

Draft Regulations laid before the Scottish Parliament under section 40(3)(a) of the Smoking, Health and Social Care (Scotland) Act 2005 for approval by resolution of the Scottish Parliament.

DRAFT SCOTTISH STATUTORY INSTRUMENTS

2022 No.

PUBLIC HEALTH

**The Prohibition of Smoking Outside Hospital
Buildings (Scotland) Regulations 2022**

Made - - - - 2022
Coming into force - - 5th September 2022

The Scottish Ministers make the following Regulations in exercise of the powers conferred by sections 4C(4), 4D(2), (4) and (5) and 40(1)(b) and paragraphs 4(1) and 5(2) of schedule 1 of the Smoking, Health and Social Care (Scotland) Act 2005⁽¹⁾ and all other powers enabling them to do so.

In accordance with section 40(3)(a) of that Act⁽²⁾, a draft of this instrument has been laid before and approved by resolution of the Scottish Parliament.

Citation, commencement, expiry and interpretation

1.—(1) These Regulations may be cited as the Prohibition of Smoking Outside Hospital Buildings (Scotland) Regulations 2022 and come into force on 5 September 2022.

(2) In these Regulations—

“the Act” means the Smoking, Health and Social Care (Scotland) Act 2005,

“distance” means as measured in a straight line on a horizontal plane,

“in clear font” means using a typeface which does not incorporate italics, scrolls or swirls.

(3) Regulation 7 expires at the end of 5 September 2023.

No-smoking notices – hospital grounds: manner of display, form and content

2.—(1) Subject to paragraph (3), this regulation applies to a no-smoking notice which, by virtue of section 4C(1) of the Act (display of warning notices in hospital buildings and on hospital grounds), the Health Board for the area in which a hospital is situated must conspicuously display at every entrance to the hospital grounds.

(1) [2005 asp 13](#). Sections 4A to 4D were inserted, and schedule 1 was amended, by section 20 of the Health (Tobacco, Nicotine etc. and Care) (Scotland) Act [2016 \(asp 14\)](#) (“the 2016 Act”).

(2) Section 40(3)(a) was amended by section 20 of the 2016 Act.

- (2) The notice must—
- (a) be a minimum size of 1 metre by 1 metre,
 - (b) display the international “no smoking” symbol consisting of a graphic description of a burning cigarette enclosed in a red circle with a red bar across it, at least 200 millimetres in diameter,
 - (c) in clear font no smaller than 254 millimetres state—
 “It is an offence to smoke or knowingly permit smoking in the no-smoking area outside a hospital building.
 No-smoking areas extend up to 15 metres around affected buildings and include all areas under canopies or other overhangs on those buildings.”,
 - (d) in clear font no smaller than 200 millimetres state—
 “If you observe someone smoking in the no-smoking area a complaint may be made to a member of hospital staff.”,
 - (e) be displayed by the Health Board in such a manner that it is protected so far as reasonably practicable from tampering, damage, removal or concealment.
- (3) This regulation does not apply to land considered to be “hospital grounds” by virtue of regulation 5.

No-smoking notices – hospital buildings: manner of display, form and content

3.—(1) This regulation applies to a no-smoking notice which, by virtue of section 4C(2) of the Act, the person having the management and control of a hospital building must conspicuously display at every entrance to the building.

- (2) The notice must—
- (a) be a minimum size of 297 millimetres by 420 millimetres,
 - (b) display the international “no smoking” symbol consisting of a graphic description of a burning cigarette enclosed in a red circle with a red bar across it, at least 75 millimetres in diameter,
 - (c) in clear font no smaller than 200 millimetres state—
 “It is an offence to smoke or knowingly permit smoking in the no-smoking area outside a hospital building.
 The no-smoking area extends up to 15 metres around this building and includes all areas under any canopy or other overhang.”,
 - (d) in clear font no smaller than 150 millimetres state—
 “If you observe someone smoking in the no-smoking area a complaint may be made to a member of hospital staff”,
 - (e) be displayed by the person having management or control of the building in such a manner that it is protected so far as reasonably practicable from tampering, damage, removal or concealment.

No-smoking area outside a hospital building: distance of perimeter

4.—(1) The specified distance from a hospital building for the purpose of section 4D(1)(b) of the Act (meaning of “no-smoking area outside a hospital building” and related expressions) is 15 metres.

(2) The distance specified in paragraph (1) is measured from the point where the external surface of the hospital building meets the ground and on the assumption that any door, window, or other means of ingress or egress to the building or vent is closed.

(3) Where the hospital building has any awning, canopy, porch or other overhanging structure attached to it, the perimeter includes all of the land lying directly beneath that awning, canopy, porch or other overhanging structure irrespective of whether that area would otherwise fall within that 15 metre perimeter.

Land to be considered “hospital grounds”

5.—(1) Where an entrance to a hospital building opens directly onto a path, any land forming part of that path and any other connected path up to a distance, in any direction, of up to—

- (a) 15 metres from the centre point of the entrance, or
- (b) if closer, the point where the path adjoins land that is not a path,

is to be considered “hospital grounds” for the purposes of Part 1 of the Act, irrespective of whether it would otherwise be so considered by virtue of section 4D(3) of the Act.

(2) Where land is to be considered hospital grounds by virtue only of paragraph (1), the Health Board for the area in which the hospital building is situated is not required by virtue of section 4C(1) to display a no-smoking notice at the entrance to the part of the hospital grounds determined in accordance with paragraph (1).

