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DRAFT SCOTTISH STATUTORY INSTRUMENTS

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**2006 No.**

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

**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

(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<sup>(1)</sup>;

“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<sup>(2)</sup>;

“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;

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(1) 2001 asp 8.

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

“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
- (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<sup>(3)</sup> 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<sup>(4)</sup>;
- (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<sup>(5)</sup> and section 1(5)(b) of the Education (Scotland) Act 1980<sup>(6)</sup>;

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(3) 2005 c. 11.

(4) 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.

(5) 1992 c. 37.

(6) 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.

(d) a university or other institution providing higher education within the meaning of section 38 of the Further and Higher Education (Scotland) Act 1992(7); 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(8) 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(9) and any injury or disability requiring medical or dental treatment or nursing;

“legalised police cell” means a police cell within the meaning of section 14(1) of the Prisons (Scotland) Act 1989(10);

“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(11);

“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;

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

(8) 1978 c. 29.

(9) 2003 asp 13.

(10) 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.

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

“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(12);

“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 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.

