

STATUTORY INSTRUMENTS SUPPLEMENT  
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STATUTORY INSTRUMENTS

2004 No. 12.

THE NATIONAL ENVIRONMENT (CONTROL OF SMOKING IN  
PUBLIC PLACES) REGULATIONS 2004.

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*Regulation.*

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Public Places.

**The National Environment (Control of Smoking in Public Places) Regulations, 2004.**

*(Under section 107 of the National Environment Act, Cap.153).*

IN EXERCISE of the powers conferred on the Minister by section 107 of the National Environment Act; and upon the recommendation of the Policy Committee on the Environment and the Board, these Regulations are made this 11th day of March, 2004.

Cap. 153

1. These Regulations may be cited as the National Environment (Control of Smoking in Public Places) Regulations, 2004.

Citation.

2. In these Regulations, unless the context otherwise requires—

Inter-pretation.

“**Act**” means the National Environment Act;

Cap. 153.

“authorised officer” means a public officer or other person upon whom any law vests functions of ensuring public health, public safety and maintenance of law and order, and includes a police officer;

“environmental inspector” means an environmental inspector designated under section 79 of the Act;

“lead agency” means any Ministry, department, parastatal agency, local government council, or public officer in which or upon whom any law vests functions of control or management of any segment of the environment;

“Local Government” means a local council established by section 3 of the Local Governments **Act**;

Cap. 243.

“mass media” includes publicly exhibited posters, newspapers, radio, television or other electronic media used for public communication;

“owner” means—

(a) in relation to any premises—

(i) the proprietor or operator of the premises;

(ii) the chief executive officer or overall manager of a work place; and

(b) in relation to a vehicle, the person registered as the owner of the vehicle or the person operating the vehicle;

“public place” means any place to which members of the general public or segments of the general public ordinarily have access by express or implied invitation and includes any indoor part of a place specified in the Schedule;

“public service vehicle” means any vehicle which—

(a) is licensed, by law, to carry passengers for hire or reward; or

(b) plies for hire or reward or is let out for hire or reward.

“second-hand smoke” means the smoke exhaled from a person smoking a tobacco product, and includes side-stream smoke;

“separately ventilated” means the existence of a mechanical, natural or other mechanism of extracting air from a smoking area in order to prevent re-circulation into other areas of the establishment;

“side-stream smoke” means smoke or other emissions released from a tobacco product or the smoke exhaled by a person smoking a tobacco product;

“smoking” means inhaling, exhaling, or handling a lighted tobacco product;

“tobacco product” means a product composed in whole or in part of tobacco, including tobacco leaves and any extract of tobacco leaves and includes cigarette papers, tubes and filters;

“work place” means any place in which employees, contractors, volunteers, or other persons perform duties of employment or work and includes individual offices, common areas, and any other area, which they generally use during the course of their employment or work.

3. (1) Every person has the right to a clean and healthy environment and the right to be protected from exposure to second hand smoke.

Right to a  
smoke free  
environment

(2) Every person has a duty to observe measures to safeguard the health of non-smokers.

(3) Every head of family is responsible for creating a climate for children to be free of second hand smoke.

4. No person shall smoke a tobacco product or hold a lighted tobacco product in an enclosed, indoor area of a public place specified in Part I of the Schedule.

Prohibition  
of smoking  
in public  
places

5. Notwithstanding the prohibition in regulation 4, the owner of a public place specified in Part II of the Schedule, may designate rooms in which smoking is allowed, so long as the following conditions are met—

Restriction  
of smoking  
in public  
places

- (a) the room is fully enclosed by walls or partitions that join the ceiling and floor and with a functional door that meets the ceiling and floor;
- (b) the rooms are physically detached and separately ventilated directly to the outside with negative air pressure in comparison with the rest of the premises;
- (c) non-smoking members of the public and workers are not required to enter the rooms while smoking is taking place.

**6. (1)** No person shall smoke in any public service vehicle or in any aircraft, train or other public transport.

(2) Notwithstanding subregulation (1), the owner of a public means of transport that has physically distinct units, such as a train, may designate particular units as smoking areas if—

- (a) the units are physically separate from one another;
- (b) the smoke will not escape from the units where smoking is allowed and enter into another unit or common system of ventilation; and
- (c) no employee is required to enter the units while smoking is taking place.

**7. (1)** The owner of a public place or any public service vehicle or other public transport where smoking is prohibited shall post clearly legible signs, prominently, stating that smoking is not permitted.

(2) Signs posted under subregulation (1) shall comply substantially with the following—

- (a) the signs shall be at least 19 cm. by 19 cm. in dimension;
- (b) the text of the: signs shall read as follows—

Restriction of smoking on public transport.

Signs where smoking is prohibited.

