



# Health Act 2006

## 2006 CHAPTER 28

### PART 1

#### SMOKING

### CHAPTER 1

#### SMOKE-FREE PREMISES, PLACES AND VEHICLES

**Modifications etc. (not altering text)**

- C1** Pt. 1 Ch. 1 modified (30.5.2007) by [National Assembly for Wales Commission \(Crown Status\) \(No.2\) Order 2007 \(S.I. 2007/1353\)](#), arts. 1(2), 7

#### *Introduction*

### **1 Introduction**

- (1) This Chapter makes provision for the prohibition of smoking in certain premises, places and vehicles which are smoke-free by virtue of this Chapter.
- (2) In this Chapter—
  - (a) “smoking” refers to smoking tobacco or anything which contains tobacco, or smoking any other substance, and
  - (b) smoking includes being in possession of lit tobacco or of anything lit which contains tobacco, or being in possession of any other lit substance in a form in which it could be smoked.
- (3) In this Chapter, “smoke” and other related expressions are to be read in accordance with subsection (2).

*Status: Point in time view as at 01/07/2007.*

*Changes to legislation: There are currently no known outstanding effects for the Health Act 2006, Chapter 1. (See end of Document for details)*

#### Commencement Information

- I1** S. 1 in force at 2.4.2007 for W. by [S.I. 2007/204](#), **art. 2(a)**  
**I2** S. 1 in force at 1.7.2007 for E. by [S.I. 2007/1375](#), **art. 2(a)**

*Smoke-free premises, etc.*

## 2 Smoke-free premises

- (1) Premises are smoke-free if they are open to the public.

But unless the premises also fall within subsection (2), they are smoke-free only when open to the public.

- (2) Premises are smoke-free if they are used as a place of work—
- (a) by more than one person (even if the persons who work there do so at different times, or only intermittently), or
  - (b) where members of the public might attend for the purpose of seeking or receiving goods or services from the person or persons working there (even if members of the public are not always present).

They are smoke-free all the time.

- (3) If only part of the premises is open to the public or (as the case may be) used as a place of work mentioned in subsection (2), the premises are smoke-free only to that extent.
- (4) In any case, premises are smoke-free only in those areas which are enclosed or substantially enclosed.
- (5) The appropriate national authority may specify in regulations what “enclosed” and “substantially enclosed” mean.
- (6) Section 3 provides for some premises, or areas of premises, not to be smoke-free despite this section.
- (7) Premises are “open to the public” if the public or a section of the public has access to them, whether by invitation or not, and whether on payment or not.
- (8) “Work”, in subsection (2), includes voluntary work.

#### Commencement Information

- I3** S. 2 in force for certain purposes at Royal Assent, see s. 83  
**I4** S. 2 in force at 2.4.2007 for W. in so far as not already in force by [S.I. 2007/204](#), **art. 2(a)**  
**I5** S. 2 in force at 1.7.2007 for E. in so far as not already in force by [S.I. 2007/1375](#), **art. 2(a)**

## 3 Smoke-free premises: exemptions

- (1) The appropriate national authority may make regulations providing for specified descriptions of premises, or specified areas within specified descriptions of premises, not to be smoke-free despite section 2.

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*Status: Point in time view as at 01/07/2007.*

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- (2) Descriptions of premises which may be specified under subsection (1) include, in particular, any premises where a person has his home, or is living whether permanently or temporarily (including hotels, care homes, and prisons and other places where a person may be detained).
- (3) The power to make regulations under subsection (1) is not exercisable so as to specify any description of—
  - (a) premises in respect of which a premises licence under the Licensing Act 2003 (c. 17) authorising the sale by retail of alcohol for consumption on the premises has effect,
  - (b) premises in respect of which a club premises certificate (within the meaning of section 60 of that Act) has effect.
- (4) But subsection (3) does not prevent the exercise of that power so as to specify any area, within a specified description of premises mentioned in subsection (3), where a person has his home, or is living whether permanently or temporarily.
- (5) For the purpose of making provision for those participating as performers in a performance, or in a performance of a specified description, not to be prevented from smoking if the artistic integrity of the performance makes it appropriate for them to smoke—
  - (a) the power in subsection (1) also includes power to provide for specified descriptions of premises or specified areas within such premises not to be smoke-free in relation only to such performers, and
  - (b) subsection (3) does not prevent the exercise of that power as so extended.
- (6) The regulations may provide, in relation to any description of premises or areas of premises specified in the regulations, that the premises or areas are not smoke-free—
  - (a) in specified circumstances,
  - (b) if specified conditions are satisfied, or
  - (c) at specified times,or any combination of those.
- (7) The conditions may include conditions requiring the designation in accordance with the regulations, by the person in charge of the premises, of any rooms in which smoking is to be permitted.
- (8) For the purposes of subsection (5), the references to a performance—
  - (a) include, for example, the performance of a play, or a performance given in connection with the making of a film or television programme, and
  - (b) if the regulations so provide, include a rehearsal.

