PROHIBITION OF SMOKING IN REGULATED AREAS (SCOTLAND) BILL

[AS INTRODUCED]

CONTENTS

Section
1 Regulated areas
2 Power to amend meaning of “regulated area”
3 Offence to smoke in regulated area
4 Offence to permit smoking in regulated area
5 Offence to fail to display signs
6 Penalty
7 Bodies corporate etc.
8 Crown application
9 Orders and regulations
10 Interpretation
11 Short title and commencement

Schedule 1—Exempt spaces
Schedule 2—Public places
Prohibition of Smoking in Regulated Areas (Scotland) Bill

[AS INTRODUCED]

An Act of the Scottish Parliament to prohibit persons from smoking in regulated areas; and for connected purposes.

1 Regulated areas

(1) Subject to subsections (2) to (5), any enclosed public space is a regulated area—

(a) while food is being supplied and consumed; and

(b) during the prescribed period before food is supplied and consumed, in that space.

(2) When an enclosed public space is a regulated area under subsection (1), an enclosed connecting space is also a regulated area for the purposes of this Act.

(3) The spaces specified in schedule 1 to this Act are not regulated areas.

(4) In this Act, “prescribed period” means 5 days or such longer period as the Scottish Ministers may by order prescribe.

(5) In this section—

“connecting space” means any space directly connected to an enclosed public space by an opening, provided that both spaces are under the same ownership or control;

“enclosed” in relation to any space, means a single space which, except for any opening, is completely enclosed on all sides whether permanently or temporarily;

“opening”, means a door, sliding partition, window, hatch or other similar opening which is capable of being closed; and

“public space”—

(a) means a space to which the public or a section of the public has access, on payment or otherwise, as of right or by virtue of express or implied permission; and

(b) without prejudice to the generality of paragraph (a), includes spaces within any of the places specified in schedule 2 to this Act.
2 Power to amend meaning of “regulated area”

(1) The Scottish Ministers may by order amend this Act for the purpose of amending the definition of “regulated area” so as to add such places as they think fit.

(2) Before making any order under subsection (1), the Scottish Ministers must consult such persons, or groups of persons, as they consider appropriate.

3 Offence to smoke in regulated area

(1) Any person who smokes in a regulated area is guilty of an offence.

(2) It is a defence for an accused charged with an offence under subsection (1) to prove that the accused did not know, and could not reasonably be expected to have known, that the area was a regulated area.

4 Offence to permit smoking in regulated area

(1) If a person to whom subsection (2) applies knowingly permits a person to smoke in a regulated area, the person to whom that subsection applies is guilty of an offence.

(2) This subsection applies—

(a) during the period while food is being supplied and consumed, to—

(i) the owner, occupier, manager or any other person for the time-being in charge of the regulated area; and

(ii) the owner, manager or any other person for the time-being in charge of the food operation in the regulated area; and

(b) during the prescribed period before food is supplied and consumed, to the owner, occupier, manager, or any other person for the time-being in charge of the regulated area.

(3) For the purposes of any proceedings under subsection (1), an accused has the requisite knowledge if the accused (or any employee or agent of the accused) knew or ought reasonably to have known that the person was smoking in the regulated area.

(4) It is a defence for an accused charged with an offence under subsection (1), to prove that the accused (or any employee or agent of the accused) took all reasonable precautions and exercised all due diligence to avoid the commission of the offence.

5 Offence to fail to display signs

(1) Signs must be clearly displayed inside and outside a regulated area indicating that smoking is not permitted.

(2) If signs are not displayed in accordance with subsection (1), or regulations made by virtue of subsection (4), any person mentioned in section 4(2)(a)(i) and (ii) is guilty of an offence.

(3) It is a defence for an accused charged with an offence under subsection (2) to prove that the accused (or any employee or agent of the accused) took all reasonable precautions and exercised all due diligence to avoid the commission of the offence.

(4) The Scottish Ministers may by regulations—

(a) prescribe the number, type, style and content of signs to be displayed; and
(b) prescribe the manner in which signs are to be displayed.

(5) Before making any regulations under subsection (4), the Scottish Ministers must consult—

(a) the Scottish Licensed Trade Association;
(b) the Scottish Tourist Forum;
(c) the Brewers’ and Licensed Retailers’ Association of Scotland;
(d) the British Hospitality Association; and
(e) such other bodies as the Scottish Ministers consider appropriate.

6 Penalty

A person guilty of an offence under section 3, 4 or 5 is liable on summary conviction to a fine not exceeding level 3 on the standard scale.

7 Bodies corporate etc.

(1) Where an offence under section 4 or 5 which has been committed by a body corporate other than a local authority is proved to have been committed with the consent or connivance of, or is attributable to, any neglect on the part of—

(a) a director, manager or secretary, member or other similar officer of the body corporate; or

(b) any person who was purporting to act in any such capacity,

that person, as well as the body corporate, is guilty of the offence and liable to be proceeded against and punished accordingly.

(2) Where an offence under section 4 or 5 which has been committed by a local authority is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of—

(a) an officer or member of the authority; or

(b) any person who was purporting to act in any such capacity,

that person, as well as the authority, is guilty of the offence and liable to be proceeded against and punished accordingly.

