1) In this Ordinance, unless the context requires otherwise –

"catering premises" –

- (a) means premises on which any food or drink is offered, or provided, for reward, for consumption on those premises, and
- (b) for the avoidance of doubt, includes any premises in respect of which a catering permit granted under the Catering (Sark) Law, 1988^b is in force,

"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,

"counter" –

- (a) means any counter, hatch or other place whatsoever at or from which food, intoxicating liquor or any other drink is sold, supplied or dispensed, and
- (b) for the avoidance of doubt, includes a bar counter in any licensed premises,

^b Ordres en Conseil Vol. XXXI, p. 68.

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

"enclosed", in relation to any premises or area, means premises or an area that –

- (a) is covered, either wholly or substantially, by a fixed or moveable roof, ceiling or similar structure, whether permanent or temporary, and
- (b) has 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 its perimeter,

"hotel" means premises (other than a self-catering unit) where sleeping accommodation, board, lodging or board and lodging are provided for reward under an accommodation permit granted under the Tourism (Sark) Law, 1982^c,

"licensed premises" has the meaning given by section 52(1) of the Liquor Licensing (General Provisions) (Sark) Ordinance, 1979^d,

"licensee", in respect of any licensed premises, means the person in whose favour a liquor licence has been granted in respect of those premises

^c Ordres en Conseil Vol. XXVII, p. 576; amended by Ordres en Conseil Vol. XXIX, p. 488.

^d Ordinance No. 57, amended by Ordinances No. 62, 65, 76A, 76B), 86, 103, 107 and 145.

under the Liquor Licensing (General Provisions) (Sark) Ordinance, 1979,

"other product" –

- (a) means a product intended for oral smoking, or which is being orally smoked, but which contains no tobacco, and
- (b) for the avoidance of doubt, excludes anything customarily used as incense,

"person" includes any unincorporated body,

"person responsible" –

- (a) in relation to any licensed premises, means the licensee of those premises, and
- (b) in relation to any catering premises in respect of which a catering permit under the Catering (Sark) Law, 1988 is in force, means the holder of that permit, and
- (c) in relation to any other regulated premises, means the manager or person in charge of those premises, or his authorised representative,

"premises" includes any place and any vehicle, vessel, aircraft, stall, tent or moveable structure,

"self-catering unit" means a unit providing self-catering tourist or

holiday accommodation for reward under an accommodation permit granted under the Tourism (Sark) Law, 1982,

"smoking" means orally smoking, holding, or otherwise having control over any ignited tobacco product or ignited other product, and related expressions must be construed accordingly,

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

"tobacco product" means –

- (a) tobacco or any product containing tobacco, including cigarettes, cigars and pipe tobacco,
- (b) smoking mixtures intended as a substitute for tobacco, or
- (c) cigarette paper.

(2) The Interpretation (Guernsey) Law, 1948^e applies to the interpretation of this Ordinance as it applies to the interpretation of a Guernsey enactment.

(3) Any reference in this Ordinance to an enactment is a

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

reference thereto as from time to time amended, re-enacted (with or without modification), extended or applied.

Extent.

8. (1) This Ordinance has effect throughout Sark except –

(a) in the territorial sea adjacent to Sark, and

(b) in the Island of Brecqhou.

(2) For the purposes of subsection (1)(a), the breadth of the territorial sea is to be measured from the baselines established by the Territorial Waters Order in Council 1964^f.

Citation.

9. This Ordinance may be cited as the Smoking in Regulated Premises (Sark) Ordinance, 2011.

Commencement.

10. This Ordinance comes into force on the 1st of August, 2011.

^f Order in Council of the 25th September, 1964.