

# Decrees, Edicts, Circulars

## GENERAL TEXTS

### MINISTRY OF HEALTH AND SOCIAL ASSISTANCE

#### **Circular of November 29, 2006, concerning the prohibition of smoking in places of common use**

NOR: SANC0624809C

Paris, November 29, 2006.

*The Minister of Health and Social Assistance to the Gentlemen Regional Prefects, Ladies and Gentlemen Departmental Prefects*

Reference texts:

Article L. 3511-7 of the Code of Public Health.

Decree n°2006-1386 of November 15, 2006, establishing the conditions for the implementation of the prohibition of smoking (in particular Articles R. 3511-1 to R. 3512-2 of the Code of Public Health).

Attachment:

Sheet regarding on-the-spot fines (Annex).

The law of January 10, 1991, and its Decree of implementation of May 29, 1992, codified within the Code of Public Health, has made possible notable advances in tobacco control, in establishing the prohibition of smoking in places of common use, except in places expressly reserved for smokers (Art. L. 3511-7 of the Code of Public Health).

But these advances are seen to be insufficient today in view of the progress of knowledge concerning the risks that tobacco entails and recent legal developments.

Scientific knowledge, especially with regard to passive smoking, has progressed.

The presence in the same place of smokers and non-smokers can no longer be approached as a societal problem but must rather be approached as a matter of public health.

The lack of protection by employers of salaried non-smokers is henceforth legally sanctioned, since the Edict of June 29, 2005, of the Court of Cassation, which imposes on employers an obligation of safety of result in terms of protection of their salaried employees from passive smoking.

Finally, the international context has also recently evolved towards enhanced protection for nonsmokers.

Article 8 of the Framework Convention on Tobacco Control (FCTC) of the WHO, ratified by France on October 19, 2004, insists on the need for protection against exposure to tobacco smoke. At the community level, the Council's recommendation of December 2, 2002, on the prevention of tobacco addresses the same concern. A number of France's European partners are thus engaged in prohibiting smoking in public places to arrive at this protection against passive smoking: Ireland in March 2004, Italy in January 2005, and Spain in January 2006.

On these grounds the Government is moving to strengthen the prohibition of smoking in places of common use. Decree n°2006-1386 of November 15, 2006, thus sets conditions for the implementation of

## Unofficial Translation

the prohibition of smoking. These principal provisions are codified in Articles R. 3511-1 to R. 3512-2 of the Code of Public Health.

The purpose of this Circular is to specify the principal provisions of this Decree.

### Part One

#### **Scope of application of the prohibition**

Pursuant to Article L. 3511-7 of the Code of Public Health, “it is prohibited to smoke in places subject to common use, particularly educational use, and in vehicles of public transportation, except in areas expressly reserved for smokers.”

*I. – Enclosed and covered places accommodating the public  
or that constitute work places*

Paragraph 1 of Article R. 3511-1 specifies that at issue here are spaces that accommodate the public or constitute work places.

The notion of a place accommodating the public should be understood in contrast to households and all other places of private use.

It is particularly concerned with government facilities and the institutions and agencies under their guardianship, companies, stores, malls, shopping centers, cafés, restaurants, discotheques, casinos, bus and train stations, airports. It is also concerned with public places for cultural or athletic purposes, as long as they are enclosed and covered, such as indoor arenas for sports events and shows.

As far as places of so-called socialization are concerned, such as cafés, restaurants, discotheques, casinos, the prohibition applies to enclosed and covered places, even if the façade is removable. Thus smoking will be permitted on terraces, as long as they are not covered or the façade is open. If these establishments are located inside a building that is itself enclosed and covered, in which the prohibition of smoking is implemented (a shopping center, a train station...), smoking will be prohibited in the parts of these establishments that are covered on the inside of the building.

In companies, the prohibition applies to places used by all personnel (entrances, reception areas, eating facilities, rest areas, walk-through areas...). It also applies to work places, meeting or training rooms, but also to offices, even those occupied by a single person, inasmuch as several people have access to it, notably maintenance personnel.

*II. –Public transportation vehicles*

This prohibition encompasses all public transportation vehicles, whether they are managed by public or private institutions or companies.

It concerns all transportation vehicles belonging to these firms that can carry travelers or passengers.