(3) Where an offence under section 4 or 5 which has been committed by a Scottish partnership is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of—

(a) a partner; or

(b) any person who was purporting to act in any such capacity,

that person, as well as the partnership, is guilty of the offence and liable to be proceeded against and punished accordingly.

(4) Where an offence under section 4 or 5 which has been committed by an unincorporated association other than a Scottish partnership is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of—

(a) a person who is concerned in the management or control of the association; or

(b) any person who was purporting to act in any such capacity,
that person, as well as the unincorporated association, is guilty of the offence and liable to be proceeded against and punished accordingly.

8 Crown application

(1) The provisions of this Act and of orders or regulations made under it bind the Crown.

(2) No contravention by the Crown of any provision of this Act or of any orders or regulations made under it makes the Crown criminally liable; but the Court of Session may, on the application of any public body or office-holder having responsibility for enforcing that provision, declare unlawful any act or omission of the Crown which constitutes such a contravention.

(3) Despite subsection (2), any provision of this Act, or of any orders or regulations made under it, applies to persons in the public service of the Crown as it applies to other persons.

9 Orders and regulations

(1) Any power of the Scottish Ministers under this Act to make orders or regulations is exercisable by statutory instrument.

(2) Any power under this Act to make orders or regulations includes power to make—

(a) different provision for different cases and for different classes of case; and

(b) such incidental, supplementary, consequential, saving or transitional provision as the Scottish Ministers consider necessary or expedient.

(3) A statutory instrument containing—

(a) an order under sections 1(4) or 2(1) is not to be made unless a draft of the instrument has been laid before, and approved by a resolution of, the Scottish Parliament; and

(b) regulations under section 5(4) is subject to annulment in pursuance of a resolution of the Scottish Parliament.

10 Interpretation

In this Act—

“food” has the same meaning as in section 1 of the Food Safety Act 1990 (c.16) except that in this Act “food” does not include—

(a) drink; or

(b) biscuits, nuts, potato crisps, chewing gum, confectionery and other similar products;

“food operation” means any business, undertaking, event or activity where food is supplied and consumed;

“local authority” means a council constituted under section 2 of the Local Government etc. (Scotland) Act 1994 (c.39);

“prescribed period” has the meaning given by section 1(4);

“regulated area” is to be construed in accordance with section 1;
“smoke” means smoke, hold or otherwise have control over, an ignited smoking product, and “smoking” shall be construed accordingly;

“smoking product” means any tobacco or other product that is intended to be smoked; and

“supplied” includes food supplied—

(a) free of charge; or

(b) by way of sale.

11 Short title and commencement

(1) This Act may be cited as the Prohibition of Smoking in Regulated Areas (Scotland) Act.

(2) This Act comes into force as follows—

(a) this section and sections 1, 5(4), 5(5), 9 and 10 come into force the day after the date of Royal Assent; and

(b) the remainder of this Act comes into force at the end of the period of six months beginning with the date of Royal Assent.
SCHEDULE 1
(introduced by section 1(3))

EXEMPT SPACES

1 Any enclosed space within a vehicle used for the carriage of members of the public for reward including, but not limited to, buses, trains, aircraft, hovercraft and ships or other vessels.

2 Any enclosed space, within any of the following premises, which is wholly or mainly used for the supply of food to, and consumption of food by, persons residing in the premises—

(a) any health service hospital within the meaning of section 108(1) of the National Health Service (Scotland) Act 1978 (c.29);

(b) any independent health care service within the meaning of section 2(5) of the Regulation of Care (Scotland) Act 2001 (asp 8);

(c) any state hospital provided under section 102(1) of the National Health Service (Scotland) Act 1978;

(d) premises providing a care home service within the meaning of section 2(3) of the Regulation of Care (Scotland) Act 2001; or

(e) prisons, remand centres, detention centres, young offenders institutions and other similar establishments.

SCHEDULE 2
(introduced by section 1(5))

PUBLIC PLACES

1 Clubs, centres or other places for the purpose of providing facilities for social, cultural or recreational activities or for physical education or training.

2 Places providing day care of children within the meaning of section 2(20) of the Regulation of Care (Scotland) Act 2001 (asp 8).

3 Places providing support services within the meaning of section 2(2) of the Regulation of Care (Scotland) Act 2001 (other than places providing support services which are wholly or mainly used as a private dwelling).

4 Hotels and other similar establishments (including private function suites and private conference rooms within such establishments).

5 Places of work other than places which are wholly or mainly used as a private dwelling.

6 Schools within the meaning of section 135(1) of the Education (Scotland) Act 1980 (c.44).

7 Colleges and other institutions providing further education within the meaning of section 1 of the Further and Higher Education (Scotland) Act 1992 (c.37) and section 1(5)(b) of the Education (Scotland) Act 1980.

8 Universities and other institutions providing higher education within the meaning of section 38 of the Further and Higher Education (Scotland) Act 1992.
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[AS INTRODUCED]

An Act of the Scottish Parliament to prohibit persons from smoking in regulated areas; and for connected purposes.

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