



# Smoking, Health and Social Care (Scotland) Act 2005

2005 asp 13

## PART 1

### SMOKING: PROHIBITION AND CONTROL

#### **1 Offence of permitting others to smoke in no-smoking premises**

- (1) A person who, having the management or control of no-smoking premises, knowingly permits another to smoke there commits an offence.
- (2) A person accused of an offence under this section is to be regarded as having knowingly permitted another to smoke in no-smoking premises if that person ought to have known that the other person was smoking there.
- (3) It is a defence for an accused charged with an offence under this section to prove—
  - (a) that the accused (or any employee or agent of the accused) took all reasonable precautions and exercised all due diligence not to commit the offence; or
  - (b) that there were no lawful and reasonably practicable means by which the accused could prevent the other person from smoking in the no-smoking premises.
- (4) A person guilty of an offence under this section is liable, on summary conviction, to a fine not exceeding level 4 on the standard scale.

#### **2 Offence of smoking in no-smoking premises**

- (1) A person who smokes in no-smoking premises commits an offence.
- (2) It is a defence for an accused charged with an offence under this section to prove that the accused did not know, and could not reasonably be expected to have known, that the place in which it is alleged that the accused was smoking was no-smoking premises.
- (3) 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.

### **3 Display of warning notices in and on no-smoking premises**

- (1) If notices are not conspicuously displayed—
  - (a) in, on or near no-smoking premises so as to be visible to and legible by persons in and persons approaching the premises; and
  - (b) stating—
    - (i) that the premises are no-smoking premises; and
    - (ii) that it is an offence to smoke there or knowingly to permit smoking there,the person having the management or control of the premises commits an offence.
- (2) It is a defence for an accused charged with an offence under this section to prove that the accused (or any employee or agent of the accused) took all reasonable precautions and exercised all due diligence not to commit the offence.
- (3) The Scottish Ministers may, after consulting such persons as they consider appropriate, by regulations provide further as to the manner of display, form and content of the notices referred to in subsection (1) and that any such provision is to be treated, for the purposes of that subsection, as if incorporated in it.
- (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.

### **4 Meaning of “smoke” and “no-smoking premises”**

- (1) In this Part, “smoke” means smoke tobacco, any substance or mixture which includes it or any other substance or mixture; and a person is to be taken as smoking if the person is holding or otherwise in possession or control of lit tobacco, of any lit substance or mixture which includes tobacco or of any other lit substance or mixture which is in a form or in a receptacle in which it can be smoked.
- (2) In this Part, “no-smoking premises” means such premises or such classes of premises, being premises of a kind mentioned in subsection (4), as are prescribed by regulations made by the Scottish Ministers after consulting such persons as they consider appropriate on a draft of the regulations.
- (3) Regulations under subsection (2) may prescribe premises or parts of premises or classes of premises or parts of premises which are excluded from the definition of “no-smoking premises”.
- (4) The kind of premises referred to in subsection (2) is premises which are wholly or substantially enclosed and—
  - (a) to which the public or a section of the public has access;
  - (b) which are being used wholly or mainly as a place of work;
  - (c) which are being used by and for the purposes of a club or other unincorporated association; or
  - (d) which are being used wholly or mainly for the provision of education or of health or care services.
- (5) In subsection (4)(b), the reference to work includes work undertaken for no financial advantage.
- (6) Regulations under subsection (2) may, for the purposes of that subsection, define or elaborate the meaning of any of the expressions—

- (a) “premises”;
  - (b) “wholly or substantially enclosed”;
  - (c) “the public”; and
  - (d) “has access”.
- (7) Regulations under subsection (2) may define or elaborate the meaning of “premises”—
- (a) by reference to the person or class of person who owns or occupies them;
  - (b) so as to include vehicles, vessels, trains and other means of transport (except aircraft), or such, or such classes, of them as are specified in the regulations.
- (8) The Scottish Ministers may, by regulations, after consulting such persons as they consider appropriate on a draft of the regulations, modify subsection (4) so as—
- (a) to add a kind of premises to; or
  - (b) remove a kind of premises (but not the kind referred to in paragraph (a) of that subsection) from,
- those in that subsection.
- (9) Regulations made by virtue of subsection (7)(b) may provide as to how the statement referred to in section 3(1)(b) is to be expressed in the case of each of the means of transport referred to in the regulations and that any such provision is to be treated, for the purposes of that section, as if incorporated in it.

