



ST HELENA

REVISED EDITION OF THE LAWS, 2017

PUBLIC HEALTH & SAFETY

TOBACCO CONTROL ORDINANCE, 2011¹

Ordinance 9 of 2011

In force 1 September 2012 (Except Part VI)

(G.N. 63 of 1 July 2011)

No amendments to 1 November 2017

Subsidiary legislation:

TOBACCO CONTROL (SMOKE-FREE EXEMPTION) ORDER, 2012

Legal Notice 28 of 2012

TOBACCO CONTROL ORDINANCE, 2011

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TOBACCO CONTROL ORDINANCE, 2011

AN ORDINANCE to make provision for the prohibition of smoking in certain premises, places and vehicles; to prohibit the sale of tobacco products to children and young persons; and for connected and incidental purposes.

**PART I
PRELIMINARY**

Short title and commencement

1. (1) This Ordinance may be cited as the Tobacco Control Ordinance, 2011, and comes into force on a date the Governor in Council appoints by order in the *Gazette*, not being earlier than 1st July, 2012.

(2) An order under subsection (1) may appoint different dates for different provisions or for different purposes of the same provision, and may contain any incidental or

transitional provisions that appear to the Governor in Council necessary or expedient.

Interpretation

- 2. (1)** In this Ordinance—
- “**authorised officer**” includes an Enforcement Officer appointed under section 12, and any police officer;
- “**no-smoking symbol**” means a symbol which consists solely of a graphic representation of a single burning cigarette enclosed in a red circle of at least 70 millimetres in diameter with a red bar across it;
- “**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, and “**smoke**” and other related expressions are to be construed accordingly;
- “**smoke-free**” in relation to any premises or vehicle, means that no person is allowed to smoke while at such premises or in such vehicle;
- “**smoke-free place**” means any premises which are, or any place or vehicle which is smoke-free by virtue of any provision of this Ordinance;
- “**tobacco**” includes cigarettes, any product containing tobacco and intended for oral or nasal use and smoking mixtures intended as a substitute for tobacco, and the expression “**cigarette**” includes cut tobacco rolled up in paper, tobacco leaf, or other material in such form as to be capable of immediate use for smoking.

PART II SMOKE-FREE PREMISES AND VEHICLES

Premises open to public

3. (1) All premises which are open to the public must be smoke-free but, subject to section 4, this requirement (the “**smoke-free requirement**”) applies only during times that the premises are open to the public.

(2) For purposes of this section, 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.

(3) If only part of the premises is open to the public, the smoke-free requirement applies only to that extent.

(4) The smoke-free requirement applies only in those areas which are enclosed or substantially enclosed as defined in section 5.

Places of work

4. (1) All premises which are used as a place of work (including voluntary work) must at all times be smoke-free if—

- (a)* the premises are used by more than one person (even if the persons who work there do so at different times, or only intermittently); or
- (b)* members of the public might attend for the purpose of seeking or receiving goods

or services from any person working there.

(2) If only part of the premises is used as a place of work, the smoke-free requirement applies only to that extent.

(3) The smoke-free requirement applies only in those areas which are enclosed or substantially enclosed as defined in section 5.

(4) A private dwelling which is also used as a place of work is exempt from the smoke-free requirement if, but only if, the work done there is ~~only~~ limited to work in one or more of the following forms:

- (a) providing personal care for a person living in the dwelling;
- (b) assisting with the domestic work of the household in the dwelling;
- (c) maintaining the structure or fabric of the dwelling;
- (d) installing, maintaining or removing any service provided to the dwelling for the benefit of persons living in it.

(5) For purposes of subsection (4), “**private dwelling**” includes any self-contained residential accommodation for permanent, temporary or holiday use and any garage, outhouse or other structure for the exclusive use of persons living in the dwelling.

Meaning of enclosed and substantially enclosed premises

5. (1) For the purposes of sections 3 and 4, premises are—

- (a) enclosed if they have a ceiling or roof and, except for doors, windows and passageways, are wholly enclosed either permanently or temporarily;
- (b) substantially enclosed if they have a ceiling or roof, but the opening (or an aggregate area of openings) in the walls is less than half of the area of walls.

(2) In determining the area of opening (or aggregate area of openings) under subsection (1)(b), no account is to be taken of openings in which there are doors, windows or other fittings that can be opened or shut.

(3) In this section—

- (a) “**roof**” includes any fixed or moveable structure or device which is capable of covering all or part of the premises as a roof, including a canvas awning; and
- (b) “**walls**” include other structures that serve the purpose of walls and constitute the perimeter of the premises.

Exemptions from smoke-free requirement

6. (1) The following premises are exempt from the smoke-free requirement under sections 3 and 4:

- (a) a place designated as a smoking area in accordance with subsection (2); and
- (b) any other place exempted by the Governor in Council by order.

(2) A person having charge of the management of any smoke-free premises may designate an area of such premises, to be known as a ‘**smoking area**’, where smoking is allowed, provided that such area—

- (a) is clearly marked as an area 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) does not have a ventilation system that ventilates into any other part of the premises.

