

HEALTH ACT 2006

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 1 - Smoking

Chapter 1 - Smoke-Free Premises, Places and Vehicles

Section 8: Offence of failing to prevent smoking in smoke-free place

56. **Section 8** imposes a duty on any person who controls or is concerned in the management of smoke-free premises to prevent smoking from taking place within the smoke-free premises. **Subsection (3)** provides that regulations may also provide for a similar duty, imposed on such people as may be specified in the regulations, to prevent smoking in relation to premises designated smoke-free under regulations made under section 4 or in relation to vehicles designated smoke-free under regulations made under section 5. However, **subsection (2)** provides that the duty to stop people smoking does not extend to stopping a person smoking where that person is a performer who smokes during a performance and 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.
57. By **subsection (4)**, anyone who fails to comply with such a duty commits an offence. **Subsection (5)** sets out the defences for a person charged with an offence under subsection (4), namely that:
- a. He/she took reasonable steps to stop the person smoking, such as requesting a person to stop smoking or taking steps to have the smoker evicted.
 - b. He/she did not know, and could not reasonably be expected to know that the person was smoking, for example if the manager was not present at the time the smoking occurred.
 - c. He/she has other grounds that show it was reasonable for him/her not to comply with the duty, for example during a period when priority had to be given to another duty, such as preventing other illegal activity or dealing with disorderly conduct.
58. **Subsection (6)** provides that if a person charged with an offence under this section relies on a defence in subsection (5), and presents evidence that is sufficient to raise an issue in respect of such a defence, then the court must assume that the defence is satisfied unless the prosecution can show beyond a reasonable doubt that it is not so satisfied.
59. **Subsection (7)** 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 4 on the standard scale, which is currently up to £2,500.