

Draft regulations laid before the Scottish Parliament under section 40(3) of the Smoking, Health and Social Care (Scotland) Act 2005, for approval by resolution of the Scottish Parliament.

DRAFT SCOTTISH STATUTORY INSTRUMENTS

2006 No.

PUBLIC HEALTH

**The Prohibition of Smoking in Certain
Premises (Scotland) Regulations 2006**

Made - - - - 2006

Coming into force at 0600 hours on 26th March 2006

The Scottish Ministers, in exercise of the powers conferred by sections 3(3), 4(2), 4(3), 4(6), 4(7), 40(1)(b) of, and paragraphs 2, 4(1), 5(2) and 12 of schedule 1 to, the Smoking, Health and Social Care (Scotland) Act 2005⁽¹⁾ and all other powers enabling them in that behalf, after consulting such persons as they consider appropriate in accordance with section 3(3) of that Act and after consulting such persons as they consider appropriate on a draft of the regulations in accordance with section 4(2) of that Act, hereby make the following Regulations, a draft of which has, in accordance with section 40(3) of that Act, been laid before and approved by resolution of the Scottish Parliament:

Citation, interpretation and commencement

1.—(1) These Regulations may be cited as the Prohibition of Smoking in Certain Premises (Scotland) Regulations 2006.

(2) In these Regulations—

“the Act” means the Smoking, Health and Social Care (Scotland) Act 2005;

“adult” means a person aged 16 years or over;

“adult care home” means an establishment providing a care home service exclusively for adults;

“adult hospice” means a hospice providing care exclusively for adults;

“bar” means any premises exclusively or mainly used for the sale and consumption of beverages, whether alcoholic or not;

“car” means a mechanically propelled road vehicle which is not—

(a) a goods vehicle;

(b) a motor cycle; or

(1) 2005 asp 13 (“the Act”).

(c) a vehicle of a type not commonly used as a private vehicle and unsuitable to be so used;
“care home service” means a care home service within the meaning of section 2(3) of the
Regulation of Care (Scotland) Act 2001(2);

“club premises” means any premises which are used by and for the purposes of a club or other
unincorporated association, whether for profit or not;

“council” means a council constituted under section 2 of the Local Government etc. (Scotland)
Act 1994(3);

“designated hotel bedroom” means a room in a hotel which—

- (a) is set apart exclusively for the sleeping accommodation of travellers;
- (b) has been designated by the person having the management or control of the hotel as being
a room in which smoking is permitted;
- (c) has a ceiling and, except for doors and windows, is completely enclosed on all sides by
solid floor to ceiling walls;
- (d) has a ventilation system that does not ventilate into any other part of the hotel (except
any other designated hotel bedrooms); and
- (e) is clearly marked as a bedroom in which smoking is permitted;

“designated laboratory room” means a room in a laboratory, the recognised activities of which
laboratory consist of, or include, the conduct of scientific education or research into smoking,
which—

- (a) is set apart exclusively for the testing of smoke;
- (b) has been designated by the person having the management or control of the laboratory
as being a room in which smoking is only permitted for scientific purposes;
- (c) has a ceiling and, except for doors and windows, is completely enclosed on all sides by
solid floor to ceiling walls;
- (d) has a ventilation system that does not ventilate into any other part of the laboratory
(except any other designated laboratory rooms); and
- (e) is clearly marked as a room in which smoking is only permitted for scientific purposes;

“designated room” means a room which—

- (a) has been designated by the person having the management or control of the no smoking
premises in question as being a room in which smoking is permitted;
- (b) has a ceiling and, except for doors and windows, is completely enclosed on all sides by
solid floor to ceiling walls;
- (c) has a ventilation system that does not ventilate into any other part of the no smoking
premises in question (except any other designated rooms); and
- (d) is clearly marked as a room in which smoking is permitted;

“detention or interview room” means a room—

- (a) within a police station which is used for the purposes of interviewing or detaining
persons;
- (b) within a police station which is used for the purposes of cell accommodation;
- (c) which is a legalised police cell; or

(2) 2001 asp 8.

(3) 1994 c. 39, section 2(2) was amended by the Environment Act 1995 (c. 25), Schedule 22, paragraph 232(1).