They fall particularly into the following categories:

- passenger trains (TGV, “Corail” trains, TER, Eurostar, Thalys, etc.);
- urban transit vehicles (subways, tramways, buses, people movers, urban funiculars, etc.);
- steep-grade railways (rack railways, funiculars, cable-cars, and gondolas);
- passenger vehicles for highway transportation, suburban transport, tourism, school buses and low-capacity vehicles providing on-demand transit service other than taxis;
- airliners;
- passenger boats on lakes and rivers (including excursion boats such as river excursion boats), car ferries and pedestrian ferries;
- ferries and cruise ships flying the French flag, boats for maritime excursions and island ferry service and maritime ferries.

For boats, ships and ferries, the smoking ban does not apply to decks in the open air.

**III. – *Institutions of instruction, training, reception  
and accommodation for minors***

Paragraph 3 of Article R. 3511-1 states that it is prohibited to smoke in “uncovered spaces in public and private schools, academies and high schools, as well as institutions for the reception, training or accommodation of minors.” The prohibition is total, since through the application of Article R. 3511-2 it will not be possible to set up spaces reserved for smokers (cf. Part 2).

It is therefore prohibited to smoke in these institutions, regardless of the place, whether it is enclosed and covered or not.

**Part Two**

**Rules concerning setting up places  
reserved for smokers**

**I. – *The procedure for setting up places where smoking is allowed***

Setting up spaces reserved for smokers is by no means obligatory. It is merely an authorization granted by the person or institution responsible for a facility.

If the person or institution responsible for a facility decides to install such a space, in establishments where employees are subject to the Labor Code, the plan for setting it up and the procedures for implementation must be submitted for approval to the Committee of Health and Safety and Working Conditions, or in the absence thereof, to representatives of personnel and occupational medicine.

## II. – *Places where setting up smoking areas is possible*

Spaces reserved for smokers can be arranged in the assorted locations where the prohibition applies, subject to fulfillment of the provisions of Article R. 3511-8, if the place is frequented by minors. However, such spaces cannot be created in the following kinds of establishments:

1 Public and private educational institutions, vocational training institutes, establishments intended for or regularly used for the reception, training, accommodation, or athletic activities of minors.

This prohibition applies in all public and private educational institutions, including those of higher education. In the latter, it will therefore be possible to smoke in open spaces.

With regard to establishments intended for minors or regularly used by them, the prohibition is particularly concerned with establishments intended to accommodate or receive minors on a regular basis, collectively, whether for free or otherwise. This covers the establishments indicated in Article L. 321-1 of the Code of Social Action and Families, but also, for example, correctional facilities for young people;

2 Health care institutions, in which smoking will be possible solely in open spaces. A specific Circular shall define the regime applicable to such establishments.

With regard to Government facilities and the institutions that govern them, a specific Circular by the Ministry of Public Service shall specify the procedures for the implementation of the measure prohibiting smoking in places of common use.

## III. – *Technical standards*

Spaces reserved for smokers are to be closed rooms that must adhere to the standards for ventilation stated in paragraph 1 of Article R. 3511-3.

They must be equipped with automatic closing doors, without the possibility of unintentional opening, and may not be an area of passage to other places.

The total surface area of these spaces may not exceed 20 % of the total surface area of the establishment in which they are set up, and each space may not exceed 35 square meters.

These spaces are to be dedicated solely to tobacco consumption, and there is to be no performance of service there by employees, whether or not they belong to the establishment. Furthermore, no tasks of cleanup and maintenance may be performed there until the air has been refreshed, with the absence of all occupants for at least one hour.

## IV. – *Signs*

Signs, as established by Edict of the Minister of Health and Social Assistance, shall be available through download from the internet as of December 15, 2006, at the website [www.tobacco.gouv.fr](http://www.tobacco.gouv.fr).

1 Signs stating the prohibition, accompanied by a prevention message for health, must be posted at the building entrances as well as inside, in visible spots that are prominently apparent.

2 Signs for areas reserved for smokers accompanied by a health warning must be posted at the entrance to the smoking areas. It should be stated, in particular, that minors under the age of 16 may not enter such premises.

Part Three

**Treatment**

*I. – Reimbursement for nicotine replacement*

With respect to treatment provided to help quit smoking, anyone applying to medical insurance authorities will be reimbursed for up to 50 € of the total, which is to say, a partial reimbursement, amounting to about one third of the cost of the nicotine replacement treatment.