## **5 Proceeding for offences under sections 1 to 3**

- (1) Summary proceedings in pursuance of section 1, 2 or 3 may be commenced at any time within the period of 6 months from the date on which evidence sufficient in the opinion of the Lord Advocate to justify the proceedings comes to the Lord Advocate’s knowledge.
- (2) Subsection (3) of section 136 of the Criminal Procedure (Scotland) Act 1995 (c. 46) (date of commencement of summary proceedings) has effect for the purposes of subsection (1) as it has effect for the purposes of that section.
- (3) For the purposes of subsection (1), a certificate of the Lord Advocate as to the date on which the evidence in question came to the Lord Advocate’s knowledge is conclusive evidence of the date on which it did so.

## **6 Fixed penalties**

- (1) Schedule 1 (which provides as to fixed penalties for offences under this Part) has effect.
- (2) Schedule 1 does not extend to an offence under section 1 or 3 committed otherwise than by a natural person.

## **7 Powers to enter and require identification**

- (1) An authorised officer of the appropriate council may enter and search any no-smoking premises in order to ascertain whether an offence under section 1, 2 or 3 has been or is being committed there.
- (2) A power under this section may be exercised, if need be, by force.

- (3) A person who—
- (a) an authorised officer of a council reasonably believes—
    - (i) is committing or has committed an offence under section 1, 2 or 3; or
    - (ii) has information relating to such an offence; and
  - (b) fails without reasonable excuse to supply the officer with the person’s name and address on being so required by the officer,
- commits an offence.
- (4) A person guilty of an offence under subsection (3) is liable, on summary conviction, to a fine not exceeding level 3 on the standard scale.
- (5) In this section—
- “authorised” means authorised for the purposes of this section by the appropriate council;
  - “the appropriate council” means, in relation to no-smoking premises, the council of the area in which those premises are.

## **8 Bodies corporate etc.**

- (1) Where an offence under this Part which has been committed by a body corporate other than a council is proved to have been committed with the consent or connivance of, or to be attributable to, any neglect on the part of—
- (a) a director, manager or secretary, member or other similar officer of the body corporate; or
  - (b) any person who was purporting to act in any such capacity,
- that person, as well as the body corporate, is guilty of the offence and liable to be proceeded against and punished accordingly.
- (2) Where an offence under this Part which has been committed by a council is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of—
- (a) an officer or member of the council; or
  - (b) any person who was purporting to act in any such capacity,
- that person, as well as the council, is guilty of the offence and liable to be proceeded against and punished accordingly.
- (3) Where an offence under this Part which has been committed by a Scottish partnership is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of—
- (a) a partner; or
  - (b) any person who was purporting to act in any such capacity,
- that person, as well as the partnership, is guilty of the offence and liable to be proceeded against and punished accordingly.
- (4) Where an offence under this Part which has been committed by an unincorporated association other than a Scottish partnership is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of—
- (a) a person who is concerned in the management or control of the association; or
  - (b) any person who was purporting to act in any such capacity,

that person, as well as the unincorporated association, is guilty of the offence and liable to be proceeded against and punished accordingly.

## **9 Sale of tobacco to under-age persons: variation of age limit**

- (1) The Scottish Ministers may, by order, modify section 18 of the Children and Young Persons (Scotland) Act 1937 (c. 37) (offence of selling tobacco etc. to under-age persons and other preventative measures) so as to substitute for the age specified in any of its provisions (at the passing of this Act, 16) such other higher age or ages as they consider appropriate.
- (2) The Scottish Ministers may make an order under this section only after consulting such persons as they consider appropriate on a draft of the order.

## **10 Crown application**

- (1) This Part binds the Crown.
- (2) No contravention by the Crown of this Part or any regulations under it makes the Crown criminally liable; but the Court of Session may, on the application of a council in the area of which the contravention is alleged to have taken place, declare unlawful any act or omission of the Crown which would, but for this subsection, have been an offence.
- (3) Subsection (2) does not extend to persons in the public service of the Crown.