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#### **Commencement Information**

- I6** S. 3 in force for certain purposes at Royal Assent, see s. 83
- I7** S. 3 in force at 2.4.2007 for W. in so far as not already in force by [S.I. 2007/204, art. 2\(a\)](#)
- I8** S. 3 in force at 1.7.2007 for E. in so far as not already in force by [S.I. 2007/1375, art. 2\(a\)](#)

*Status: Point in time view as at 01/07/2007.*

*Changes to legislation: There are currently no known outstanding effects for the Health Act 2006, Chapter 1. (See end of Document for details)*

#### 4 Additional smoke-free places

- (1) The appropriate national authority may make regulations designating as smoke-free any place or description of place that is not smoke-free under section 2.
- (2) The place, or places falling within the description, need not be enclosed or substantially enclosed.
- (3) The appropriate national authority may designate a place or description of place under this section only if in the authority's opinion there is a significant risk that, without a designation, persons present there would be exposed to significant quantities of smoke.
- (4) The regulations may provide for such places, or places falling within the description, to be smoke-free only—
  - (a) in specified circumstances,
  - (b) at specified times,
  - (c) if specified conditions are satisfied,
  - (d) in specified areas,
 or any combination of those.

#### Commencement Information

**I9** S. 4 in force for certain purposes at Royal Assent, see s. 83

**I10** S. 4 in force at 1.7.2007 for E. in so far as not already in force by [S.I. 2007/1375, art. 2\(a\)](#)

#### 5 Vehicles

- (1) The appropriate national authority may make regulations providing for vehicles to be smoke-free.
- (2) The regulations may in particular make provision—
  - (a) for the descriptions of vehicle which are to be smoke-free,
  - (b) for the circumstances in which they are to be smoke-free,
  - (c) for them to be smoke-free only in specified areas, or except in specified areas,
  - (d) for exemptions.
- (3) The power to make regulations under this section is not exercisable in relation to—
  - (a) any ship or hovercraft in relation to which regulations could be made under section 85 of the Merchant Shipping Act 1995 (c. 21) (safety and health on ships), including that section as applied by any Order in Council under section 1(1)(h) of the Hovercraft Act 1968 (c. 59), or
  - (b) persons on any such ship or hovercraft.
- (4) In section 85 of the Merchant Shipping Act 1995, at the end add—
  - (8) Safety regulations which make provision in respect of the prohibition of smoking on any ship (“the smoking provisions”) may include provision—
    - (a) for the appointment by the Secretary of State of persons to enforce the smoking provisions (whether in respect of ships generally or for any particular case or purpose), and for the removal of any person so appointed,

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- (b) for such persons (if they are not surveyors of ships appointed under section 256) to have the powers of such surveyors for the purposes of their enforcement functions,
- (c) for any such persons to have, for the purposes of their enforcement functions, powers corresponding to those which authorised officers have under paragraphs 2(b) to (e), 3 and 4, as read with paragraphs 5 and 9, of Schedule 2 to the Health Act 2006 (which confers powers of entry, etc., on authorised officers of enforcement authorities in relation to the enforcement of the provisions of that Act in relation to smoking),
- (d) in relation to an offence of smoking in a place where smoking is prohibited under the smoking provisions, for purposes corresponding to those of section 9 of and Schedule 1 to the Health Act 2006 (which provide for the giving by authorised officers of penalty notices in respect of such an offence).

In this subsection, “smoking” has the same meaning as in Chapter 1 of Part 1 of the Health Act 2006.”

- (5) In this Chapter, “vehicle” means every type of vehicle, including train, vessel, aircraft and hovercraft.

