

HEALTH ACT 2006

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 1 - Smoking

Chapter 1 - Smoke-Free Premises, Places and Vehicles

Section 7: Offence of smoking in smoke-free place

52. *Section 7* sets out the offence of smoking in a smoke-free place. Smoke-free places comprise enclosed or substantially enclosed premises as defined in section 2, additional smoke-free places as set out in section 4, and vehicles required to be smoke-free as set out in section 5 of the Act. By *subsection (2)*, a person who smokes in any of these places commits an offence. However, by *subsection (3)*, a performer who smokes during a performance, where the premises have been exempted from the smoke-free requirement in relation to such performance by virtue of regulations under section 3(1) and (5) of the Act does not commit an offence.
53. *Subsection (4)* provides that it is a defence for a person charged with smoking in a smoke-free place to show that he/she did not know, and could not reasonably have been expected to know, that the premises, place or vehicle was smoke-free.
54. By *subsection (5)*, where a defendant wishes to rely on this defence, he/she must provide evidence that supports the defence. Where a defendant does provide evidence, the defence must be taken to be satisfied unless the prosecution proves beyond reasonable doubt that the evidence provided does not satisfy the defence.
55. *Subsection (6)* provides that a person who is found guilty of an offence under this section will be liable to a fine up to a level on the standard scale specified in regulations. It is intended that the regulations will prescribe a fine on summary conviction not exceeding level 1 on the standard scale, which is currently up to £100.