

*Draft Regulations laid before Parliament under section 79(4) of the Health Act 2006, for approval
by resolution of each House of Parliament*

DRAFT STATUTORY INSTRUMENTS

2007 No.

PUBLIC HEALTH, ENGLAND

The Smoke-free (Exemptions and Vehicles) Regulations 2007

Made - - - - 2007
Coming into force - - 1st July 2007

The Secretary of State for Health, in exercise of the powers conferred by sections 3, 5 and 79(3) of the Health Act 2006⁽¹⁾ makes the following Regulations, a draft of which was laid before Parliament in accordance with section 79(4) of that Act and approved by a resolution of each House of Parliament:

PART 1

General

Citation, commencement and application

1.—(1) These Regulations which may be cited as the Smoke-free (Exemptions and Vehicles) Regulations 2007 shall come into force on 1st July 2007.

(2) These Regulations apply in relation to England.

PART 2

Exemptions

Application of Part 2

2. The exemptions in this Part apply only to premises that would be smoke-free under section 2 of the Health Act 2006 if those exemptions had not been made.

(1) 2006 c.28. As to the meaning of “appropriate national authority” see section 82(1).

Private accommodation

- 3.—(1) A private dwelling is not smoke-free except for any part of it which is—
- (a) used in common in relation to more than one set of premises (including premises so used in relation to any other private dwelling or dwellings); or
 - (b) used solely as a place of work (other than work that is excluded by paragraph (2)) by—
 - (i) more than one person who does not live in the dwelling;
 - (ii) a person who does not live in the dwelling and any person who does live in the dwelling; or
 - (iii) a person (whether he lives in the dwelling or not) who in the course of his work invites persons who do not live or work in the dwelling to attend the part of it which is used solely for work.
- (2) There is excluded from paragraph (1)(b) all work that is undertaken solely—
- (a) to provide personal care for a person living in the dwelling;
 - (b) to assist with the domestic work of the household in the dwelling;
 - (c) to maintain the structure or fabric of the dwelling; or
 - (d) to install, maintain or remove any service provided to the dwelling for the benefit of persons living in it.
- (3) In this regulation, “private dwelling” includes self-contained residential accommodation for temporary or holiday use and any garage, outhouse or other structure for the exclusive use of persons living in the dwelling.

Accommodation for guests and club members

- 4.—(1) A designated bedroom in a hotel, guest house, inn, hostel or members’ club is not smoke-free.
- (2) In this regulation “a designated bedroom” means a room which—
- (a) is set apart exclusively for sleeping accommodation;
 - (b) has been designated in writing by the person having the charge of the premises in which the room is situated 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) does not have a ventilation system that ventilates into any other part of the premises (except any other designated bedrooms);
 - (e) does not have any door that opens onto smoke-free premises which is not mechanically closed immediately after use; and
 - (f) is clearly marked as a bedroom in which smoking is permitted.
- (3) In this regulation “bedroom” does not include any dormitory or other room that a person in charge of premises makes available under separate arrangements for persons to share at the same time.

Other residential accommodation

- 5.—(1) A designated room that is used as accommodation for persons aged 18 years or over in the premises specified in paragraph (2) is not smoke-free.
- (2) The specified premises are—

- (a) care homes as defined in section 3 (care homes) of the Care Standards Act 2000⁽²⁾;
 - (b) hospices which as their whole or main purpose provide palliative care for persons resident there who are suffering from progressive disease in its final stages; and
 - (c) prisons.
- (3) In this regulation “designated room” means a bedroom or a room used only for smoking which—
- (a) has been designated in writing by the person having charge of the premises in which the room is situated 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) does not have a ventilation system that ventilates into any other part of the premises (except any other designated rooms);
 - (d) is clearly marked as a room in which smoking is permitted; and
 - (e) except where the room is in a prison, does not have any door that opens onto smoke-free premises which is not mechanically closed immediately after use.

Performers

6. Where the artistic integrity of a performance makes it appropriate for a person who is taking part in that performance to smoke, the part of the premises in which that person performs is not smoke-free in relation to that person during his performance.