- (d) within premises used by a person appointed as an officer of Revenue and Customs under section 2(1) of the Commissioners for Revenue and Customs Act 2005(4) for the purposes of interviewing or detaining persons;

“domestic premises” means premises occupied as a private dwelling (including any garage, outhouse, or other appurtenance of such premises which is not used in common by the occupants of more than one such dwelling), and “non-domestic premises” shall be construed accordingly;

“educational institution” means—

- (a) a school within the meaning of section 135(1) of the Education (Scotland) Act 1980(5);
- (b) a school care accommodation service within the meaning of section 2(4) of the Regulation of Care (Scotland) Act 2001;
- (c) a college or other institution providing further education within the meaning of section 1 of the Further and Higher Education (Scotland) Act 1992(6) and section 1(5)(b) of the Education (Scotland) Act 1980(7);
- (d) a university or other institution providing higher education within the meaning of section 38 of the Further and Higher Education (Scotland) Act 1992(8); and
- (e) any other educational and vocational institution;

“health care premises” means any premises provided by the Scottish Ministers in accordance with the provisions of section 36(1)(b) of the National Health Service (Scotland) Act 1978(9) and any other premises which are not a hospital and which are used for the purpose of providing medical, dental, pharmaceutical, ophthalmic or chiropody services to non-resident persons;

“hospice” means an establishment the whole or main purpose of which is to provide palliative care for persons resident there who are suffering from a progressive disease in its final stages;

“hospital” means—

- (a) any institution for the reception and treatment of persons suffering from illness;
- (b) any maternity home; and
- (c) any institution for the reception and treatment of persons during convalescence or persons requiring medical rehabilitation, and any institution for providing dental treatment maintained in connection with a dental school,

and includes clinics, dispensaries and out-patient departments which are not health care premises which are maintained in connection with any such home or institution;

“hospital unit” means any part of a hospital which is treated as a separate unit;

“hotel” means a hotel, boarding house, guest house, inn or hostel containing at least two rooms or apartments set apart exclusively for the sleeping accommodation of travellers;

“illness” includes mental disorder within the meaning of section 328 of the Mental Health (Care and Treatment) (Scotland) Act 2003(10) and any injury or disability requiring medical or dental treatment or nursing;

(4) 2005 c. 11.

(5) 1980 c. 44; the definition of “school” in section 135(1) was amended by the Self Governing Schools etc. (Scotland) Act 1989 (c. 39), Schedule 10, paragraph 8(22)(d) and repealed in part by the Registered Establishments (Scotland) Act 1987 (c. 40), section 2(2). There are other amendments to section 135(1) not relevant to these Regulations.

(6) 1992 c. 37.

(7) Section 1(5)(b) was amended by the Local Government and Planning (Scotland) Act 1982 (c. 43), Schedule 3, paragraph 37(b) (i) and Schedule 4, Part I and by S.I. 1982.1397, Schedule 2 and repealed in part by the Self Governing Schools etc. (Scotland) Act 1989 (c. 39), Schedule 11.

(8) Section 38 was amended by the Education (Scotland) Act 1996 (c. 43), Schedule 5, paragraph 9.

(9) 1978 c. 29.

(10) 2003 asp 13.

“legalised police cell” means a police cell within the meaning of section 14(1) of the Prisons (Scotland) Act 1989⁽¹¹⁾;

“no smoking notice” means a notice displayed in accordance with section 3(1) of the Act;

“offender accommodation service” means an offender accommodation service within the meaning of section 2(10) of the Regulation of Care (Scotland) Act 2001;

“offshore installation” means any offshore installation within the meaning of regulation 3 of the Offshore Installations and Pipeline Works (Management and Administration) Regulations 1995⁽¹²⁾;

“premises” includes—

- (a) any building or part of a building;
- (b) any structure or part of a structure, whether moveable or otherwise;
- (c) any installation on land (including the foreshore and other land intermittently covered by water), any offshore installation, and any other installation (whether floating, or resting on the seabed or the subsoil thereof, or resting on other land covered with water or the subsoil thereof);
- (d) any tent, marquee or stall; and
- (e) any vehicle;

“private hire car” means a hire car other than a taxi within the meaning of section 23(1) of the Civic Government (Scotland) Act 1982⁽¹³⁾;

“private vehicle” means—

- (a) any car which is not a public transportation vehicle; and
- (b) any other vehicle which is used primarily for the private purposes of the person who owns it or of a person having the right to use it, provided always that such right to use a vehicle does not, in relation to that vehicle, include a reference to a person whose right to use the vehicle derives only from having paid, or undertaken to pay, for the use of the vehicle and its driver for a particular journey nor does it include a reference to any public transportation vehicle;

