

HEALTH SERVICES (SMOKING) REGULATIONS, 2017

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SCHEDULE

S.I. 2017 No.

Health Services Act

CAP. 44

HEALTH SERVICES (SMOKING) REGULATIONS, 2017

The Minister, in exercise of the powers conferred on him by section 10(1) (aa) of the *Health Services Act*, makes the following Regulations:

PART I

PRELIMINARY

Citation

1. These Regulations may be cited as the *Health Services (Smoking) Regulations, 2017*.

Interpretation

2. In these Regulations,

“advertise” means to make any representation to the general public by any means whatever for the purpose of promoting directly or indirectly, the sale or use of electronic smoking devices, and “advertisement” shall be construed accordingly;

“automatic sales machine” means a machine or device from which products can be obtained by an operation which involves the activation by insertion of money or tokens;

“broadcast” has the meaning assigned to it by section 2 of the *Telecommunications Act, Cap. 282B*;

“electronic smoking device” has the meaning assigned to it by section 2 of the *Health Services Act, Cap. 44*;

“imitation tobacco products” means any of the products referred to in regulation 7;

“inspector” means

- (a) an Environmental Health Officer in the Ministry of Health;
- (b) a Buildings Officer in the Environmental Protection Department; or
- (c) a public health officer;

“minor” means a person under the age of 18 years;

“occupier” in relation to a public place, means a person who

- (a) holds possession of a public place or premises;
- (b) has the management or control of a public place; or
- (c) is otherwise in charge of a public place;

“public place” means a

- (a) building, place, structure or facility that is owned, controlled, managed or occupied by the Crown or a statutory board in Barbados;
- (b) place, site, building, factory, plant, work place or other structure that is fully or substantially enclosed;
- (c) library, museum, auditorium, historic or other site of archaeological or national significance,

to which the public or a member or section of the public has access or is permitted to have access, with or without restriction to users and whether or not

- (i) on the payment of money; or
- (ii) by virtue of membership;

“publish” means to display, present or distribute information to the general public either physically or electronically, and “publication” shall be construed accordingly;

“self-service merchandising” means the open display of tobacco products or electronic smoking devices to which the public has access without the intervention of the person selling the tobacco products or electronic smoking devices or his employee;

“smoke” means to smoke, hold or otherwise have control over an ignited tobacco product or to inhale, exhale or otherwise have control over the emission of vapour from an electronic smoking device;

“substantially enclosed” means a place, site, building, factory, plant, work place or other structure that

(a) is covered by a permanent or temporary roof or covering whether semi-porous or otherwise; and

(b) has walls or other erections that prevent passage, and also has doors, windows or openings in the walls or other erections.

PART II

SMOKING IN PUBLIC PLACES

Prohibition of smoking in a public place

3.(1) No person shall smoke or be permitted to smoke in a public place.

(2) No occupier of a public place shall permit a person to smoke in a public place that is under the control or management of that occupier.

(3) An occupier is to be regarded as having permitted a person to smoke in a public place if the occupier knew or ought reasonably to have known that the person was smoking in that place.

PART III

PROTECTION OF MINORS

Minors not to use or sell tobacco products etc.

- 4.(1) No minor shall use or sell tobacco products or electronic smoking devices.
- (2) A minor who uses or sells tobacco products or electronic smoking devices is guilty of an offence.
- (3) Where a minor is charged with an offence under this regulation and a court is satisfied of the minor's guilt, the court may
- (a) reprimand and send the minor to a court-approved counsellor;
 - (b) order the parent or guardian of the minor to pay a fine and send the minor to a court-approved counsellor; or
 - (c) deal with the minor in any other manner in which he may be legally dealt with by the court.
- (4) For the purposes of this regulation "court" means the magistrate's court.

Tobacco products etc. not to be sold to minors

5. No person shall directly or indirectly
- (a) sell tobacco products or electronic smoking devices to a minor;
 - (b) buy or acquire a tobacco product or an electronic smoking device for the purpose of giving it, whether or not for consideration, to a minor; or
 - (c) give or furnish a tobacco product or an electronic smoking device to a minor.

Minors not to be employed in sale of tobacco products etc.

6. No person shall employ a minor to sell or assist in the sale of tobacco products or electronic smoking devices.

Imitation products

7. No person shall

- (a) import;
- (b) manufacture;
- (c) sell;
- (d) display for sale;
- (e) supply; or
- (f) distribute

any sweets, snacks, toys or other items or objects that imitate tobacco products or electronic smoking devices.

Self-service display of tobacco products etc.

8. No person shall offer for sale or display for sale tobacco products or electronic smoking devices by means of self-service merchandising.

