

SMOKING, HEALTH AND SOCIAL CARE (SCOTLAND) ACT 2005

EXPLANATORY NOTES

THE ACT

Part 1: Smoking: Prohibition and Control

Section 4 – Meaning of “smoke” and “no-smoking premises”

14. Subsection (1) provides the meaning of “smoke” which in the context of Part 1 of the Act means to smoke tobacco or any other substance or mixture which can be smoked. This subsection further clarifies that a person is to be taken as smoking if the person holds or is otherwise in possession or control of lit tobacco or any other lit substance or mixture which can be smoked.
15. Subsection (2) provides for “no-smoking premises” to be defined as such premises or classes of premises of a kind mentioned in subsection (4), which will be prescribed by the Scottish Ministers under regulations. Subsection (3) allows the Scottish Ministers to exclude, by means of those regulations, certain premises, or parts of premises, or classes or premises or parts of premises, from the definition of “no-smoking premises”. Regulations made under subsection (2) are to be made by affirmative procedure.
16. Subsection (4) lists the kinds of premises which are to be prescribed as “no-smoking premises” under subsection (2), being premises which are wholly or substantially enclosed and (a) to which the public or a section of the public have access, (b) which are used wholly or mainly as a place of work, (c) which are being used for the purposes of a club or an other unincorporated association and (d) which provide education, health or care services.
17. Subsection (5) clarifies that those premises described in subsection (4)(b) as a place used for work include those premises where people work for no financial advantage such as, for example, voluntary workers.
18. Subsection (6) gives a further power to the Scottish Ministers to define or elaborate by means of regulations on the meaning of certain expressions used under subsection (2).
19. Similarly, and as above, subsection (7)(a) empowers the Scottish Ministers to define or elaborate by means of regulations the meaning of “premises” by reference to the person or class of person who owns or occupies the premises, whilst subsection (7) (b) allows the Scottish Ministers to define or elaborate the meaning of “premises” to include specific forms of public transport as they see fit.
20. Subsection (8) allows the Scottish Ministers to make regulations to modify subsection (4) by adding to or removing from the kinds of premises listed there. Again, any such regulations will require to be made by affirmative resolution.
21. Subsection (9) relates to the “no-smoking” notices which are to be displayed under section 3(1). Subsection (9) provides that where regulations are made under

*These notes relate to the Smoking, Health and Social Care (Scotland)
Act 2005 (asp 13) which received Royal Assent on 5 August 2005*

subsection (2) which define or elaborate the meaning of “premises” to cover certain forms of transport, those regulations may provide how the “no-smoking” sign in relation to each form of transport is to be expressed, thus enabling bespoke “no-smoking” signs for the various forms of transport.