“psychiatric hospital” means a hospital the whole or main purpose of which is to treat persons with a mental disorder within the meaning of section 328 of the Mental Health (Care and Treatment) (Scotland) Act 2003, and includes a state hospital;

“psychiatric unit” means a hospital unit the whole or main purpose of which is to treat persons with a mental disorder within the meaning of section 328 of the Mental Health (Care and Treatment) (Scotland) Act 2003;

“public house” includes an inn, ale house, victualling house or other premises in which alcoholic drink is sold by retail for consumption either on or off the premises;

“public transportation facilities” includes train stations, bus stations, bus shelters, waiting rooms, ticket offices and terminal buildings provided in connection with any public transportation vehicle;

“public transportation vehicle” means any vehicle available to the public as a means of transportation and includes a taxi and a private hire car;

“residential accommodation” means so much of any premises as is for the time being occupied or used by any person for residential purposes, but does not include so much of any such

(11) 1989 c. 45; section 14(1) was amended by the Prisoners and Criminal Proceedings (Scotland) Act 1993 (c. 9), Schedule 5, paragraph 6(3) and Schedule 6, paragraphs 1 and 2.

(12) S.I.1995/738; regulation 2 was amended by S.I. 2002/2175, regulation 2.

(13) 1982 c. 45.

premises as constitutes a common area to which the person has or is allowed access in connection with the person's use or occupation of that accommodation, nor does it include an adult care home, an adult hospice, a psychiatric hospital, a psychiatric unit or premises providing a secure accommodation service;

“restaurant” means—

- (a) a café, coffee shop, bistro, fast food establishment or snack bar; and
- (b) any other premises exclusively or mainly used for the sale and consumption of food;

“secure accommodation service” means a secure accommodation service within the same meaning of section 2(9) of the Regulation of Care (Scotland) Act 2001;

“sports centre” means any gymnasium, health spa, swimming pool, roller or ice rink, bowling alley and other similar premises used to engage in sports, athletics or recreational activities or to witness sports, athletics, recreational or similar activities;

“state hospital” means a state hospital provided under section 102(1) of the National Health Service (Scotland) Act 1978;

“taxi” means a hire car within the meaning of section 23(1) of the Civic Government (Scotland) Act 1982; and

“vehicle” includes any train, bus, car and any vessel (whether navigable or not), boat or hovercraft.

(3) A reference to premises includes any premises within premises.

(4) These Regulations shall come into force at 0600 hours on 26th March 2006.

Display of no-smoking notices

2.—(1) At least one no smoking notice displayed in no-smoking premises that are not a vehicle shall—

- (a) be a minimum size of 230mm by 160mm;
- (b) display the international “no smoking” symbol, consisting of a graphic representation of a burning cigarette enclosed in a red circle with a red bar across it, at least 85mm in diameter; and
- (c) display the name of the person to whom a complaint may be made by any person who observes another person smoke in the no-smoking premises in question and state that a complaint may be so made.

(2) The remainder of no-smoking notices displayed in no-smoking premises that are not a vehicle and any no smoking notices displayed on or near no-smoking premises that are not a vehicle shall display the international “no smoking” symbol, consisting of a graphic representation of a burning cigarette enclosed in a red circle with a red bar across it, at least 85mm in diameter.

(3) A no smoking notice displayed in no-smoking premises that are a vehicle shall—

- (a) display the international “no smoking” symbol, consisting of a graphic representation of a burning cigarette enclosed in a red circle with a red bar across it; and
- (b) display the holder of a particular post to whom a complaint may be made by any person who observes another person smoke in the no smoking premises in question and state that a complaint may be so made.

(4) A no smoking notice shall be displayed by the person having the management or control of the no smoking premises in such a manner that it is protected from tampering, damage, removal or concealment.

(5) The requirements in paragraphs (1) to (4) as to the manner of display, form and content of no smoking notices are to be treated for the purposes of section 3(1) of the Act as if incorporated in it.

“No-smoking premises”

3.—(1) The premises or classes of premises prescribed(14) under section 4(2) of the Act as being “no smoking premises” for the purposes of Part 1 of the Act are the premises or classes of premises specified in Schedule 1 to these Regulations, being premises or classes of premises which are wholly or substantially enclosed.

(2) The premises or parts of premises or classes of premises or parts of premises prescribed under section 4(2) of the Act which are excluded from the definition of “no smoking premises” are the premises or parts of premises or classes of premises or parts of premises specified in Schedule 2 to these Regulations.

