

HEALTH ACT 2006

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 1 - Smoking

Chapter 1 - Smoke-Free Premises, Places and Vehicles

29. **Chapter 1** of Part 1 of the Act contains provisions that will make virtually all enclosed and substantially enclosed public places and shared workplaces smoke-free. The White Paper *Choosing Health: Making healthy choices easier*, published in November 2004, set out proposals to shift the balance significantly in favour of smoke-free environments, and in June 2005 the Department of Health published a consultation document with proposals for smoke-free legislation.
30. The Act requires that enclosed public places and shared workplaces be smoke-free, unless exempted by regulations to made under section 3 of the Act. Regulations can also provide for vehicles to be smoke-free in certain circumstances and for additional places not covered by section 2 of the Act to be smoke-free.
31. Health Ministers intend that the smoke-free provisions within the Act will come into force in England in Summer 2007.
32. **Chapter 2** of Part 1 of the Act provides the Secretary of State with power to amend the minimum age of sale of tobacco products through secondary legislation. The Act specifies that when amending the age of sale through such secondary legislation the age specified may not be lower than 16 years or higher than 18 years. The Department of Health published a 12-week public consultation on amending the age of sale of tobacco products in July 2006.
33. The provisions in Part 1 of the Act extend to England and Wales. The Act also amends the Merchant Shipping Act 1995 to include provisions for smoke-free ships. The Merchant Shipping Act extends throughout the United Kingdom, and the amendments to that Act also do so.

Section 1: Introduction

34. **Section 1** introduces the smoke-free premises, places and vehicles provisions within the Act. *Subsection (1)* explains that Chapter 1 of Part 1 makes provision prohibiting smoking in certain premises, places and vehicles. *Subsection (2)* defines “smoking” for the purposes of Chapter 1 of Part 1 and provides that “smoking” refers to smoking tobacco, or anything which contains tobacco, or smoking any other substance, and includes being in possession of lit tobacco, or anything lit which contains tobacco, or being in possession of any other lit substance in a form which could be smoked. “Smoking” therefore includes the smoking of cigarettes, pipes, cigars, herbal cigarettes and waterpipes (often known as hookah or shisha pipes) etc.

Section 2: Smoke-free premises

35. **Section 2** makes provision for enclosed or substantially enclosed premises which are open to the public, and shared workplaces, to be smoke-free.
36. *Subsection (1)* provides that premises that are open to the public are to be smoke-free when they are open to the public. However, unless such premises also fall within the provisions of *subsection (2)*, they are smoke-free only when open to the public.
37. *Subsection (2)* provides that if premises are used as a place of work by more than one person, irrespective of whether such people work there at the same time, or if they are used a place of work where the public might attend to seek or receive goods or services, then they are to be smoke-free all the time. *Subsection (3)* provides that if only part of any premises are open to the public or used as a place of work, then the premises are only smoke-free to that extent.
38. *Subsection (4)* provides that only enclosed or substantially enclosed premises are smoke-free under section 2. The appropriate national authority (the Secretary of State in the case of England and the National Assembly in the case of Wales) may define in regulations under *subsection (5)* the meaning of “enclosed” or “substantially enclosed”.
39. *Subsection (6)* is a signpost to section 3, which provides that premises that would otherwise be smoke-free under section 2 may be exempted from that requirement by regulations made under section 3.
40. *Subsections (7) and (8)* make provision as to what is covered by the terms “open to the public” and “work”.