Specialist tobacconists

7.—(1) The shop of a specialist tobacconist that is being used by persons who are sampling cigars and pipe tobacco is not smoke-free for the duration of that sampling if it—

- (a) has a ceiling and, except for doors and windows, is completely enclosed on all sides by solid, floor-to-ceiling walls;
- (b) does not have a ventilation system that ventilates into any smoke-free premises;
- (c) does not have any door that opens onto smoke-free premises which is not mechanically closed immediately after use; and
- (d) is clearly marked as premises in which smoking is permitted.

(2) In this regulation “cigar” has the same meaning as in the Tobacco Products (Descriptions of Products) Order 2003⁽³⁾ and “specialist tobacconist” has the same meaning as in section 6(2) of the Tobacco Advertising and Promotion Act 2002⁽⁴⁾.

Offshore installations

8.—(1) A designated room in an offshore installation is not smoke-free.

(2) In this regulation a “designated room” means a room used only for smoking which—

- (a) has been designated in writing by the person in charge of the installation in which the room is situated 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;

(2) 2000 c.14.

(3) S.I. 2003/1471; see article 5 and the Schedule.

(4) 2002 c.36.

- (c) does not have a ventilation system that ventilates into any other part of the premises (except any other designated rooms);
- (d) does not have any door that opens onto smoke-free premises which is not mechanically closed immediately after use; and
- (e) is clearly marked as a room in which smoking is permitted.

Research and testing facilities

9.—(1) A designated room in a research or testing facility is not smoke-free whilst it is being used for any research or tests specified in paragraph (2).

- (2) The research or tests that are specified are those that relate to—
 - (a) emissions from tobacco and other products used for smoking;
 - (b) development of products for smoking with lower fire hazards;
 - (c) the fire safety testing of materials involving products for smoking;
 - (d) development of smoking or pharmaceutical products that could result in the manufacture of less dangerous products for smoking; or
 - (e) smoking cessation programmes.
- (3) In this regulation a “designated room” means a room which—
 - (a) has been designated in writing by the person in charge of the research or testing facility in which the room is situated as being a room in which smoking is permitted for research or tests specified in paragraph (2) and is a room for the use only of the persons who are required to supervise or participate in the research or tests;
 - (b) has a ceiling and, except for doors and windows, is completely enclosed on all sides by solid, floor-to-ceiling walls;
 - (c) does not have a ventilation system that ventilates into any other part of the premises or other premises (except any other designated rooms);
 - (d) does not have any door that opens onto smoke-free premises which is not mechanically closed immediately after use; and
 - (e) is clearly marked as a room in which smoking is permitted.

Temporary exemption for mental health units

10.—(1) A designated room for the use of patients aged 18 years or over in residential accommodation in a mental health unit is not smoke-free.

- (2) In this regulation—
 - “designated room” means a bedroom or a room used only for smoking which—
 - (a) has been designated in writing by the person in charge of the mental health unit 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) does not have a ventilation system that ventilates into any other part of the premises (except any other designated room);
 - (d) is clearly marked as a room in which smoking is permitted; and
 - (e) does not have any door that opens on to smoke-free premises which is not mechanically closed immediately after use; and

“mental health unit” means any establishment (or part of an establishment) maintained wholly or mainly for the reception and treatment of persons suffering from any form of mental disorder as defined in section 1(2) of the Mental Health Act 1983⁽⁵⁾.

(3) Paragraphs (1) and (2) shall cease to have effect on 1st July 2008.

PART 3

Vehicles

Enclosed vehicles

11.—(1) Subject to the following paragraphs of this regulation, an enclosed vehicle and any enclosed part of a vehicle is smoke-free if it is used—

- (a) by members of the public or a section of the public (whether or not for reward or hire); or
- (b) in the course of paid or voluntary work by more than one person (even if those persons use the vehicle at different times, or only intermittently).

(2) A vehicle or part of a vehicle is enclosed for the purposes of paragraph (1) where it is enclosed wholly or partly by a roof and by any door or window that may be opened.

(3) Except where paragraph (4) applies, “roof” in paragraph (2) includes any fixed or moveable structure or device which is capable of covering all or part of the vehicle, including any canvas, fabric or other covering.