(3) For the purposes of section 4(2) of the Act—

(a) “premises” includes—

- (i) any building or part of a building;
- (ii) any structure or part of a structure, whether moveable or otherwise;
- (iii) any installation on land (including the foreshore and other land intermittently covered by water), any offshore installation, and any other installation (whether floating, or resting on the seabed or the subsoil thereof, or resting on other land covered with water or the subsoil thereof);
- (iv) any tent, marquee or stall; and
- (v) any vehicle.

(b) “wholly enclosed” means—

- (i) for premises other than a vehicle or part of a vehicle, having a ceiling or roof and, except for doors, windows and passageways, wholly enclosed, whether permanently or temporarily; or
- (ii) for premises that are a vehicle, or part of a vehicle, having a top or roof and, except for doors, windows or exits, wholly enclosed, whether permanently or temporarily;

(c) “substantially enclosed” means—

- (i) for premises other than a vehicle or part of a vehicle, having a ceiling or roof and, except for doors, windows and passageways, substantially enclosed, whether permanently or temporarily; or
- (ii) for premises that are a vehicle, or part of a vehicle, having a top or roof and, except for doors, windows or exits, substantially enclosed, whether permanently or temporarily, and in determining whether premises are “substantially enclosed”, no account is to be taken of openings in which there are doors, windows or other fittings that can be opened or shut;

(d) premises shall be taken to be “substantially enclosed” if—

- (i) the opening in the premises has an area; or
 - (ii) if there is more than one, both or all those openings have an aggregate area, which is less than half of the area of the walls, including any other structures serving the purpose of walls, which constitute the perimeter of the premises;
- (e) where an opening is in, or consists of the absence of, such walls or other structures or a part of them, their area shall be measured for the purposes of paragraph (d) as if it included the area of the opening; and

(f) “has access” means has access whether on payment or otherwise, and whether as of right or by virtue of express or implied permission.

(14) Section 41 of the Act defines “prescribed” as meaning prescribed by regulations made by the Scottish Ministers.

Fixed penalty time limits, amounts and payments

4.—(1) The time limit prescribed under paragraph 2 of schedule 1 to the Act relating to the offence after which a fixed penalty notice may not be given shall be 7 days.

(2) The amount of the fixed penalty prescribed under paragraph 4(1) of schedule 1 to the Act is—

- (a) £200 for an offence under section 1 of the Act;
- (b) £50 for an offence under section 2 of the Act; and
- (c) £200 for an offence under section 3 of the Act.

(3) The discounted amount prescribed under paragraph 5(2) of schedule 1 to the Act for a fixed penalty is—

- (a) £150 for an offence under section 1 of the Act;
- (b) £30 for an offence under section 2 of the Act; and
- (c) £150 for an offence under section 3 of the Act.

Application by councils of fixed penalties and account keeping

5.—(1) Paragraphs (4) and (5) apply in relation to the application by councils of fixed penalties paid under schedule 1 to the Act.

(2) Paragraphs (3) and (6) apply in relation to the keeping of accounts, and the preparation and publication of statements of account, by councils in relation to fixed penalties under schedule 1 to the Act.

(3) Councils shall keep an account of their income and expenditure in respect of the administration and enforcement of section 5 of, and schedule 1 to, the Act.

(4) At the end of each financial year any deficit in the account shall be made good out of the council's general fund, and (subject to paragraph (5) below) any surplus shall be applied to purposes connected with the improvement of the amenity of the area of the council or any part of that area.

(5) If the council so determines, any amount not applied in any financial year, instead of being or remaining so appropriated, may be carried forward in the account kept under paragraph (3) above to the next financial year.

(6) Each council shall, as soon as possible after the end of each financial year, prepare and send to the Scottish Ministers a statement of account to include the account of their income and expenditure kept under paragraph (3) above and an account of any action taken by them, pursuant to paragraph (4) or (5) above, in respect of any deficit or surplus in their account for the year.

