

*These notes relate to the Smoking, Health and Social Care (Scotland)
Act 2005 (asp 13) which received Royal Assent on 5 August 2005*

SMOKING, HEALTH AND SOCIAL CARE (SCOTLAND) ACT 2005

EXPLANATORY NOTES

THE ACT

Part 1: Smoking: Prohibition and Control

Section 1 – Offence of permitting others to smoke in no-smoking premises

4. Subsections (1) and (2) make it an offence for the person who is in charge of no-smoking premises, having the management or control of those premises, to knowingly permit others to smoke there. The person in charge will be regarded as having permitted that other person to smoke if he or she knew, or ought to have known, that the other person was smoking there.
5. Two defences are provided under subsection (3). The first defence open to the accused person is to prove that they, or anyone working for them, had taken all reasonable precautions and had tried to the best of their ability to stop any other person from smoking in their premises. The second defence open to the accused is to prove that there were no lawful and reasonably practicable means by which they could prevent the other person from smoking in their premises.
6. Subsection (4) provides that the offence of permitting others to smoke in no-smoking premises is subject to a maximum penalty, on summary conviction, of a fine not exceeding level 4 on the standard scale (currently £2500).