(3) In this regulation, a “path” means a public footway, footpath or cycle track within the meaning given to those terms by section 151 of the Roads (Scotland) Act 1984(3).

Buildings that are not hospital buildings

6.—(1) Buildings of the following description are not hospital buildings for the purposes of Part 1 of the Act, that is buildings that are not—

- (a) used for the reception and treatment of persons suffering from illness,
- (b) a maternity home,
- (c) used for the reception and treatment of persons during convalescence or persons requiring medical rehabilitation,
- (d) used for providing dental treatment and maintained in connection with a dental school,
- (e) a clinic, dispensary or out-patient department maintained in connection with any building falling within sub-paragraphs (a) to (d),
- (f) used to provide a corridor, walkway or other link between buildings used for any of the purposes mentioned in sub-paragraphs (a) to (e).

(2) In this regulation “illness” includes—

- (a) mental disorder within the meaning of section 328 (meaning of “mental disorder”) of the Mental Health (Care and Treatment) (Scotland) Act 2003(4), and
- (b) any injury or disability requiring medical or dental treatment or nursing.

Land not forming part of a no-smoking area

7. Land that—

- (a) is fenced off or otherwise separated by a fixed boundary from the remainder of the hospital grounds,
- (b) is only accessible from a hospital building,
- (c) is for use by patients only, and

(3) 1984 c. 54.

(4) 2003 asp 13.

(d) is clearly marked by a sign, notice or other means as a “designated smoking area”, does not form part of a no-smoking area outside a hospital building for the purposes of Part 1 of the Act.

Amendment of the Prohibition of Smoking in Certain Premises (Scotland) Regulations 2006

8.—(1) Regulation 4 (fixed penalty time limits, amounts and payments) of the Prohibition of Smoking in Certain Premises (Scotland) Regulations 2006⁽⁵⁾ is amended as follows.

(2) In paragraph (2)—

(a) omit “and” after sub-paragraph (b),

(b) after sub-paragraph (c) insert—

“(d) £200 for an offence under section 4A of the Act;

(e) £50 for an offence under section 4B of the Act; and

(f) £200 for an offence under section 4C of the Act.”.

(3) In paragraph (3)—

(a) omit “and” after sub-paragraph (b),

(b) after sub-paragraph (c) insert—

“(d) £150 for an offence under section 4A of the Act;

(e) £30 for an offence under section 4B of the Act; and

(f) £150 for an offence under section 4C of the Act.”.

St Andrew’s House,
Edinburgh
Date

Name
A member of the Scottish Government

(5) [S.S.I. 2006/90](#), as amended by [S.S.I. 2011/211](#).

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations establish no-smoking areas outside of hospital buildings and make provision further to sections 4A to 4D of the Smoking, Health and Social Care (Scotland) Act 2005 (“the Act”). Section 4D(1) of the Act provides that the “no-smoking area outside a hospital building” is the area lying immediately outside the hospital building, and bounded by a perimeter the specified distance from the building, but only insofar as the area forms part of hospital grounds. These Regulations set the specified distance of the perimeter as 15 metres.

Regulation 2 sets out the requirements for no-smoking notices which, by virtue of section 4C(1) of the Act, must be conspicuously displayed at every entrance to hospital grounds. The requirement under section 4C(1) does not apply to entrances to hospital grounds determined in accordance with regulation 5.

Regulation 3 sets out the requirements for no-smoking notices which, by virtue of section 4C(2) of the Act, the person having the management and control of a hospital building must conspicuously display at every entrance to the building. Under section 4C(5) of the Act, the person having the management and control of a hospital building commits an offence if they fail to conspicuously display no-smoking notices at every entrance to the building, or fail to do so in accordance with the requirements in regulation 3.

Regulation 4 specifies the perimeter of the no-smoking areas as 15 metres, to be measured on a horizontal plane from the building walls. Where a hospital building has any awning, canopy, porch or other overhanging structure attached to it, all of the land lying directly beneath that awning, canopy, porch or other overhanging structure forms part of the no-smoking area.

Regulation 5 modifies the definition of “hospital grounds” in section 4D(3) of the Act. It provides that where the entrance to a hospital building opens directly onto a public footway, footpath or cycle track (“a path”) which would not otherwise form part of hospital grounds, that path and any connected paths are to form part of the hospital grounds. The path ceases to form part of the hospital grounds beyond 15 metres measured from the centre of the entrance or where it meets land which is not a path.

Regulation 6 specifies by exception buildings that are not to be considered “hospital buildings” for the purposes of Part 1 of the Act.

Regulation 7 provides that an area of land that is accessed from a hospital building and is a designated smoking area with fixed boundaries does not form part of a no-smoking area. This derogation expires after one year of the Regulations being in force by virtue of regulation 1.

Regulation 8 amends regulation 4 of the Prohibition of Smoking in Certain Premises (Scotland) Regulations 2006 to prescribe the amount of the fixed penalty prescribed under paragraph 4(1) of schedule 1 of the Act and the discounted amount prescribed under paragraph 5(2) of schedule 1 of the Act for offences under sections 4A, 4B and 4C(5) of the Act.

It is an offence under section 4A of the Act for a person with management and control of a no-smoking area to knowingly permit smoking in that area. It is an offence under section 4B of the Act for a person to smoke in a no-smoking area.

Impact assessments have been carried out and can be found at www.gov.scot.