



# Health (Tobacco, Nicotine etc. and Care) (Scotland) Act 2016

2016 asp 14

## PART 1

### TOBACCO, NICOTINE VAPOUR PRODUCTS AND SMOKING

#### CHAPTER 3

##### SMOKING OUTSIDE HOSPITALS

#### **20 Smoking outside hospitals**

- (1) The Smoking, Health and Social Care (Scotland) Act 2005 is modified as follows.
- (2) After section 4 insert—

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

- (1) A person who, having the management and control of the no-smoking area outside a hospital building, 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 the no-smoking area outside a hospital building 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 area outside a hospital building.

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- (4) A person who commits an offence under this section is liable, on summary conviction, to a fine not exceeding level 4 on the standard scale.

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

- (1) A person who smokes within the no-smoking area outside a hospital building 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 the accused was smoking was within the no-smoking area outside a hospital building.
- (3) A person who commits an offence under this section is liable, on summary conviction, to a fine not exceeding level 3 on the standard scale.

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

- (1) The Health Board for the area in which a hospital is situated must conspicuously display no-smoking notices at every entrance to the hospital grounds.
- (2) The person having the management and control of a hospital building must conspicuously display no-smoking notices at every entrance to the building.
- (3) A no-smoking notice is a notice stating that it is an offence to smoke in the no-smoking area outside a hospital building or knowingly to permit smoking there.
- (4) The Scottish Ministers may by regulations make further provision as to the manner of display, form and content of no-smoking notices.
- (5) A person who fails to display no-smoking notices in accordance with subsection (2) (and regulations made under subsection (4) insofar as they relate to the duty under subsection (2)) commits an offence.
- (6) A person who commits an offence under subsection (5) is liable, on summary conviction, to a fine not exceeding level 3 on the standard scale.

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

- (1) For the purposes of this Part, the “no-smoking area outside a hospital building” is the area—
- (a) lying immediately outside the hospital building, and
  - (b) bounded by a perimeter the specified distance from the building,
- but only insofar as the area forms part of hospital grounds.
- (2) The Scottish Ministers may by regulations—
- (a) specify the distance for the purposes of subsection (1)(b),
  - (b) make further provision about determining the perimeter around a building for the purposes of that subsection.

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- (3) In this Part—
- “hospital” means a health service hospital (as defined in section 108(1) of the National Health Service (Scotland) Act 1978),
  - “hospital building” means a building situated on hospital grounds,
  - “hospital grounds”, in relation to a hospital, means land in the vicinity of the hospital and associated with it.
- (4) The Scottish Ministers may by regulations—
- (a) provide that hospitals of a specified description are not hospitals for the purposes of this Part,
  - (b) provide that land of a specified description is or is not to be considered “hospital grounds” and otherwise make further provision to elaborate the meaning of “hospital grounds” for the purposes of this Part,
  - (c) provide that buildings of a specified description are not hospital buildings for the purposes of this Part,
  - (d) provide that land of a specified description does not form part of the no-smoking area outside a hospital building for the purposes of this Part.
- (5) Regulations under subsection (4) may modify the application of section 4C as the Scottish Ministers consider appropriate.”.
- (3) In section 5(1) (proceedings for offences), for “or 3” substitute “, 3, 4A, 4B or 4C(5)”.
- (4) The section title of section 5 becomes “**Proceedings for offences under sections 1 to 3 and 4A to 4C**”.
- (5) In section 6(2) (fixed penalties), for “or 3” substitute “, 3, 4A, 4B or 4C(5)”.
- (6) In section 7 (powers to enter and require identification)—
- (a) after subsection (1) insert—
    - “(1A) An authorised officer of the appropriate council may enter and search any hospital grounds to ascertain whether an offence under section 4A, 4B or 4C(5) has been or is being committed there.”,
  - (b) in subsection (3)(a)(i), for “or 3” substitute “, 3, 4A, 4B or 4C(5)”,
  - (c) in subsection (5), in the definition of “the appropriate council”—
    - (i) the words “in relation to no-smoking premises, the council of the area in which those premises are” become paragraph (a),
    - (ii) after that paragraph insert—
      - “(b) in relation to a no-smoking area outside a hospital building, the council of the area in which the hospital is.”.
- (7) In section 40(3)(a) (regulations or orders), for “or 4(2) or (8)” substitute “, 4(2) or (8) or 4D(2)(a) or (4)(a)”.
- (8) In schedule 1—
- (a) in paragraph 1(1), after “premises” insert “or under section 4A within the no-smoking area outside a hospital”,
  - (b) in paragraph 1(2), for “or 3” substitute “, 3, 4A, 4B or 4C(5)”,
  - (c) in paragraph 1(3), for “or 3” substitute “, 3, 4A, 4B or 4C(5)”,

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- (d) in paragraph 2, for “or 3” substitute “, 3, 4A, 4B or 4C(5)”,
- (e) in paragraph 4(1), for “or 3” substitute “, 3, 4A, 4B or 4C(5)”,
- (f) the title becomes “FIXED PENALTY FOR OFFENCES UNDER SECTIONS 1, 2, 3, 4A, 4B AND 4C(5)”.