

C03/2012



**Command Paper on a law to introduce a ban on
smoking in certain public places, premises and in
public service vehicles.**

**Presented to Parliament by the Minister with
responsibility for Health & the Environment**

**by Command of Her Majesty
MAY 2012**

1. Draft Bill

2. Draft Explanatory Memorandum

DRAFT

BILL

FOR

AN ACT to prohibit smoking in certain places, premises and vehicles.

ENACTED by the Legislature of Gibraltar.

Title and commencement.

1. This Act may be cited as the Smoke-Free Environment Act 2012 and comes into operation on the 1st October 2012.

Interpretation.

2. (1) In this Act, unless the context otherwise requires—

“no-smoking symbol” means a symbol which consists solely of a graphic representation of a single burning cigarette enclosed in a red circle with a red bar across it;

“public” includes a section of the public;

“smoking” refers to smoking tobacco or anything which contains tobacco, or smoking any other substance, and includes being in possession of lit tobacco or of anything lit which contains tobacco, or being in possession of any other lit substance in a form in which it could be smoked;

“work” includes voluntary work.

(2) For the purposes this Act, premises are enclosed if they-

(a) have a ceiling or roof; and

(b) except for doors, windows and passageways, are wholly enclosed either permanently or temporarily.

(3) For the purposes this Act, premises are substantially enclosed if they have a ceiling or roof but there is-

- (a) an opening in the walls; or
- (b) an aggregate area of openings in the walls,

which is less than half of the area of the walls, including other structures that serve the purpose of walls and constitute the perimeter of the premises.

(4) In determining the area of an opening or an aggregate area of openings for the purposes of subsection (3), no account is to be taken of openings in which there are doors, windows or other fittings that can be opened or shut.

(5) In this Act "roof" includes any fixed or moveable structure or device which is capable of covering all or part of the premises as a roof, including, for example, a canvas awning.

Prohibition of smoking.

3.(1) Smoking is prohibited-

- (a) in enclosed or substantially enclosed premises which are open to the public;
- (b) in enclosed or substantially enclosed premises which are used as a place of work –
 - (i) by more than one person (even if the persons who work there do so at different times, or only intermittently), or
 - (ii) where members of the public might attend for the purpose of seeking or receiving goods or services from the person or persons working there (even if members of the public are not always present).

(2) Unless the premises also falls within subsection (1)(b), smoking is only prohibited in premises by virtue of subsection (1)(a) during the time that the premises is open to the public.

(3) If only part of the premises is open to the public or (as the case may be) used as a place of work mentioned in subsection (1)(b), smoking is only prohibited in that part of the premises.

(4) Sections 6 to 10 provide for some premises, or areas of premises, where smoking is not prohibited despite this section.

(5) Premises are "open to the public" if the public or a section of the public has access to them, whether by invitation or not, and whether on payment or not.

Public service vehicles.

4. Smoking is prohibited at all times in any vehicle which is used or is licensed to be used-

- (a) as a taxi under a road service licence issued under the Transport Act 1998;
- (b) as a chauffeur-driven hire car under a chauffeur-driven hire car operator's licence issued under the Transport Act 1998;
- (c) as an omnibus under a road passenger transport operator licence issued under the Transport Act 1998; or
- (d) other than as set out above, under an operator licence issued under the Transport Act 1998.

Further prohibitions.

5.(1) The Minister with responsibility for Health may make regulations prohibiting smoking in any premises, vehicle, place or description of place where smoking is not otherwise prohibited under this Act.

(2) The premises, vehicle, place, or places falling within the description, need not be enclosed or substantially enclosed.

(3) The Minister may designate a place or description of place under this section only if in his opinion there is a significant risk that, without a designation, persons present there would be exposed to significant quantities of smoke or it is otherwise in the interest of public health for him to do so.

(4) The regulations may provide for smoking to be prohibited in such places, or places falling within the description, only-

- (a) in specified circumstances,
- (b) at specified times,
- (c) if specified conditions are satisfied,
- (d) in specified areas,

or any combination of those.

Exemptions

Private accommodation.