(3) An order under subsection (1)(b) may exempt specified places or vehicles, or specified descriptions of places or vehicles –

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

Enclosed vehicles

7. (1) An enclosed vehicle or any enclosed part of a vehicle must be smoke-free if it is used—

- (a) by members of the public or a section of the public (whether or not for reward or hire); or
- (b) in the course of paid or voluntary work by more than one person (even if those persons use the vehicle at different times or only intermittently).

(2) A vehicle or part of a vehicle is enclosed for the purposes of subsection (1) if it is enclosed wholly or partly by a roof and by any door or window that can be opened or by any window which cannot be opened.

(3) For purposes of subsection (2), “**roof**” includes any fixed or moveable structure or device which is capable of covering all or part of the vehicle, including any canvas, fabric or other covering, but in relation to a vehicle that is engaged in conveying persons, does not include any fixed or moveable structure or device which is completely stowed away so that it does not cover all or any part of the vehicle.

(4) A vehicle is not used in the course of paid or voluntary work for purposes of subsection (1)(b) if it is used primarily for the private purposes of a person who owns the vehicle, or has a right to use it, and such use is not restricted to a particular journey.

Additional smoke-free places

8. (1) The Governor in Council may by order designate as smoke-free any place or description of place or vehicle, which is not otherwise smoke-free under this Ordinance if, in the opinion of the Governor in Council, there is a significant risk that (without such a designation) persons present there would be exposed to significant quantities of smoke.

(2) Any place or vehicle designated as smoke-free under subsection (1) need not be enclosed or substantially enclosed.

(3) An order under this section may provide that the smoke-free requirement applies to such places or description of places or vehicle only—

- (a) in specified circumstances;
- (b) at specified times;

- (c) if specified conditions are satisfied;
- (d) in specified areas.

PART III NO-SMOKING SIGNS

No-smoking signs in premises

9. (1) A person who occupies or is concerned with the management of smoke-free premises must ensure that no-smoking signs complying with subsections (2) and (3) are displayed in those premises.

(2) There must be displayed in a prominent position near (and inside) each entrance to smoke-free premises at least one no-smoking sign which—

- (a) is at least 150 millimetres × 200 millimetres;
- (b) displays the no-smoking symbol; and
- (c) contains, in characters that can be easily read by persons using the entrance, the words “**No Smoking. It is against the law to smoke in these premises**”;

(3) The words “these premises” in subsection (2)(c) may be replaced by words which refer to the particular smoke-free premises.

No-smoking signs in vehicles

10. A person with the management responsibilities for a smoke-free vehicle must ensure that at least one sign displaying the no-smoking symbol is displayed in a prominent position in each compartment of the vehicle which—

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

PART IV SALE OF TOBACCO PRODUCTS TO CHILDREN AND YOUNG PERSONS

Sale of tobacco to persons under 18

11. (1) In this section, “**young person**” means a person under the age of 18 years and “**public place**” means any place to which, at the material time, the public have access (whether on payment or otherwise).

(2) It is an offence for a person to—

- (a) sell tobacco to a young person, whether for the young person’s own use or not; or
- (b) supply tobacco to any young person in any public place.

Penalty: A fine of £1,000.

(2A) A person who has responsibility for the welfare of a young person and causes or permits the young person to smoke tobacco in any public place commits an offence.

Penalty: A fine of £1,000.

(3) A young person who is found with any tobacco in his or her possession in any

public place commits an offence.

Penalty: A fine of £500.

(4) It is a defence for a person charged with an offence under subsection (1) (2) to prove that the person took all reasonable precautions and exercised all due diligence to avoid the commission of the offence.

PART V ENFORCEMENT

Enforcement Officer

12. The Governor may appoint any person to be an Enforcement Officer for purposes of this Ordinance.

Powers of authorised officer

13. (1) An authorised officer may –

- (a) exercise, in relation to the enforcement of this Ordinance, any power which can be exercised by a police officer (under the Police and Criminal Evidence Ordinance, 2003 or otherwise) in relation to the enforcement of any law which creates criminal offences; and
- (b) ~~to~~ seize any tobacco in the possession of any person apparently under the age of 18 years whom the officer finds smoking in any public place.

(1A) Any tobacco seized under subsection (1)(b) must be disposed of in any manner the Director of Police considers appropriate.

(2) A person from whom any tobacco is seized under subsection (1)(b) may, within 21 days of the date of seizure, make an application to the Magistrates' Court for the tobacco to be returned to the person and the court must, after enquiring into the matter—

- (a) if satisfied that the person was in fact over the age of 18 years on the date of the seizure - order that the tobacco be returned to the person;
- (b) in any other case - order that the tobacco be destroyed,

and, if no application is made under this subsection within the period of 21 days, the Director of Police may cause the tobacco to be destroyed.

(3) An authorised officer who seizes any tobacco under subsection (1)(d) must give the person from whom it is seized a receipt containing at least the following Information –

- (a) the name of the authorised officer;
- (b) a description of the item or items seized; and
- (c) a notice of the person's rights under subsection (2).

