

# HEALTH (TOBACCO, NICOTINE ETC. AND CARE) (SCOTLAND) ACT 2016

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## EXPLANATORY NOTES

### THE ACT – OVERVIEW

#### **Part 1 – Tobacco, Nicotine Vapour Products and Smoking**

#### *Chapter 3 – Smoking Outside Hospitals*

#### *Section 20(2)*

61. [Section 20\(2\)](#) inserts new sections 4A, 4B, 4C and 4D into the 2010 Act. The new sections contain powers for the Scottish Ministers to designate no-smoking areas around certain buildings on certain NHS hospital grounds and provide for related duties, offences and penalties. Each new section is considered in turn below.

#### **Section 4A: Offence of permitting others to smoke outside hospital building**

62. Subsection (1) makes it an offence for a person who has management and control of a no-smoking area to knowingly permit smoking there.
63. Subsection (2) provides that a person knowingly permits smoking if the person should have known that someone was smoking in the no-smoking area.
64. Subsection (3) provides that it is a defence for an accused to show that the accused (or an employee or agent of the accused) took all reasonable precautions and exercised all due diligence to avoid committing the offence, or that there were no lawful and reasonably practicable means by which the accused could have prevented the smoking in the no-smoking area. The onus is, however, on the accused to prove this.
65. Subsection (4) provides that a person who commits the offence under this section is liable on summary conviction to a fine not exceeding level 4 on the standard scale (currently £2,500).

#### **Section 4B: Offence of smoking outside hospital building**

66. Subsection (1) makes it an offence for a person to smoke within the no-smoking area outside a hospital building.
67. Subsection (2) provides that it is a defence if the accused can prove that the accused did not know, and could not reasonably be expected to have known, that the area in which the accused was smoking was a no-smoking area. This might arise in instances where, for example, no-smoking signs had been removed or had failed to be displayed. The onus is, however, on the accused to prove this.
68. Subsection (3) provides that a person who commits the offence of smoking in a no-smoking area is liable on summary conviction to a fine not exceeding level 3 on the standard scale (currently £1,000).

#### **Section 4C: Display of warning notices in hospital buildings and on hospital grounds**

69. Subsection (1) places a duty on Health Boards to prominently display signs at every entrance to the hospital grounds.
70. Subsection (2) requires the person in management and control of each building on a hospital ground to prominently display signs at the entrance to each building. Subsection (5) makes it an offence for a person to fail to comply with this requirement. It also makes it an offence to fail to comply with requirements which may be set out in regulations made under subsection (4).
71. Subsection (3) provides that a sign must state that it is an offence to smoke in the no-smoking area outside a hospital building or knowingly permit smoking there.
72. Subsection (4) gives the Scottish Ministers a power to make regulations which may provide further detail as to the manner of display, form and content of the no-smoking signs.
73. Subsection (5) provides that a person who commits an offence of failing to display signage at the entrance to hospital buildings in compliance with this section is liable to a fine not exceeding level 3 on the standard scale (currently £1,000).

#### **Section 4D: Meaning of “no-smoking area outside a hospital building” and related expressions**

74. Subsection (1) defines the meaning of “no-smoking area outside a hospital building”. It is an area lying immediately outside the hospital building. It is bounded by a perimeter of a specified distance from the building. However, the area is limited to being within, and thereby cannot fall outside of, hospital grounds. Subsection (2) gives a power to the Scottish Ministers to make regulations prescribing the specified distance. The regulations can also make further provision about determining the perimeter around a building, for example they could make detailed provision on how to determine the starting point outside a building from which the specified distance is to be measured.
75. Subsection (3) defines “hospital”, “hospital building” and “hospital grounds” for the purposes of this section. A hospital means a health service hospital as defined in section 108(1) of the National Health Service (Scotland) Act 1978. A hospital building is simply a building on hospital grounds. Hospital grounds covers land in the vicinity of a hospital which is associated with it.
76. Subsection (4) allows the Scottish Ministers to make regulations which can—
  - (a) exclude certain hospitals altogether from the ban on smoking outside hospitals,
  - (b) include certain land within the meaning of hospital grounds e.g. land which might not necessarily be in the vicinity of, or associated with, a hospital, so that it can be caught by a no-smoking area,
  - (c) exclude certain land from the meaning of hospital grounds e.g. land which despite being in the vicinity of, and associated with, a hospital, is not to be caught by a no-smoking area,
  - (d) make further provision to elaborate on the meaning of “hospital grounds” e.g. criteria could be set out for determining whether land is to be regarded as associated with a hospital or not,
  - (e) provide that certain buildings on hospital grounds are not to be regarded as hospital buildings for the purposes of the ban on smoking outside hospitals, and thereby, remove these buildings from having a perimeter applied from them, and

*These notes relate to the Health (Tobacco, Nicotine etc. and Care)  
(Scotland) Act 2016 (asp 14) which received Royal Assent on 06 April 2016*

(f) provide that certain land within a no-smoking area is to be exempt from that area so that it is not an offence to smoke there or permit others to do so.

77. Subsection (5) allows regulations made under subsection (4) by the Scottish Ministers to make provision modifying the application of section 4C so that, for example, signage requirements can be adjusted, as appropriate, to take account of exceptions and other provision made by those regulations.