Section 3: Smoke-free premises: exemptions

41. **Section 3** enables regulations to be made by the appropriate national authority to specify descriptions of premises, or specified areas within such premises, which are not to be smoke-free where they would otherwise be covered by the provisions of Section 2.
42. *Subsection (2)* gives examples of the types of premises that might specified under such regulations. These might include, in particular, premises where someone has their home or where they are living, whether permanently or temporarily. Such premises might include places such as rooms in a hotel, bed and breakfast accommodation, a hostel or a care home. They could also include a place where a person is detained, such as a prison. .
43. *Subsection (3)* provides that such regulations may not exempt from the smoke-free requirement premises where the sale of alcohol is permitted under a premises licence under the Licensing Act 2003 (which could include places such as pubs, bars, discos and nightclubs) or premises which operate under a club premises certificate under the Licensing Act. However, by virtue of *subsection (4)*, if someone has their home, or is living either temporarily or permanently, in some area within such premises, the regulations may specify that particular living area as being exempt from the smoke-free requirement. This could permit, for example, a publican’s living accommodation above a pub to be exempt from the smoke-free requirement that applies to the pub itself.
44. *Subsection (5)* provides that such regulations may make provision for those taking part in performances, so as to permit smoking by such performers if artistic integrity so requires. Performances may, by virtue of *subsection (8)*, include the performance of a play or a performance in connection with a film or television production (including rehearsals in each case but only if the regulations so provide). This would, for example, enable provision to be made enabling those participating in an artistic performance to smoke (where the artistic integrity of the performance made it appropriate) where that performance takes place on licensed premises.
45. *Subsection (6)* makes provision in respect of the matters such regulations may deal with, including the circumstances and conditions under which, and the times at which,

premises may be exempt from the smoke-free requirement. *Subsection (7)* provides that regulations may also make provision for the designation of rooms in which smoking may be permitted. This would enable provision to be made for designated smoking rooms, for example, in premises such as hotels, prisons or long term adult care homes or in other premises where it may be impossible for smoking to take place outside for safety, health or practical reasons, such as oil rigs.

Section 4: Additional smoke-free places

46. *Section 4* enables regulations to be made that designate additional smoke-free places. These will be places that are not already covered by section 2 of the Act. Such places will not need to be enclosed or substantially enclosed. The appropriate national authority may designate a place under this section only if, in the authority's opinion, there is significant risk that, without designation, persons present in the place would be exposed to significant quantities of smoke. Examples of such places that might possibly be covered by regulations made under this section are sports stadia, bus shelters or entrances to buildings that are not covered within section 2 of the Act. Regulations made under this section may provide for additional places to be smoke-free only in certain circumstances, at certain times, if certain conditions are satisfied or in certain areas (or any combination of those).

Section 5: Vehicles

47. *Section 5* provides powers for the appropriate national authority to make regulations providing for vehicles to be smoke-free. These regulations may make provision for the types of vehicles that are to be smoke-free, the circumstances in which the vehicles are to be smoke-free, any limitations to specified areas of the vehicle which is to be smoke-free and any exemptions. *Subsection (5)* defines vehicle as meaning every type of vehicle, including train, vessel, aircraft and hovercraft.
48. By *subsection (3)*, the power to make regulations to provide for smoke-free vehicles is not exercisable in relation to ships or hovercraft (or any persons on any such ship or hovercraft) for which regulations could be made under section 85 of the Merchant Shipping Act 1995. *Subsection (4)* amends section 85 of the Merchant Shipping Act to enable safety regulations made under that Act to provide for smoke-free provision for ships and hovercraft which corresponds with provisions in the Health Act.

Section 6: No-smoking signs

49. *Section 6(1)* imposes a duty on any person who occupies or is concerned with the management of smoke-free premises to display no-smoking signs which comply with the requirements of regulations to be made by the appropriate national authority under this section. *Subsection (2)* provides that regulations may also provide for a similar duty, imposed on such people as may be specified in the regulations, to display signs in relation to any premises designated smoke-free under regulations made under section 4 or in relation to any vehicle designated smoke-free under regulations made under section 5.
50. *Subsection (5)* provides that anyone who fails to comply with such a duty commits an offence. *Subsection (6)* sets out the defences that may be relied upon by a person charged with such an offence. *Subsection (7)* provides that if a person charged with an offence relies on a defence in *subsection (6)*, and presents evidence that is sufficient to raise an issue in respect of such a defence, then the court must assume that the defence is satisfied unless the prosecution can show beyond a reasonable doubt that it is not so satisfied.
51. *Subsection (8)* provides that a person who is found guilty of an offence under section 6 will be liable to a fine up to a level on the standard scale specified in regulations. It is intended that the regulations will prescribe a fine on summary conviction not exceeding level 3 on the standard scale, which is currently up to £1,000.