Offences relating to smoking in smoke-free place

14. (1) A person who smokes in a smoke-free place commits an offence.
Penalty: A fine of £300.

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

show that the person did not know, and could not reasonably have been expected to know, that it was a smoke-free place.

Offences relating to no-smoking signs

15. (1) A person who fails to comply with the duty in section 9 or 10 to display no-smoking signs commits an offence.

Penalty: A fine of £300

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

- (a)* the person did not know, and could not reasonably have been expected to know, that the premises were, or the place or vehicle was, smoke-free;
- (b)* the person did not know, and could not reasonably have been expected to know, that no-smoking signs complying with the requirements of this Ordinance were not being displayed in accordance with the requirements of this Ordinance; or
- (c)* on any other grounds it was reasonable for the person not to comply with the duty.

Offence of failing to prevent smoking in smoke-free place

16. (1) A person who controls or is concerned in the management of any smoke-free place (and, in the case of a vehicle which is smoke-free, also the driver) must cause any person smoking in the place or on the vehicle to stop smoking.

(2) A person who fails to comply with the duty in subsection (1) commits an offence.

Penalty: A fine of £500.

(3) It is a defence for a person ('P') charged with an offence under subsection (2) to show that—

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

Obstruction of officers

17. (1) A person who intentionally obstructs an authorised officer acting in the performance of the officer's functions under this Ordinance commits an offence.

Penalty: A fine of £500.

(2) A person who without reasonable cause fails to give to an authorised officer acting in the the performance of the officer's functions under this Ordinance any facilities, assistance or information which the authorised officer reasonably requires of the person for the performance of those functions commits an offence.

Penalty: A fine of £500.

(3) A person who, in purported compliance with any requirement of an authorised officer makes a statement which is false or misleading in a material particular and

either knows that it is false or misleading or is reckless as to whether it is false or misleading commits an offence.

Penalty: A fine of £500.

(4) *Omitted*

PART VI² FIXED PENALTIES

Fixed penalty notice

18. (1) An authorised officer who has reason to believe that a person has committed an offence under section 11, 14, 15 or 16 may give the person a penalty notice in respect of the offence.

(2) A penalty notice is a notice offering a person the opportunity to discharge any liability to conviction for the offence to which the notice relates by paying a penalty in accordance with this Part.

Contents of penalty notice

19. A penalty notice must be in the form prescribed by regulation and must state—

- (a) the alleged offence (giving such particulars of the circumstances alleged to constitute it as are necessary to provide reasonable information about it);
- (b) the amount of the penalty and the period for payment of it (which must not be less than 30 days from the date of the notice);
- (c) the consequences of not paying the penalty before the end of the period mentioned in the notice;
- (d) the person to whom and the address at which payment may be made;
- (e) the person to whom and the address at which any representations relating to the notice may be made; and
- (f) that the person to whom it is given has a right to be tried for the alleged offence and explain how that right may be exercised.

Effect of fixed penalty notice and payment

20. (1) Proceedings for the offence in respect of which a penalty notice was given may not be brought before the end of the period for payment of the penalty.

(2) Subsection (1) does not apply if the person to whom the notice was given has returned the penalty notice to the authorised officer indicating that the offence is denied.

(3) If the penalty is paid in accordance with the penalty notice before the end of the period mentioned in the notice, no proceedings for the offence may be brought and section 21 does not apply.

(4) If proceedings have been brought pursuant to a request under section 21, but

² Part VI not in force at 1 November 2017

then the penalty is paid in accordance with the penalty notice before the end of the period mentioned in the notice, those proceedings may not be continued.

Proceedings for offence

21. If the person to whom a penalty notice has been given fails to pay the penalty by the due date, proceedings may be taken against the person as if the penalty notice had not been issued.

Withdrawal of penalty notice

22. (1) If an Enforcement Officer considers that a penalty notice should not have been given, the notice may be withdrawn.

(2) If a penalty notice is withdrawn—

- (a) any amount which has been paid by way of penalty pursuant to the penalty notice must be repaid; and
- (b) no proceedings may be brought or continued against the person to whom the notice was given for the offence in question.

PART VII MISCELLANEOUS

Regulations

23. The Governor in Council may make regulations necessary or convenient for the purposes of this Ordinance, and without limiting that power, the regulations may specifically prescribe—

- (a) the form of a fixed penalty notice issued under Part VI; and
- (c) the amount of the fixed penalty for purposes of section 19.

Repeal of legislation

24. *Omitted*

TOBACCO CONTROL ORDINANCE, 2011

TOBACCO CONTROL (SMOKE-FREE EXEMPTION) ORDER, 2012

(Section 6(1))

Citation

1. This Order may be cited as the Tobacco Control (Smoke-Free Exemption) Order, 2012.

Exemptions from smoke-free requirement

2. The following premises are exempt from the smoke-free requirement under sections 3 and 4 of the Ordinance:

- (a) HM Prison, Jamestown;
 - (b) Police Lock-up known as “Sundale” when in use as a designated lock-up or alternate prison facility.
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