
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.

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

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.