Section 7: Offence of smoking in smoke-free place

52. **Section 7** sets out the offence of smoking in a smoke-free place. Smoke-free places comprise enclosed or substantially enclosed premises as defined in section 2, additional smoke-free places as set out in section 4, and vehicles required to be smoke-free as set out in section 5 of the Act. By *subsection (2)*, a person who smokes in any of these places commits an offence. However, by *subsection (3)*, a performer who smokes during a performance, where the premises have been exempted from the smoke-free requirement in relation to such performance by virtue of regulations under section 3(1) and (5) of the Act does not commit an offence.
53. *Subsection (4)* provides that it is a defence for a person charged with smoking in a smoke-free place to show that he/she did not know, and could not reasonably have been expected to know, that the premises, place or vehicle was smoke-free.
54. By *subsection (5)*, where a defendant wishes to rely on this defence, he/she must provide evidence that supports the defence. Where a defendant does provide evidence, the defence must be taken to be satisfied unless the prosecution proves beyond reasonable doubt that the evidence provided does not satisfy the defence.
55. *Subsection (6)* provides that a person who is found guilty of an offence under this section will be liable to a fine up to a level on the standard scale specified in regulations. It is intended that the regulations will prescribe a fine on summary conviction not exceeding level 1 on the standard scale, which is currently up to £100.

Section 8: Offence of failing to prevent smoking in smoke-free place

56. **Section 8** imposes a duty on any person who controls or is concerned in the management of smoke-free premises to prevent smoking from taking place within the smoke-free premises. *Subsection (3)* provides that regulations may also provide for a similar duty, imposed on such people as may be specified in the regulations, to prevent smoking in relation to premises designated smoke-free under regulations made under section 4 or in relation to vehicles designated smoke-free under regulations made under section 5. However, *subsection (2)* provides that the duty to stop people smoking does not extend to stopping a person smoking where that person is a performer who smokes during a performance and the premises have been exempted from the smoke-free requirement, in relation to such performance, by virtue of regulations under section 3(1) and (5) of the Act.
57. By *subsection (4)*, anyone who fails to comply with such a duty commits an offence. *Subsection (5)* sets out the defences for a person charged with an offence under subsection (4), namely that:
- a. He/she took reasonable steps to stop the person smoking, such as requesting a person to stop smoking or taking steps to have the smoker evicted.
 - b. He/she did not know, and could not reasonably be expected to know that the person was smoking, for example if the manager was not present at the time the smoking occurred.
 - c. He/she has other grounds that show it was reasonable for him/her not to comply with the duty, for example during a period when priority had to be given to another duty, such as preventing other illegal activity or dealing with disorderly conduct.
58. *Subsection (6)* provides that if a person charged with an offence under this section relies on a defence in subsection (5), and presents evidence that is sufficient to raise an issue in respect of such a defence, then the court must assume that the defence is satisfied unless the prosecution can show beyond a reasonable doubt that it is not so satisfied.
59. *Subsection (7)* provides that a person who is found guilty of an offence under this Section will be liable to a fine up to a level on the standard scale specified in regulations.

It is intended that the regulations will prescribe a fine on summary conviction not exceeding level 4 on the standard scale, which is currently up to £2,500.

Section 9: Fixed penalties

60. An authorised officer (as defined in section 10(5)) who has reason to believe a person has committed an offence under section 6(5) (not displaying no-smoking signage that complies with regulations in smoke-free premises, places or vehicles) or 7(2) (smoking in smoke-free premises, or in a smoke-free place or vehicle) may issue a penalty notice in respect of the offence. If the person pays the penalty in accordance with the Act, he/she will be discharged of all liability for the offence and will not be able to be prosecuted for the offence for which the penalty notice was issued.
61. [Schedule 1](#) contains provisions on fixed penalties.

