

POLICY NOTE

The Health (Tobacco, Nicotine etc. and Care) (Scotland) Act 2016 (Supplementary Provision) Regulations 2022

SSI 2022/XXX

The above instrument is made in exercise of the powers conferred on the Scottish Ministers by section 35 of the Health (Tobacco, Nicotine etc. and Care) (Scotland) Act 2016 and all other powers enabling them to do so. The instrument is subject to affirmative procedure.

Purpose of the instrument. The purpose of this instrument is to ensure that Environmental Health Officers (EHOs) are able to issue fixed penalty notices in respect of the offence of smoking in a no-smoking area outside a hospital building and the offence of failing to comply with signage requirements at entrances to hospital buildings, regarding the no-smoking area outside those buildings.

Policy Objectives

Background

Section 20 of the Health (Tobacco, Nicotine etc. and Care) (Scotland) Act 2016 (**the 2016 Act**) will amend, when it comes into force on 5 September 2022, the Smoking, Health and Social Care (Scotland) Act 2005 (**the 2005 Act**). This amendment to the 2005 Act, together with the Prohibition of Smoking Outside Hospital Buildings (Scotland) Regulations 2022 (**the 2022 Regulations**), creates no-smoking areas outside of hospital buildings. Section 20 of the 2016 Act inserts new sections 4A to 4D into the 2005 Act and then making consequential amendments to the 2005 Act, notably in relation to proceedings for offences and fixed penalty notices. The 2022 Regulations supplement provision made in section 20 of the 2016 Act.

Three new offences will be established when section 20 of the 2016 Act comes into force. New section 4A of the 2005 Act creates the offence of permitting others to smoking in the no-smoking area outside of hospital buildings. It is only people having the management and control of the no-smoking area who can commit this offence. New section 4B creates the offence of smoking outside hospital buildings. New section 4C(5) creates the offence of failing to conspicuously display no-smoking notices at every entrance to a hospital building. This offence can also only be committed by a person having management and control of the building.

Section 20(8)(a) to (c) of the 2016 Act amends schedule 1 of the 2005 Act to make provision regarding who can issue fixed penalty notices in respect of the above three offences. In the absence of these amendments, schedule 1 sets out who can issue fixed penalty notices in respect of the equivalent offences under sections 1 to 3 of the 2005 Act relating to the indoor smoking ban. The amendments made by the 2016 Act provide that an authorised officer of a council (such as EHOs), may issue a fixed penalty notice in respect of an offence under new section 4A and that a constable may issue a fixed penalty notice in respect of an offence under new section 4A, 4B or 4C(5).

The prohibition of smoking outside hospital buildings requires effective enforcement. It is anticipated that, like the indoor smoking ban, the prohibition will become self-governing to a certain extent as the public become used to the fact that smoking is simply not permitted near

hospital buildings. It was the intention that EHOs would lead on the enforcement of no-smoking areas outside hospital buildings, much like their leading of the enforcement of the indoor smoking ban. As drafted, however, the provisions for enforcement currently do not fully reflect that intention in that they rest with EHOs in respect of the offence of section 4A alone. In order for this enforcement to be most effective, EHOs require the ability to issue fixed penalty notices in respect of all three new offences, rather than just the one. This will ensure that the ban is upheld and that smoking continues to be denormalised outside hospital buildings.

During the passage through Parliament of the 2022 Regulations earlier this year, MSPs and Ministers alike stated that the effective enforcement of this ban was key to its success. To ensure that we meet this aim of effective enforcement, this instrument uses the ancillary power in section 35 of the 2016 Act to amend schedule 1 of the 2005 Act, to provide that EHOs can issue fixed penalty notices in respect of all three of the new offences.

Impact Assessments

An Equality Impact Assessment was published in March 2022¹ at the time the 2022 Regulations were laid in Parliament. This instrument does not impact on that assessment and as such it does not need updating.

All other impact assessments were pre-screened in March 2022 and found to have negligible or no significant impact from the 2022 Regulations. There are no additional impacts from this instrument. These screening assessments were published on the gov.scot website.²³⁴⁵

Financial Effects

Pre-pandemic the Scottish Government agreed to fund the signage costs and this commitment will be honoured. Local Authorities are already funded to undertake tobacco enforcement work and it is expected that any additional costs will be covered under existing budgets.

Scottish Government
Tobacco Control & Gambling Team
May 2022

¹ [Prohibition of Smoking Outside Hospital Buildings \(Scotland\) Regulations 2022: EQIA - gov.scot \(www.gov.scot\)](https://www.gov.scot/publications/prohibiting-smoking-outside-hospital-buildings-scotland-regulations-2022/eqia/eqia-2022-001.pdf)

² [Prohibition of Smoking Outside Hospital Buildings \(Scotland\) Regulations 2022: CRWIA - gov.scot \(www.gov.scot\)](https://www.gov.scot/publications/prohibiting-smoking-outside-hospital-buildings-scotland-regulations-2022/crwia/crwia-2022-001.pdf)

³ [Prohibition of Smoking Outside Hospital Buildings \(Scotland\) Regulations 2022: FSD - gov.scot \(www.gov.scot\)](https://www.gov.scot/publications/prohibiting-smoking-outside-hospital-buildings-scotland-regulations-2022/fsd/fsd-2022-001.pdf)

⁴ [Prohibition of Smoking Outside Hospital Buildings \(Scotland\) Regulations 2022: ICIA - gov.scot \(www.gov.scot\)](https://www.gov.scot/publications/prohibiting-smoking-outside-hospital-buildings-scotland-regulations-2022/icia/icia-2022-001.pdf)

⁵ [Prohibition of Smoking Outside Hospital Buildings \(Scotland\) Regulations 2022: SEA pre-screening notification - gov.scot \(www.gov.scot\)](https://www.gov.scot/publications/prohibiting-smoking-outside-hospital-buildings-scotland-regulations-2022/sea-pre-screening-notification/sea-pre-screening-notification-2022-001.pdf)