#### **Commencement Information**

- I11** S. 5 in force for certain purposes at Royal Assent, see s. 83
- I12** S. 5 in force at 2.4.2007 for W. in so far as not already in force by [S.I. 2007/204, art. 2\(a\)](#)
- I13** [S. 5\(1\)-\(3\)\(5\)](#) in force at 1.7.2007 for E. in so far as not already in force by [S.I. 2007/1375, art. 2\(a\)](#)
- I14** [S. 5\(4\)](#) in force at 1.7.2007 for E.S.N.I. in so far as not already in force by [S.I. 2007/1375, art. 2\(a\)](#)

### *No-smoking signs*

## **6 No-smoking signs**

- (1) It is the duty of any person who occupies or is concerned in the management of smoke-free premises to make sure that no-smoking signs complying with the requirements of this section are displayed in those premises in accordance with the requirements of this section.
- (2) Regulations made by the appropriate national authority may provide for a duty corresponding to that mentioned in subsection (1) in relation to—
  - (a) places which are smoke-free by virtue of section 4,
  - (b) vehicles which are smoke-free by virtue of section 5.

The duty is to be imposed on persons, or on persons of a description, specified in the regulations.

- (3) The signs must be displayed in accordance with any requirements contained in regulations made by the appropriate national authority.
- (4) The signs must conform to any requirements specified in regulations made by the appropriate national authority (for example, requirements as to content, size, design, colour, or wording).

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- (5) A person who fails to comply with the duty in subsection (1), or any corresponding duty in regulations under subsection (2), commits an offence.
- (6) It is a defence for a person charged with an offence under subsection (5) to show —
- (a) that he did not know, and could not reasonably have been expected to know, that the premises were smoke-free (or, as the case may be, that the place or vehicle was smoke-free), or
  - (b) that he did not know, and could not reasonably have been expected to know, that no-smoking signs complying with the requirements of this section were not being displayed in accordance with the requirements of this section, or
  - (c) that on other grounds it was reasonable for him not to comply with the duty.
- (7) If a person charged with an offence under subsection (5) relies on a defence in subsection (6), and evidence is adduced which is sufficient to raise an issue with respect to that defence, the court must assume that the defence is satisfied unless the prosecution proves beyond reasonable doubt that it is not.
- (8) A person guilty of an offence under subsection (5) is liable on summary conviction to a fine not exceeding a level on the standard scale specified in regulations made by the Secretary of State.
- (9) The references in this section, however expressed, to premises, places or vehicles which are smoke-free, are to those premises, places or vehicles so far as they are smoke-free under or by virtue of this Chapter (and references to smoke-free premises include premises which by virtue of regulations under section 3(5) are smoke-free except in relation to performers).

#### Commencement Information

**I15** S. 6 in force for certain purposes at Royal Assent, see s. 83

**I16** S. 6 in force at 2.4.2007 for W. in so far as not already in force by [S.I. 2007/204, art. 2\(a\)](#)

**I17** S. 6 in force at 1.7.2007 for E. in so far as not already in force by [S.I. 2007/1375, art. 2\(a\)](#)

*Offences relating to smoking in smoke-free premises, etc.*

## 7 Offence of smoking in smoke-free place

- (1) In this section, a “smoke-free place” means any of the following—
- (a) premises, so far as they are smoke-free under or by virtue of sections 2 and 3 (including premises which by virtue of regulations under section 3(5) are smoke-free except in relation to performers),
  - (b) a place, so far as it is smoke-free by virtue of section 4,
  - (c) a vehicle, so far as it is smoke-free by virtue of section 5.
- (2) A person who smokes in a smoke-free place commits an offence.
- (3) But a person who smokes in premises which are not smoke-free in relation to performers by virtue of regulations under section 3(5) does not commit an offence if he is such a performer.

*Status: Point in time view as at 01/07/2007.*

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- (4) It is a defence for a person charged with an offence under subsection (2) to show that he did not know, and could not reasonably have been expected to know, that it was a smoke-free place.
- (5) If a person charged with an offence under this section relies on a defence in subsection (4), and evidence is adduced which is sufficient to raise an issue with respect to that defence, the court must assume that the defence is satisfied unless the prosecution proves beyond reasonable doubt that it is not.
- (6) A person guilty of an offence under this section is liable on summary conviction to a fine not exceeding a level on the standard scale specified in regulations made by the Secretary of State.