Schedule 1

This Schedule contains provisions relating to fixed penalties. Provision is made for the contents of the penalty notice, the amount of the penalty, the discounted amount and the period for payment, as well as the time given to make payment. Paragraphs 14 and 15 of the Schedule enable a person to request to be tried for the offence in court instead of paying a fixed penalty. Paragraph 16 of the Schedule makes provision in relation to withdrawal of notices.

For the offence of smoking in a smoke-free place it is intended that regulations will prescribe a fixed penalty of £50. If the person pays the penalty, he will be discharged of any liability to conviction for the offence. A discounted amount can be paid if the fixed penalty notice (FPN) is settled within 15 days. The discounted amount will be set out in regulations, but is expected to be £30.

For the offence of failing to comply with signage requirements, it is intended that regulations will prescribe a fixed penalty of £200. If the person pays the penalty, he will be discharged of any liability to conviction for the offence, and will not be taken to court. A discounted amount can be paid if the FPN is settled within 15 days. The discounted amount will be set out in regulations, but is expected to be £150.

Section 10: Enforcement

62. The appropriate national authority may make regulations to designate the bodies which are to be enforcement authorities for the purposes of smoke-free legislation. *Subsection (3)* places a duty on bodies specified as enforcement authorities to enforce the smoke-free requirements of the Act in those premises, places or vehicles where the enforcement authority has functions (which will also be specified in regulations).
63. Provision may also be made for the transfer of enforcement cases between designated enforcement authorities. *Subsection (4)* provides that the appropriate national authority may exercise enforcement functions itself in particular cases or types of case.
64. *Subsection (5)* provides that within Chapter 1 of Part 1 of the Act, “authorised officer” in relation to an enforcement authority means any person whom the enforcement authority authorises in writing to enforce smoke-free legislation. Such written authorisation can be either general or specific. Regulations may be made under *subsection (6)* to specify any qualifications required to be held by an authorised officer of an enforcement authority.
65. [Schedule 2](#) makes provision about powers of entry, etc.

Schedule 2

This Schedule contains provisions relating to powers of entry for enforcement. The Schedule sets out the powers of an officer who is an authorised officer of an enforcement

authority for the purposes of Chapter 1 of Part 1 of the Act. He/she may enter premises (other than premises used only as a private dwelling which is not open to the public), require and take possession of samples and substances, and request information. Provision is also made for a justice of the peace to issue warrants where admission is likely to be refused and in certain other cases. In enforcement cases where the appropriate national authority acts as the enforcement authority, the same provisions apply to persons discharging enforcement authority functions on behalf of the appropriate national authority.

Section 11: Obstruction etc. of officers

66. **Section 11** provides that any person who intentionally obstructs an authorised officer of an enforcement authority, enforcing smoke-free provisions of this Act, commits an offence. By *subsection (2)*, a person who fails to give to an authorised officer any facilities, assistance or information which the authorised officer reasonably requires for the purposes of enforcement commits an offence. By *subsection (3)*, a person commits an offence if he/she makes a statement which is false or misleading, and he/she either knows that is false or misleading or is reckless as to whether it is false or misleading. For the purposes of this section, “false or misleading” means false or misleading in a material particular. In enforcement cases where the appropriate national authority acts as the enforcement authority, the same provisions apply to persons discharging enforcement authority on behalf of the appropriate national authority.
67. *Subsection (4)* provides that a person who obstructs an authorised officer as specified in section 11 is liable on summary conviction to a fine not exceeding level 3 on the standard scale, which is currently up to £1,000.

Section 12: Interpretation and territorial sea

68. *Subsection (1)* contains definitions that apply to Chapter 1 of Part 1 of the Act, apart from the definition of “smoking” which is in section 1. *Subsection (2)* enables the definition of premises in subsection (1), which currently includes a reference to regulation 3 of the Offshore Installations and Pipeline Works (Management and Administration) Regulations 1995, to be amended by order so as to substitute reference to another enactment for the current reference to the 1995 Regulations, should those Regulations, for example, be amended or revoked. *Subsections (3) and (4)* provide that Part 1 has effect in relation to the territorial sea which is adjacent to England and Wales as it has effect in relation to England and Wales.