(4) In relation to a vehicle that is engaged in conveying persons, “roof” does not include any fixed or moveable structure or device which is completely stowed away so that it does not cover all or any part of the vehicle.

(5) A vehicle is not used in the course of paid or voluntary work for the purposes of paragraph (1) (b) where it is used primarily for the private purposes of a person who—

- (a) owns it; or
- (b) has a right to use it which is not restricted to a particular journey.

(6) This regulation applies to all vehicles other than—

- (a) aircraft; or
- (b) ships or hovercraft in respect of which regulations could be made under section 85 of the Merchant Shipping Act 1995⁽⁶⁾ (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⁽⁷⁾ or to persons on any such ships or hovercraft.

⁽⁵⁾ 1983 c.20.

⁽⁶⁾ 1995 c.21. Section 85 was amended by the British Overseas Territories Act 2002 (c.8), section 2, and by the Merchant Shipping and Maritime Security Act 1997 (c.28), sections 8 and 29 and Schedule 7, Part 1.

⁽⁷⁾ 1968 c.59. Section 1 was amended by the Control of Pollution Act 1974 (c.40), section 108 and Schedule 3; the Supreme Court Act 1981 (c.54), section 152 and Schedule 5; the Environmental Protection Act 1990 (c.43), section 162 and Schedule 15; the Merchant Shipping Act 1995 (c.21), section 314 and Schedule 13; the Environment Act 1995 (c.25), section 120 and Schedule 24; the Merchant Shipping and Marine Security Act 1997 (c.28), section 29 and Schedule 6; the Constitutional Reform Act 2005 (c.4), section 59 and Schedule 11, and by S.I. 1978/1049. It was also modified by the Pilotage Act 1987 (c.21), section 32 and Schedule 2 and by the Merchant Shipping Act 1995, section 310.

Draft Legislation: This is a draft item of legislation. This draft has since been made as a UK
Statutory Instrument: The Smoke-free (Exemptions and Vehicles) Regulations 2007 No. 765

Signed by authority of the Secretary of State for Health

Date

Minister of State
Department of Health

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations, which apply only to England, provide exemptions from the smoke-free requirements of section 2 of the Health Act 2006 and provide for most public and work vehicles to be smoke-free under section 5 of that Act.

Regulation 3 exempts residential accommodation other than any part of it which is shared with other premises or is used solely as a place of work in the circumstances set out in paragraph (1)(b). Paragraph (2) excludes from the meaning of work for this purpose the provision of personal care, assistance with domestic work, the maintenance of the structure or fabric of the building and the installation, maintenance and removal of services.

Regulation 4 exempts designated bedrooms in hotels, guest houses, inns, hostels and members' clubs. Paragraph (2) defines "designated bedroom" for the purposes of the exemption.

Regulation 5 exempts designated bedrooms and smoking rooms for adults in care homes, hospices and prisons. Paragraph (3) defines "designated room" for the purposes of the exemption.

Regulation 6 provides a personal exemption for persons who are taking part in a performance where the artistic integrity of the performance makes it appropriate for them to smoke. This exemption does not apply to other persons who are present during the performance.

Regulation 7 exempts specialist tobacconists. By paragraph (2) specialist tobacconist has the same meaning as in section 6(2) of the Tobacco Advertising and Promotion Act 2002.

Regulation 8 exempts designated smoking rooms in offshore installations. Paragraph (2) defines "designated room" for the purposes of the exemption.

Regulation 9 exempts designated smoking rooms in research and testing facilities. For the purposes of this exemption paragraph (2) sets out the meaning of research and tests and paragraph (3) defines "designated room".

Regulation 10 exempts until 1st July 2008 designated rooms for adults in accommodation in mental health units.

Regulation 11 provides for most enclosed vehicles which are used by the public or used for work purposes to be smoke-free, but aircraft and most ships and hovercraft are excluded. "Vehicle" is defined in section 5(5) of the Health Act 2006 to include trains.

A Regulatory Impact Assessment has been prepared for these Regulations and a copy has been placed in the library of each House of Parliament. Copies can be obtained from the Smokefree Legislation Team, Room 712, Department of Health, Wellington House, 133-155 Waterloo Road, London SE1 8UG.