#### Commencement Information

**I18** S. 7 in force for certain purposes at Royal Assent, see s. 83

**I19** S. 7 in force at 2.4.2007 for W. in so far as not already in force by [S.I. 2007/204](#), [art. 2\(a\)](#)

**I20** S. 7 in force at 1.7.2007 for E. in so far as not already in force by [S.I. 2007/1375](#), [art. 2\(a\)](#)

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

- (1) It is the duty of any person who controls or is concerned in the management of smoke-free premises to cause a person smoking there to stop smoking.
- (2) The reference in subsection (1) to a person smoking does not include a performer in relation to whom the premises are not smoke-free by virtue of regulations under section 3(5).
- (3) Regulations made by the appropriate national authority may provide for a duty corresponding to that mentioned in subsection (1) in relation to—
  - (a) places which are smoke-free by virtue of section 4,
  - (b) vehicles which are smoke-free by virtue of section 5.

The duty is to be imposed on persons, or on persons of a description, specified in the regulations.

- (4) A person who fails to comply with the duty in subsection (1), or any corresponding duty in regulations under subsection (3), commits an offence.
- (5) It is a defence for a person charged with an offence under subsection (4) to show—
  - (a) that he took reasonable steps to cause the person in question to stop smoking, or
  - (b) that he did not know, and could not reasonably have been expected to know, that the person in question was smoking, or
  - (c) that on other grounds it was reasonable for him not to comply with the duty.
- (6) If a person charged with an offence under this section relies on a defence in subsection (5), and evidence is adduced which is sufficient to raise an issue with respect to that defence, the court must assume that the defence is satisfied unless the prosecution proves beyond reasonable doubt that it is not.

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- (7) A person guilty of an offence under this section is liable on summary conviction to a fine not exceeding a level on the standard scale specified in regulations made by the Secretary of State.
- (8) The references in this section, however expressed, to premises, places or vehicles which are smoke-free, are to those premises, places or vehicles so far as they are smoke-free under or by virtue of this Chapter (and references to smoke-free premises include premises which by virtue of regulations under section 3(5) are smoke-free except in relation to performers).

#### Commencement Information

- I21** S. 8 in force for certain purposes at Royal Assent, see s. 83
- I22** S. 8 in force at 2.4.2007 for W. in so far as not already in force by [S.I. 2007/204, art. 2\(a\)](#)
- I23** S. 8 in force at 1.7.2007 for E. in so far as not already in force by [S.I. 2007/1375, art. 2\(a\)](#)

### *Fixed penalties*

## 9 Fixed penalties

- (1) An authorised officer of an enforcement authority (see section 10) who has reason to believe that a person has committed an offence under section 6(5) or 7(2) on premises, or in a place or vehicle, in relation to which the authorised officer has functions may give him a penalty notice in respect of the offence.
- (2) A penalty notice is a notice offering a person the opportunity to discharge any liability to conviction for the offence to which the notice relates by paying a penalty in accordance with this Chapter.
- (3) Schedule 1 makes further provision about fixed penalties.

#### Commencement Information

- I24** S. 9 in force at 2.4.2007 for W. by [S.I. 2007/204, art. 2\(b\)](#)
- I25** S. 9 in force at 1.7.2007 for E. by [S.I. 2007/1375, art. 2\(a\)](#)

### *Enforcement*

## 10 Enforcement

- (1) The appropriate national authority may make regulations designating the bodies or descriptions of body which are to be enforcement authorities for the purposes of this Chapter.
- (2) The regulations—
- (a) must specify the descriptions of premises, place or vehicle in relation to which an enforcement authority has enforcement functions,
  - (b) may provide for a case being dealt with by one enforcement authority to be transferred (or further transferred, or transferred back) to, and taken over by, another enforcement authority.



*Status: Point in time view as at 01/07/2007.*

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- (3) It is the duty of an enforcement authority to enforce, as respects the premises, places and vehicles in relation to which it has enforcement functions, the provisions of this Chapter and regulations made under it.
- (4) The appropriate national authority may direct, in relation to cases of a particular description or a particular case, that any duty imposed on an enforcement authority by subsection (3) is to be discharged instead by the appropriate national authority.
- (5) In this Chapter, “authorised officer”, in relation to an enforcement authority, means any person (whether or not an officer of the authority) who is authorised by it in writing, either generally or specially, to act in matters arising under this Chapter.
- (6) If regulations under this section so provide, no person is to be so authorised unless he has such qualifications as are prescribed by the regulations.
- (7) Schedule 2 makes provision about powers of entry, etc.