6.(1) Smoking is not prohibited in a private dwelling except for any part of it which is-

- (a) used in common in relation to more than one set of premises (including premises so used in relation to any other private dwelling or dwellings); or
- (b) used solely as a place of work (other than work that is excluded by subsection (2)) by-
 - (i) more than one person who does not live in the dwelling;
 - (ii) a person who does not live in the dwelling and any person who does live in the dwelling; or
 - (iii) a person (whether he lives in the dwelling or not) who in the course of his work invites persons

who do not live or work in the dwelling to attend the part of it which is used solely for work.

(2) There is excluded from subsection (1)(b) all work that is undertaken solely-

- (a) to provide personal care for a person living in the dwelling;
- (b) to assist with the domestic work of the household in the dwelling;
- (c) to maintain the structure or fabric of the dwelling; or
- (d) to install, maintain or remove any service provided to the dwelling for the benefit of persons living in it,

except during the time that such work is being carried out.

(3) In this section, "private dwelling" includes self-contained residential accommodation for temporary or holiday use and any garage, outhouse or other structure for the exclusive use of persons living in the dwelling.

Accommodation for guests.

7.(1) Smoking is not prohibited in a designated bedroom in a hotel, guest house, inn, or hostel.

(2) In this section "a designated bedroom" means a room which-

- (a) is set apart exclusively for sleeping accommodation;
- (b) has been designated in writing by the person having the charge of the premises in which the room is situated as being a room in which smoking is permitted;
- (c) has a ceiling and, except for doors and windows, is completely enclosed on all sides by solid, floor-to-ceiling walls;

- (d) has a ventilation system that does not ventilate into any other part of the premises (except any other designated bedrooms);
- (e) does not have any door that opens onto premises where smoking is prohibited which is not mechanically closed immediately after use; and
- (f) is clearly marked as a bedroom in which smoking is permitted.

(3) In this section "bedroom" does not include any dormitory or other room that a person in charge of premises makes available under separate arrangements for persons to share at the same time.

Other residential accommodation.

8.(1) Smoking is not prohibited in a designated room that is used as accommodation for persons aged 18 years or over in the premises specified in subsection (2).

- (2) The specified premises are-
 - (a) care homes;
 - (b) hospices which as their whole or main purpose provide palliative care for persons resident there who are suffering from progressive disease in its final stages;
 - (c) prisons; and
 - (d) a hospital, as defined in and for the purposes of, the Mental Health Act.

(3) In this regulation "designated room" means a bedroom or a room used only for smoking which-

- (a) has been designated in writing by the person having charge of the premises in which the room is situated as being a room in which smoking is permitted;

- (b) has a ceiling and, except for doors and windows, is completely enclosed on all sides by solid, floor-to-ceiling walls;
- (c) has a ventilation system that does not ventilate into any other part of the premises (except any other designated rooms);
- (d) is clearly marked as a room in which smoking is permitted;
- (e) except where the room is in premises under subsection (2)(c) or (d), does not have any door that opens onto premises where smoking is prohibited which is not mechanically closed immediately after use; and
- (f) where the room is a bedroom, it is not used to accommodate more than one person.

Performers.

9. Where the artistic integrity of a performance makes it appropriate for a person who is taking part in that performance to smoke, smoking by him during such performance is not prohibited.

Other exemptions.

10.(1) The Minister with responsibility for Health may make regulations providing smoking not to be prohibited in specified descriptions of premises, or specified areas within specified descriptions of premises, despite the provisions of sections 3 to 5.

(2) The power to make regulations under subsection (1) is not exercisable so as to specify any description of premises in respect of which a licence authorising the sale by retail of alcohol for consumption on the premises has effect.

(3) Subsection (2) does not prevent the exercise of that power so as to specify any area, within a specified description of premises mentioned in subsection (2), where a person has his home, or is living whether permanently or temporarily.

(4) The regulations may provide, in relation to any description of premises or areas of premises specified in the regulations, that smoking is not prohibited in the premises or areas-

- (a) in specified circumstances,
- (b) if specified conditions are satisfied, or
- (c) at specified times,

or any combination of those.

(5) The conditions may include conditions requiring the designation in accordance with the regulations, by the person in charge of the premises, of any rooms in which smoking is to be permitted.

(6) The Minister shall prior to making regulations under this section consult the Director of Public Health as to the public health consequences of such regulations being implemented.

(7) Regulations made under this section shall be laid by the Minister in Parliament and shall come into effect after they have been approved by resolution in Parliament moved by a Minister.

