

2006 No. 1115

CONSTITUTIONAL LAW

DEVOLUTION, SCOTLAND

HEALTH

**The Smoking, Health and Social Care (Scotland) Act 2005 and
the Prohibition of Smoking in Certain Premises (Scotland)
Regulations 2006 (Consequential Provisions) (Scotland) Order
2006**

<i>Made</i> - - - -	<i>18th April 2006</i>
<i>Laid before Parliament</i>	<i>21st April 2006</i>
<i>Coming into force</i> - -	<i>15th May 2006</i>

The Secretary of State makes the following Order in exercise of the powers conferred by sections 104, 112(1) and 113 of the Scotland Act 1998(a).

He considers it necessary or expedient to make this Order in consequence of provision made by the Smoking, Health and Social Care (Scotland) Act 2005(b) and the Prohibition of Smoking in Certain Premises (Scotland) Regulations 2006(c).

Citation and commencement

1. This Order may be cited as the Smoking, Health and Social Care (Scotland) Act 2005 and the Prohibition of Smoking in Certain Premises (Scotland) Regulations 2006 (Consequential Provisions) (Scotland) Order 2006 and comes into force on 15th May 2006.

Interpretation

2. In this Order—

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

“the 2006 Regulations” means the Prohibition of Smoking in Certain Premises (Scotland) Regulations 2006;

“exempted voyage” means a voyage with—

(a) a point of departure;

(a) 1998 c.46; section 113 was amended by the Criminal Justice Act 2003, section 283, Schedule 27, paragraphs 7 (1) to (3).
(b) 2005 asp 13.
(c) SSI 2006/90.

- (b) a destination; or
- (c) at least one port of call,
outside Scotland, and includes part of such a voyage;

“ferry service” means a regular service the principal purpose of which is the transport of passengers or of passengers and goods;

“passenger”, means in relation to a ship, every person other than—

- (a) the master and the members of the crew or other persons employed or engaged in any capacity on board the ship on the business of that ship; and
- (b) a child under one year of age;

“passenger ship” means a ship which carries one or more passengers;

“United Kingdom ship” means a vessel which—

- (a) is registered in the United Kingdom; or
- (b) is not registered under the law of any country but is wholly owned by persons each of whom is—
 - (i) a British citizen, a British overseas territories citizen or a British Overseas citizen; or
 - (ii) a body corporate which is established under the law of a part of the United Kingdom and has its principal place of business in the United Kingdom.

Application of the 2005 Act and the 2006 Regulations

3.—(1) In this article a “relevant ship” is a ship—

- (a) to which section 85 of the Merchant Shipping Act 1995^(a) applies;
- (b) which is being used—
 - (i) for the purposes of a ferry service,
 - (ii) as licensed premises within the meaning of section 147(1) of the Licensing (Scotland) Act 2005^(b),
 - (iii) as a passenger ship, or
 - (iv) primarily for the purpose of the sale or consumption of food or beverages;
- (c) which, in the case of a ship other than a United Kingdom ship, is operating in Scotland; and
- (d) which is not on an exempted voyage.

(2) The definition of “vehicle” in regulation 1(2) of the 2006 Regulations has effect as if it included a reference to a relevant ship, and the 2006 Regulations have effect accordingly.

(3) The following provisions of the 2005 Act have effect in relation to no-smoking premises which (by virtue of paragraph (2)) are a relevant ship—

- (a) sections 1 and 2 (offences of permitting others to smoke and smoking in no-smoking premises);
- (b) section 3(1), (2) and (4) (display of warning notices);
- (c) section 4(1) (meaning of “smoke”);
- (d) section 5 (proceedings for offences under sections 1 to 3);
- (e) section 6 (fixed penalties);
- (f) section 7 (powers to enter and require identification);
- (g) section 8 (bodies corporate etc.);
- (h) section 10 (Crown application); and

^(a) 1995 c.21; there are amendments to section 85 which are not relevant to this Order.

^(b) 2005 asp 16.

- (i) paragraphs 1 to 3, 4(2) and (3), 5(1) and (3) and 6 to 11 of Schedule 1 (further provisions as to fixed penalties).

Offences committed on United Kingdom ships outside Scotland

4. If by virtue of article 3 an offence under Part 1 of the 2005 Act is committed on a United Kingdom ship outside Scotland—

- (a) it may be treated as having been committed at any place in Scotland; and
- (b) proceedings may be taken accordingly.

Alistair Darling
Secretary of State for Transport

18th April 2006

EXPLANATORY NOTE

(This note is not part of the Order)

This Order makes provision in consequence of the Smoking, Health and Social Care (Scotland) Act 2005 (asp 13) (“the 2005 Act”) and the Prohibition of Smoking in Certain Premises (Scotland) Regulations 2006 (SSI 2006/90) (“the 2006 Regulations”).

The 2005 Act introduced a ban on smoking in certain premises in Scotland which are wholly or substantially enclosed and of a type prescribed in regulations made under the Act. These are defined as “no-smoking” premises. The 2006 Regulations made under the Act prescribed the premises that are no-smoking premises for the purposes of Part 1 of the Act. Regulation 3 provides that no-smoking premises are the premises or classes of premises that are listed in Schedule 1 to those Regulations. Regulation 2 defines premises as including vehicles, and vehicles as including vessels.

Article 3 of this Order provides for the definition of “vehicle” in the 2006 Regulations to have effect in a modified way, so as to include a “relevant ship”. The meaning of a “relevant ship” is set out in *article 3(1)*.

Article 3(3) provides that the offences created by Part 1 of the 2005 Act, and related enforcement, and other provisions shall apply in relation to such ships.

By virtue of *article 4*, where an offence under Part 1 of the 2005 Act is committed on a United Kingdom ship outside Scotland it may be treated as having been committed in Scotland and proceedings may be taken accordingly.

A Regulatory Impact Assessment has not been prepared in relation to this Order as it has negligible impact on business.

£3.00

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E0597 4/2006 160597T 19585