#### Commencement Information

- I26** S. 10 in force for certain purposes at Royal Assent, see s. 83
- I27** S. 10 in force at 2.4.2007 for W. in so far as not already in force by [S.I. 2007/204, art. 2\(a\)](#)
- I28** [S. 10](#) in force at 1.7.2007 for E. in so far as not already in force by [S.I. 2007/1375, art. 2\(a\)](#)

## 11 Obstruction etc. of officers

- (1) Any person who intentionally obstructs an authorised officer of an enforcement authority, acting in the exercise of his functions under or by virtue of this Chapter, commits an offence.
- (2) Any person who without reasonable cause fails to give to an authorised officer of an enforcement authority, acting in the exercise of his functions under or by virtue of this Chapter, any facilities, assistance or information which the authorised officer reasonably requires of him for the performance of those functions commits an offence.
- (3) A person commits an offence if, in purported compliance with any requirement of an authorised officer mentioned in subsection (2)—
  - (a) he makes a statement which is false or misleading, and
  - (b) he either knows that it is false or misleading or is reckless as to whether it is false or misleading.

“False or misleading” means false or misleading in a material particular.
- (4) A person guilty of an offence under this section is liable on summary conviction to a fine not exceeding level 3 on the standard scale.
- (5) If a direction of the appropriate national authority has effect under section 10(4), this section has effect, in relation to any case or case of a description specified in the direction, as if references to an authorised officer of an enforcement authority were to a person acting on behalf of the appropriate national authority.

#### Commencement Information

- I29** S. 11 in force at 2.4.2007 for W. by [S.I. 2007/204, art. 2\(b\)](#)

*Status: Point in time view as at 01/07/2007.*

*Changes to legislation: There are currently no known outstanding effects for the Health Act 2006, Chapter 1. (See end of Document for details)*

**I30** S. 11 in force at 1.7.2007 for E. by [S.I. 2007/1375](#), **art. 2(a)**

*Interpretation, etc.*

## 12 Interpretation and territorial sea

(1) In this Chapter—

“authorised officer” has the meaning given by section 10(5),

“premises” includes a tent, and (if not a ship within the meaning of the Merchant Shipping Act 1995 (c. 21)) a moveable structure and an offshore installation (as defined in regulation 3 of the Offshore Installations and Pipeline Works (Management and Administration) Regulations 1995 (S.I. 1995/738)),

“specified”, in relation to regulations, means specified in the regulations,

“vehicle” is to be construed in accordance with section 5(5).

(2) The appropriate national authority may by order provide for the definition of “premises” in subsection (1) to be read as if a reference to another enactment were substituted for the reference to regulation 3 of the Offshore Installations and Pipeline Works (Management and Administration) Regulations 1995.

(3) This Chapter—

(a) has effect in relation to the territorial sea adjacent to England as it has effect in relation to England, and

(b) has effect in relation to the territorial sea adjacent to Wales as it has effect in relation to Wales.

(4) The following have effect for the purposes of subsection (3) if or in so far as expressed to apply for the general or residual purposes of the Act in question or for the purposes of this section—

(a) an Order in Council under section 126(2) of the Scotland Act 1998 (c. 46),

(b) an order or Order in Council under or by virtue of section <sup>[F1</sup>158(3) and (4) of the Government of Wales Act 2006]).

### Textual Amendments

**F1** Words in [s. 12\(4\)](#) substituted (25.5.2007) by [Government of Wales Act 2006 \(Consequential Modifications and Transitional Provisions\) Order 2007 \(S.I. 2007/1388\)](#), [art. 1\(2\)](#), [Sch. 1 para. 123](#)

### Commencement Information

**I31** S. 12 in force for certain purposes at Royal Assent, see s. 83

**I32** S. 12 in force at 2.4.2007 for W. in so far as not already in force by [S.I. 2007/204](#), **art. 2(a)**

**I33** S. 12 in force at 1.7.2007 for E. in so far as not already in force by [S.I. 2007/1375](#), **art. 2(a)**

**Status:**

Point in time view as at 01/07/2007.

**Changes to legislation:**

There are currently no known outstanding effects for the Health Act 2006, Chapter 1.