Automatic sales machines

9. No person shall sell tobacco products or electronic smoking devices using an automatic sales machine unless that machine is kept under the supervision of the owner of that machine or his employee.

Advertisement of tobacco products etc. and minors

10. No person shall
- (a) advertise or promote the use of tobacco products or electronic smoking devices by minors; or
 - (b) use a minor in an advertisement or a promotion of the use of tobacco products or electronic smoking devices.

PART IV

ADVERTISING AND MARKETING OF ELECTRONIC SMOKING DEVICES

Advertising or marketing electronic smoking devices

- 11.(1) No person shall advertise the use of electronic smoking devices as a safe alternative to smoking tobacco products.
- (2) No person shall broadcast or publish information that markets or promotes the use of electronic smoking devices as a safe alternative to smoking tobacco products.

Permitted advertisement of electronic smoking devices

12. Notwithstanding regulation 11, nothing in this Part shall operate to restrict or prohibit the advertisement, broadcast or publication of information with respect to electronic smoking devices, where the advertisement, broadcast or publication
- (a) contains accurate statements of fact; and
 - (b) does not expressly or impliedly promote, encourage or induce the use of electronic smoking devices as a safe alternative to smoking tobacco products.

PART V

MISCELLANEOUS PROVISIONS

Signs and notices to the public

13.(1) Every occupier of a public place shall place, in at least 2 prominent positions within the public place, conspicuous signs, designed in the manner and setting out the information described in paragraph (2).

(2) The signs referred to in paragraph (1) shall

- (a) state "NO SMOKING PERMITTED", and shall be of the colour and type indicated in the diagram set out in the Schedule;
- (b) be of the minimum size of 35cm x 30cm; and
- (c) be displayed in such a manner as to be protected from being tampered with, damaged, removed or concealed.

(3) A person who sells tobacco products or electronic smoking devices shall place, in at least 2 prominent positions on his premises, conspicuous signs, setting out the information described in paragraph (4).

(4) The signs referred to in paragraph (3) shall

- (a) be of the minimum size of 35cm x 30cm;
- (b) be displayed in such a manner as to be protected from being tampered with, damaged, removed or concealed;
- (c) state as follows in relation to tobacco products:

"THE SALE OF TOBACCO PRODUCTS TO A PERSON WHO IS UNDER THE AGE OF EIGHTEEN YEARS IS PROHIBITED" ; and

- (d) state as follows in relation to electronic smoking devices:

“THE SALE OF ELECTRONIC SMOKING DEVICES TO A PERSON WHO IS UNDER THE AGE OF EIGHTEEN YEARS IS PROHIBITED”.

(5) A person who advertises, broadcasts or publishes information with respect to electronic smoking devices shall display or announce a notice together with the advertisement, broadcast or publication.

(6) The notice referred to in paragraph (5) shall

(a) in the case of an advertisement or a publication,

(i) be of the minimum size of 35cm x 30cm;

(ii) be printed in black letters on a white background; and

(iii) be displayed in such a manner as to be protected from being tampered with, damaged, removed or concealed;

(b) in the case of a broadcast, be announced immediately after the broadcast; and

(c) state as follows:

“THE USE OF ELECTRONIC SMOKING DEVICES SHOULD NOT BE REGARDED AS A SAFE ALTERNATIVE TO SMOKING TOBACCO PRODUCTS”.

Inspectors

14.(1) For the purpose of ensuring compliance with these Regulations, an inspector, on the presentation of a certificate of identification signed by the Minister, may

(a) at any reasonable time, including any time that a public place is open to the public for the conduct of business, and without warrant or notice,

(i) enter and inspect a public place or the premises referred to in regulation 13(3) and make such examinations as the inspector considers necessary or advisable;

- (ii) take samples of a substance reasonably suspected of being a product containing tobacco that is found in the public place either ignited or having the appearance of having been ignited;
 - (iii) seize any device reasonably suspected of being an electronic smoking device that is being smoked in the public place;
 - (iv) take samples of tobacco products, imitation tobacco products or electronic smoking devices that are found on the premises referred to in regulation 13(3);
- (b) make enquiries of any person who is or was in the public place or the premises referred to in regulation 13(3);
 - (c) seize a tobacco product, an imitation tobacco product or an electronic smoking device in the possession of a person if the inspector suspects on reasonable grounds that the person is a minor;
 - (d) compel a person whom he suspects on reasonable grounds of being a minor and who is in possession of tobacco products, imitation tobacco products or electronic smoking devices to produce evidence of his age;
 - (e) make enquiries of any person who advertises, broadcasts or publishes information describing the use of electronic smoking devices as a safe alternative to smoking tobacco products;
 - (f) direct a person to rectify, retract or discontinue the advertisement, broadcast or publication of information describing the use of electronic smoking devices as a safe alternative to smoking tobacco products; and
 - (g) exercise such other powers as may be necessary or incidental to the carrying out of the inspector's powers pursuant to these Regulations.
- (2) An inspector, for the purposes of conducting an inspection referred to in paragraph (1), may be assisted by any person who, in the opinion of the inspector, has special knowledge or expertise in any relevant matter.

