



ST. HELENA

(Chapter No. not allocated yet)

TOBACCO CONTROL ORDINANCE

(NOT IN FORCE YET)

Non-authoritative Consolidated Text

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Whilst it is intended that this version accurately reflects the current law, users should refer to the authoritative texts in case of doubt. Enquiries may be addressed to the Attorney General at Essex House, Jamestown [Telephone (+290) 2270; Fax (+290) 2454; email pa.lawofficers@legalandlands.gov.sh]¹

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This version contains a consolidation of the following laws—

Page

TOBACCO CONTROL ORDINANCE

2

Ordinance 9 of 2011 ... in force on ... *(Not in force yet)*

Gazette Notice No. 63 of 1 July 2011

¹ These contact details may change during 2011 or early in 2012. In case of difficulty, email shgwebsite@sainthelena.gov.sh or telephone (+290) 2470.

TOBACCO CONTROL ORDINANCE

(Ordinance 9 of 2011)

AN ORDINANCE TO MAKE PROVISION FOR THE PROHIBITION OF SMOKING IN CERTAIN PREMISES, PLACES AND VEHICLES, AND TO PROHIBIT THE SALE OF TOBACCO PRODUCTS TO CHILDREN AND YOUNG PERSONS, AND FOR PURPOSES CONNECTED THEREWITH OR INCIDENTAL THERETO.

Commencement

[Not in force yet]

Part I *Preliminary*

Citation and commencement

1. (1) This Ordinance may be cited as the Tobacco Control Ordinance, 2011, and shall come into force on such date as the Governor may appoint by Order in the *Gazette*;
Provided that an Order under this subsection shall not appoint a date earlier than 1 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 such incidental or transitional provisions as to the Governor in Council appear necessary or expedient.

Interpretation

2. (1) In this Ordinance—
- “**authorised officer**” includes an Enforcement Officer appointed under section 12, and all Police Officers;
- “**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 shall be construed accordingly;
- “**smoke-free**” in relation to any premises or vehicle, means that no person shall be allowed to smoke while at such premises or in such vehicle;
- “**smoke-free place**” means any premises, 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 shall be smoke-free but, subject to section 4, shall be smoke-free only during such times as such 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 premises shall be smoke-free only to that extent.

(4) Premises shall be smoke-free under this section 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) shall at all times be smoke-free if—

- (a) such 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 premises shall be smoke-free only to that extent.

(3) Premises shall be smoke-free under this section 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 of this section if, but only if, the work done there is only limited to work in one or more of the following forms:

- (i) providing personal care for a person living in the dwelling;
- (ii) assisting with the domestic work of the household in the dwelling;
- (iii) maintaining the structure or fabric of the dwelling;
- (iv) 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; or
- (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 shall 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 shall be 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 regulation under section 23.

(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 shall be 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.

Enclosed vehicles

7. (1) An enclosed vehicle or any enclosed part of a vehicle shall 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) where it is enclosed wholly or partly by a roof and by any door or window that may 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) where 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 make regulations designating 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) Regulations under this section may provide that such places or description of places or vehicle shall be smoke-free 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, shall ensure that no-smoking signs complying with subsection (2) are displayed in those premises in accordance with the requirements of this section.

(2) There shall 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**”:

Provided that the words “these premises” may be substituted 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 shall ensure that at least one sign displaying the no-smoking symbol is displayed in a prominent position in each compartment of his 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.

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) A person who—

- (a) sells tobacco to a young person, whether for his own use or not;
- (b) supplies tobacco to any young person in any public place; or
- (c) has responsibility for the welfare of a young person and causes or permits that young person to smoke tobacco in any public place,

is guilty of an offence for which the maximum penalty on conviction is a fine of £1,000.

(3) A young person is guilty of an offence (for which the maximum sentence on conviction is a fine of £500) if he is found with any tobacco in his possession in any public place.

(4) It shall be a defence for a person charged with an offence under subsection (1) to prove that he 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 has the right to do any of the following:

- (a) exercise, in relation to the enforcement of this Ordinance, any power which could be exercised by a police officer (under the Police and Criminal Evidence Ordinance, or otherwise) in relation to the enforcement of any other law which creates criminal offences;
- (b) to seize any tobacco in the possession of any person apparently under the age of 18 years whom he finds smoking in any public place, and any tobacco so seized shall be disposed of in such manner as the Chief of the St Helena Police Force deems 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 him and the Court shall, 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 him;
- (b) in any other case, order that the tobacco be destroyed,

and, if no application is made under this subsection within the said period of 21 days, it shall be lawful for the Chief of Police² to cause the tobacco to be destroyed.

(3) An authorised officer who seizes any tobacco under subsection (1)(d) shall provide the person from whom it is seized with 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 that persons rights under subsection (2).

Part V

Offences and Penalties

Offences relating to smoking in smoke-free place

14. (1) A person who smokes in a smoke-free place is guilty of an offence for which the maximum sentence on conviction is a fine of £300.

(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 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 is guilty of an offence for which the maximum penalty on conviction is a fine of £300

² Gazette Notice No. 63 of 1 July 2011: Title changed to Director of Police

- (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 the premises, place or vehicle was smoke-free;
 - (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 Ordinance were not being displayed in accordance with the requirements of this Ordinance; or
 - (c) that on any other grounds it was reasonable for him 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) shall have the duty to cause a person smoking in such place or on such vehicle to stop smoking.

(2) A person who fails to comply with the duty in subsection (1) is guilty of an offence for which the maximum penalty on conviction is a fine of £500.

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

- (a) he took reasonable steps to cause the person in question to stop smoking;
- (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 any other grounds it was reasonable for him not to comply with the duty.

Obstruction of officers

17. (1) A person who intentionally obstructs an authorised officer acting in exercise of his functions under this Ordinance commits an offence.

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

(3) A person commits an offence if, in purported compliance with any requirement of an authorised officer he makes a statement which is false or misleading in a material particular and he either knows that it is false or misleading or is reckless as to whether it is false or misleading.

(4) The maximum penalty for an offence under this section is a fine of £500.

Part VI

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 him 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 (and give such particulars of the circumstances alleged to

- constitute it as are necessary for giving reasonable information about it);
- (b) the amount of the penalty and the period for payment thereof which shall 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 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 him 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, such notice may be withdrawn.

(2) If a penalty notice is withdrawn—

- (a) any amount which has been paid by way of penalty in pursuance of 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 prejudice to the generality of this provision may specifically—

- (a) exempt certain places or description of places or vehicles from the smoke-free requirement under this Ordinance, which regulations may provide that such exemption shall only apply in specified circumstances, at specified times, if

- specified conditions are satisfied or in specific areas;
- (b) prescribe the form of a fixed penalty notice issued under Part VI;
- (c) prescribe the amount of the fixed penalty for purposes of section 19.

Repeal of legislation

- 24.** The Juvenile Smoking (Prevention) Ordinance, 1907, is repealed.
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