St Andrew's House,
Edinburgh
2006

A member of the Scottish Executive

SCHEDULE 1

Regulation 3(1)

NO-SMOKING PREMISES

1. Restaurants.
2. Bars and public houses.
3. Shops and shopping centres.
4. Hotels.
5. Libraries, archives, museums and galleries.
6. Cinemas, concert halls, theatres, bingo halls, gaming and amusement arcades, casinos, dance halls, discotheques and other premises used for the entertainment of members of the public.
7. Premises used as a broadcasting studio or film studio or for the recording of a performance with a view to its use in a programme service or in a film intended for public exhibition.
8. Halls and any other premises used for the assembly of members of the public for social or recreational purposes.
9. Conference centres, public halls and exhibition halls.
10. Public toilets.
11. Club premises.
12. Offices, factories and other premises that are non-domestic premises in which one or more persons work.
13. Offshore installations.
14. Educational institution premises.
15. Premises providing care home services, sheltered housing or secure accommodation services and premises that are non-domestic premises which provide offender accommodation services.
16. Hospitals, hospices, psychiatric hospitals, psychiatric units and health care premises.
17. Crèches, day nurseries, day centres and other premises used for the day care of children or adults.
18. Premises used for, or in connection with, public worship or religious instruction, or the social or recreational activities of a religious body.
19. Sports centres.
20. Airport passenger terminals and any other public transportation facilities.
21. Public transportation vehicles.
22. Vehicles which one or more persons use for work.
23. Public telephone kiosks.

SCHEDULE 2

Regulation 3(2)

EXEMPTIONS

1. Residential accommodation.

2. Designated rooms in adult care homes.
3. Adult hospices.
4. Designated rooms in psychiatric hospitals and psychiatric units.
5. Designated hotel bedrooms.
6. Detention or interview rooms which are designated rooms.
7. Designated rooms in offshore installations.
8. Private vehicles
9. Designated laboratory rooms.
10. HM Submarines and ships of the Royal Fleet Auxiliary.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations make further provision under Part 1 of, and schedule 1 to, the Smoking, Health and Social Care (Scotland) Act 2005 (“the Act”) in relation to the prohibition of smoking in certain wholly or substantially enclosed premises.

Regulation 1 contains the citation, commencement and interpretation provisions to be applied to the Regulations, and gives the time and date (at 0600 hours on 26th March 2006) on which they will come into force.

Regulation 2 makes provision in relation to the display of no smoking notices, providing further requirements in addition to those already stipulated under section 3(1) of the Act. Paragraph (1) of regulation 2 sets out the requirement that at least one no-smoking notice within no smoking premises that are not a vehicle must be a minimum size and must display certain specified details. Paragraph (2) provides that all other no smoking notices on no-smoking premises that are not a vehicle, as well as any no smoking notices on or near no smoking premises that are not a vehicle, must still display the international no-smoking symbol. Paragraph (3) makes separate provision in relation to no smoking premises that are vehicles by requiring certain specified details to be displayed.

Regulation 3(1) gives effect to Schedule 1 to the Regulations, which sets out the premises or classes of premises which are prescribed under section 4(2) of the Act to be no-smoking premises for the purposes of Part 1 of the Act, being premises or classes of premises which are wholly or substantially enclosed.

Regulation 3(2) gives effect to Schedule 2 to the Regulations, which sets out the premises or parts of premises or classes of premises or parts of premises which are prescribed under section 4(2) of the Act to be excluded from the definition of “no smoking premises” in accordance with section 4(3) of the Act, that is those which are excluded from the list of “no smoking premises” in Schedule 1 to the Regulations.

Regulation 3(3) defines and elaborates the meaning of certain expressions (“premises”; “wholly enclosed”; “substantially enclosed”; and “has access”) used in section 4(4) of the Act, as provided for under section 4(5).

Regulation 4 prescribes time limits, amounts and payments in relation to fixed penalties under schedule 1 to the Act. Paragraph (1) prescribes the time limit under paragraph (1) of Schedule 1 to the Act after which a fixed penalty notice may not be given as being 7 days. Paragraph (2) prescribes the amount of the fixed penalty under paragraph 4(1) of schedule 1 to the Act for offences under section 1 (£200), section 2 (£50) and section 3 (£200). Paragraph (3) prescribes the discounted amount of the fixed penalty under paragraph 5(2) of schedule 1 to the Act for offences under section 1 (£150), section 2 (£30) and section 3 (£150).

Regulation 5 provides for the application by councils of fixed penalties and account keeping.

These Regulations were notified in draft to the European Commission in accordance with Article 8 of the European Parliament and Council Directive [98/34/EC](#) laying down a procedure for the provision of information in the field of technical standards and regulations and of rules on information society services (O.J. No. L 204, 21.7.1998, p.37), as amended by the European Parliament and Council Directive [98/48/EC](#) (O.J. No. L 217, 5.8.1998, p.18).