No-Smoking Signs

No-smoking signs (premises and places)

11.(1) A person who occupies or is concerned in the management of premises or a place (other than a vehicle) in which smoking is prohibited by or under this Act shall ensure that no-smoking signs complying with the requirements of this section are prominently displayed at each entrance to the premises or within the place.

(2) The sign shall consist of the no-smoking symbol and the words "No smoking. It is against the law to smoke in these premises" beneath in characters that can be easily read by persons using the entrance; the size of the sign shall be no less than 20 centimetres in height and 15 centimetres in width.

(3) For the words required by subsection (2) there may be substituted words which differ only in that for "these premises" there

are substituted words which refer to the particular premises or place in which a sign is displayed .

No-smoking signs (vehicles)

12. (1) Any person with management responsibilities for a vehicle in which smoking is prohibited under section 4 shall ensure that at least one no-smoking sign is displayed in a prominent position in each compartment of the vehicle.

(2) In subsection (1)-

"compartment" includes each part of a vehicle which-

- (a) is constructed or adapted to accommodate persons; and
- (b) is, or may from time to time be, wholly or partly covered by a roof;

"no-smoking sign" means a sign which displays the no-smoking symbol where the symbol is at least 7.5cm in diameter; and

"person with management responsibilities" includes the operator of the vehicle, the holder of a licence under the Transport Act 1998 under which the vehicle is or may be operated, the driver of the vehicle and any person on the vehicle who is responsible for order or safety on it.

(3) The Minister with responsibility for Health may by regulations make provision requiring the display of no-smoking signs in vehicles where smoking is prohibited by virtue of regulations made by him under section 5.

Offences

No-smoking signs (offence)

13. (1) A person who fails to comply with the duty in section 11(1) or 12(1) or regulations made under section 12(3) commits an offence and is liable on summary conviction to a fine at level 3 on the standard scale.

(2) It is a defence for a person charged with an offence under subsection (1) to show-

- (a) that he did not know, and could not reasonably have been expected to know, that smoking on the premises, at the place or in the vehicle was prohibited, or
- (b) that he did not know, and could not reasonably have been expected to know, that no-smoking signs complying with the requirements of this section were not being displayed in accordance with the requirements of this section, or
- (c) that on other grounds it was reasonable for him not to comply with the duty.

(3) If a person charged with an offence under subsection (1) relies on a defence in subsection (2), and evidence is adduced which is sufficient to raise an issue with respect to that defence, the court must assume that the defence is satisfied unless the prosecution proves beyond reasonable doubt that it is not.

Offence of smoking where it is prohibited

14.(1) A person who smokes in contravention of a prohibition imposed by or under this Act commits an offence and is liable on summary conviction to a fine at level 3 on the standard scale.

(2) It is a defence for a person charged with an offence under subsection (1) to show that he did not know, and could not reasonably have been expected to know, that smoking on the premises, at the place or in the vehicle was prohibited,.

(3) If a person charged with an offence under this section relies on a defence in subsection (2), and evidence is adduced which is sufficient to raise an issue with respect to that defence, the court must assume that the defence is satisfied unless the prosecution proves beyond reasonable doubt that it is not.

Offence of failing to prevent smoking where it is prohibited

15.(1) It is the duty of any person who controls or is concerned in the management of premises, a place or a vehicle where smoking is prohibited to cause any person smoking there to stop smoking where

that person is smoking in contravention of a prohibition imposed by or under this Act.

(2) A person who fails to comply with the duty in subsection (1) commits an offence and is liable on summary conviction to a fine at level 3 on the standard scale.

(3) It is a defence for a person charged with an offence under subsection (2) to show-

- (a) that he took reasonable steps to cause the person in question to stop smoking, or
- (b) that he did not know, and could not reasonably have been expected to know, that the person in question was smoking, or
- (c) that on other grounds it was reasonable for him not to comply with the duty.

(4) If a person charged with an offence under this section relies on a defence in subsection (3), and evidence is adduced which is sufficient to raise an issue with respect to that defence, the court must assume that the defence is satisfied unless the prosecution proves beyond reasonable doubt that it is not.

EXPLANATORY MEMORANDUM

This Bill introduces a ban on smoking in certain public places, premises and in public service vehicles subject to certain statutory exceptions.