**“NO SMOKING”**

(c) the wording shall be accompanied by a no smoking sign of a cigarette in a red circle with a red line passing through the cigarette diagonally from top left to bottom right or any other pictorial representation; and

(d) the text required by paragraph (b) shall cover 60 % of the sign.

(3) The signs shall be posted throughout the premises.

**8. (1)** The owner of a public place where smoking is restricted shall post signs prominently on the premises indicating areas designated for smoking.

Signs where smoking is restricted.

(2) Signs posted under subregulation (1) shall comply substantially with the following—

(a) the signs shall be at least 19 cm. by 19 cm. in dimension;

(b) the information displayed on the signs shall read as follows—

**“SMOKING AREA”**

(c) the text required by paragraph (b) shall cover 80 % of the sign.

(3) The signs shall be posted at the entrance of the smoking room or area.

**9. (1)** The owner of a public place or public service vehicle or other public transport shall take all reasonable steps to ensure that no person smokes in violation of these Regulations.

Obligations of owners.

(2) Taking reasonable steps under subregulation (1) includes, but is not limited to —

(a) asking a person to stop smoking;

(b) demanding that a person who continues to smoke leaves the premises or the public service vehicle or other public transport, as applicable and practicable; and

(c) seeking the assistance of an environmental inspector or other authorised officer in cases where the person refuses to stop smoking or to leave the premises.

(3) The owner or operator of any public service vehicle or other public transport shall ensure that passengers are informed that smoking is not allowed in the vehicle or other public transport.

(4) An owner shall not discriminate against any employee or person who asserts his or her right to a smoke-free environment, or who reports any violation under these Regulations.

**10.** The National Environment Management Authority shall, in collaboration with lead agencies, promote public awareness campaigns in the mass media relating to the implementation of measures to safeguard the health of non-smokers from second hand smoke.

**11.** Nothing in these Regulations limits the powers of a local government, in accordance with the Local Governments Act, to make laws for the protection of non-smokers from environmental smoke and side stream smoke.

**12. (1)** An environmental inspector designated by the National Environment Management Authority in accordance with the Act is an inspector for the purposes of these Regulations.

(2) An environmental inspector may, at any reasonable time, in order for him or her to ascertain compliance with these Regulations, enter and inspect any public place.



(3) An environmental inspector entering a public place to inspect it under these Regulations shall, on request, provide the owner with proof of identity and produce a certificate or instrument of appointment signed by the Minister.

(4) An environmental inspector may, during an inspection under these Regulations, seize any tobacco product or other thing by means of which or in relation to which the inspector believes, on reasonable grounds, that these Regulations have been contravened.

(5) No person shall obstruct an environmental inspector in the execution of his or her duties under these Regulations, or refuse to provide him or her with any information or document to which the inspector is entitled under these Regulations, or destroy any such information or document.

**13.** (1) An owner of a public place, public service vehicle or other public transport who fails to enforce the smoking restrictions required by these Regulations commits an offence and is liable, on conviction, to a fine of not less than fifty thousand shillings and not more than three hundred thousand shillings.

**Offences**

(2) An owner of a public place, public service vehicle or other public transport who fails to post prescribed signs and to ensure that any designated smoking rooms and areas meet the requirements of these Regulations, commits an offence and is liable, on conviction; to a fine of not less than fifty thousand shillings and not more than three hundred thousand shillings.

(3) Any person who smokes in a public place in contravention of these Regulations commits an offence and is liable, on conviction, to a fine of not less than twenty thousand shillings and not more than one hundred thousand shillings.

(4) Any person who smokes in a public service vehicle or other means of public transport. commits an offence and is liable, on conviction, to a fine of not less than twenty thousand shillings and not more than one hundred thousand shillings.



(5) A court convicting a person for an offence under subregulations (1) and (2) may, in addition to any penalty imposed by it, further order that the license or permit of the owner be suspended.

(6) A person who obstructs an environmental inspector in the execution of his or her duties under these Regulations commits an offence and is liable, on conviction, to a fine of not less than twenty thousand shillings and not more than one hundred thousand shillings.

# SCHEDULE.

## PUBLIC PLACES

### PART I—PUBLIC PLACES IN WHICH SMOKING IS PROHIBITED

#### REGULATION 4

Offices, office buildings and work places including individual offices, public areas, corridors, lounges, eating areas, reception areas, lifts, escalators, foyers, stairwells, toilets, laundries, amenity areas;

Court buildings;

Factories;

Hospitals, clinics and other health institutions;

Educational institutions of all levels;

Premises in which children are cared for;

Public places of worship;

Prisons;

Police cells;

Public service vehicles and other means of public transport;

Public transport terminals, including airports and airfields;

Retail establishments including markets and shopping malls;

Cinemas and theatrical performance halls;

**Sports stadia.**

**Public places of lodging;**

**Bars;**

**Restaurants;**

**Discotheques.**

**COL. KAHINDA OTAI**  
*Minister of Water, Lands and Environ*