



Smoking, Health and Social Care (Scotland) Act 2005

2005 asp 13

PART 1

SMOKING: PROHIBITION AND CONTROL

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.

Changes to legislation: There are currently no known outstanding effects for the Smoking, Health and Social Care (Scotland) Act 2005, Section 4. (See end of Document for details)

- (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.

Modifications etc. (not altering text)

- C1** S. 4(1) applied (15.5.2006) by [Smoking, Health and Social Care \(Scotland\) Act 2005](#) and [The Prohibition Of Smoking In Certain Premises \(Scotland\) Regulations 2006 \(Consequential Provisions\) \(Scotland\) Order 2006 \(S.I. 2006/1115\)](#), arts. 1, **3** (with art. 4)

Commencement Information

- I1** S. 4(1)(4)(5) in force at 7.2.2006 by [S.S.I. 2006/47](#), **art. 2**
- I2** S. 4(2)(3)(7) in force at 1.11.2005 by [S.S.I. 2005/492](#), art. 3(b), **Sch. 2**
- I3** S. 4(6)(8)(9) in force at 16.12.2005 by [S.S.I. 2005/642](#), **art. 2**

Changes to legislation:

There are currently no known outstanding effects for the Smoking, Health and Social Care (Scotland) Act 2005, Section 4.