(3) Where an inspector has reason to believe that a person is committing or has committed an offence under these Regulations, the inspector

- (a) may, where the offence is being committed, direct the person to cease the contravention;
- (b) may require the person to furnish his name and address; and
- (c) shall report the commission of the offence and the details in respect thereof to a member of the Police Force.

Service of compliance notice

15.(1) Where, after an inspection of a public place, an inspector finds that the occupier has not complied with these Regulations, the inspector shall inform the Chief Medical Officer of this fact and may serve on the occupier a notice in writing signed by

- (a) the Chief Medical Officer; or
- (b) a person authorised by the Chief Medical Officer in that regard,

requiring the occupier to comply immediately or within such period of time as is specified in the notice.

(2) A notice served pursuant to paragraph (1) shall indicate the nature of the non-compliance with these Regulations and the location at which the non-compliance occurred.

Offences

16.(1) A person who smokes in a public place where a sign referred to in regulation 13(1) is displayed is guilty of an offence and is liable on summary conviction to a fine of \$500 or to imprisonment for a term of 12 months or to both such fine and imprisonment.

(2) Where an occupier

- (a) contravenes regulation 3(2), 13(1) or 15; or

(b) prohibits an inspector from performing his duties under regulation 14, the occupier is guilty of an offence and is liable on summary conviction to a fine of \$5 000 or to imprisonment for a term of 12 months or to both such fine and imprisonment, and in the case where the offence is continued, to a further fine of \$200 for each day or part thereof during which the offence so continues after conviction.

(3) Where a person

(a) contravenes regulations 5, 6, 7, 8, 9, 10, 11, 13(3) or 13(5); or

(b) prohibits an inspector from performing his duties under regulation 14, the person is guilty of an offence and is liable on summary conviction to a fine of \$5 000 or to imprisonment for a term of 12 months or to both.

(4) Where a person convicted of an offence fails to comply with these Regulations, that person shall be liable to a further fine of \$200 for each day or part thereof during which that failure to comply continues.

Defences

17.(1) It is a defence to a charge that an occupier contravened regulation 3(2), for the occupier to prove on a balance of probabilities that

(a) he took reasonable steps and exercised due diligence in preventing the commission of the offence; or

(b) there were no lawful and reasonably practicable means by which he could know of or prevent the commission of the offence.

(2) It is a defence to a charge that a person contravened regulation 5 or 6, for the person to prove that

(a) he had reasonable grounds to believe and made reasonable enquiries to ascertain that the person to whom the tobacco product or electronic smoking device was sold, given or furnished was not a minor;

- (b) he had reasonable grounds to believe and made reasonable enquiries to ascertain that the person he employed was not a minor;
 - (c) he received from the person to whom the tobacco product or electronic smoking device was sold, given or furnished, evidence that that person was not a minor and it was reasonable for the first person to rely on that evidence; or
 - (d) he received from the person he employed, evidence that that person was not a minor and it was reasonable for the first person to rely on that evidence.
- (3) It is a defence to a charge that a person contravened regulation 11, for the person to prove on a balance of probabilities that
- (a) he took reasonable steps and exercised due diligence in preventing the commission of the offence; or
 - (b) there were no lawful and reasonably practicable means by which he could know of or prevent the commission of the offence.

Revocation of S.I. 2010 No. 13 and S.I. 2010 No. 101

18. The *Health Services (Protection of Minors from Tobacco Products) Regulations, 2010* (S.I. 2010 No. 13) and the *Health Services (Prohibition of Tobacco Smoking in Public Places) Regulations, 2010* (S.I. 2010 No. 101) are revoked.

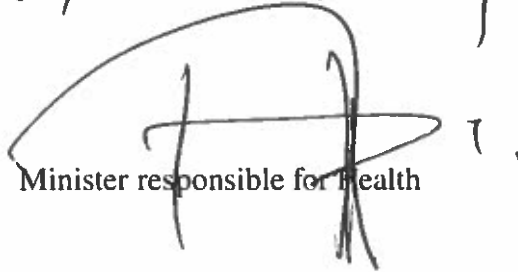
SCHEDULE

(Regulation 13(2))

NO SMOKING PERMITTED



Made by the Minister this 24 day of February, 2017.



Minister responsible for Health