*II. – The development of tobacco addiction consultations*

With regard to personal support quitting, in coordination with the addiction control plan, the number of consultations for tobacco addiction will be doubled, from 500 to 1,000. This doubling will focus primarily on group consultations, and will make it possible to deal with the increase of requests for help quitting smoking without a delay in providing service. A training plan intended for personnel involved in these consultations (doctors, nurses, medical assistants, psychologists or dietitians) who are to be recruited, is to be implemented by the end of this year.

### III. – *Arrangements for information and communication*

A phone hotline will be set up by Monday, November 27. The number is: 0825 309 310.

As of December 15, a dedicated website will be opened at: [www.tobacco.gouv.fr](http://www.tobacco.gouv.fr), where information kits for companies, government offices and health professionals can be downloaded. In addition to signs, this kit will include the text of the Decree, an explanatory leaflet and a mobilization poster.

To influence behavior relating to tobacco so that it evolves in a sustainable fashion, a barometer of passive smoking, drawn up under the supervision of Bertrand Dautzenberg, Professor in the Department of Pneumology of the Pitié-Salpêtrière hospital group, shall compile the indicators required to measure the effects of the ban. Inspired by highway fatality statistics, and showing the rapid benefits for public health of a complete prohibition of smoking, this barometer will be published monthly.

With regard to communication campaigns, a television campaign addressing the harmful effects of passive smoking is being broadcast from November 16 to December 6. Then, a radio and internet campaign will explain arrangements for help quitting smoking, before and after the Holiday period at the end of the year.

In a second phase, starting in January 2007, a campaign will be implemented to provide information on the actual procedures for the prohibition.

Finally, a campaign already planned for the second half of 2007 to prepare the implementation of the ban on smoking in cafés, hotels, bars, restaurants, discotheques and casinos.

## Part Four

### **Sanctions and enforcement**

#### I. – *Sanctions*

##### **1-1. With regard to smokers**

Any person smoking in a place in which the prohibition applies is liable for a 3<sup>rd</sup> Class offense punishable by an on-the-spot fine of 68 euros.

If the offender fails to settle the fine payment ticket within a period of 45 days, or does not file any motion seeking exoneration with a police department, the amount of the fine shall be increased to 180 euros (cf. Annex).

In the event of an appeal by the offender, the public prosecutor may either drop the case or decide to prosecute in a local jurisdiction, or else notify the offender that the appeal is not admissible.

If he does not issue a payment ticket for the fine, the law enforcement agent can instead draw up a detailed incident report specifying the circumstances of the commission of the offense. The maximum fine that can be incurred for 3<sup>rd</sup> Class offenses is 450 euros.

##### **1-2. With respect to those responsible for premises where offenses occur**

*1 Elements for the definition of those responsible for premises where offenses occur*

## Unofficial Translation

The person responsible for a place is the person who, because of his status or the delegation of powers vested in him, has the authority and the means necessary to ensure the implementation of the provisions of the Decree of November 15, 2006. Those who may act, in particular, depending on individual circumstances, are the proprietor, the operator or any person to whom authority has been delegated in matters of hygiene and safety.

### *2 Offenses and sanctions*

The following acts are punishable by the fine indicated for 4<sup>th</sup> Class offenses:

- 1 Setting up smoking areas that are not in compliance with standards (See Part II);
- 2 Failure to post the required signs (See Part II);
- 3 Knowingly encouraging non-compliance with the ban on smoking.

The first two offenses may be subject to an on-the-spot fine. For 4<sup>th</sup> Class offenses, the on-the-spot fine is 135 euros. If, within a period of 45 days, the offender fails to settle the fine payment ticket, or does not file any motion seeking exoneration with a police department, the amount of the fine shall be increased. It shall then go up to 375 euros (cf. Annex).

If he does not issue a payment ticket for the fine, the law enforcement agent can instead draw up a detailed incident report specifying the circumstances of the commission of the offense.

The maximum fine that can be incurred for 4<sup>th</sup> Class offenses is 750 euros.

A third offense involves sanctioning those responsible for the premises who in a completely illegal fashion incite users to smoke, for example, by giving them spoken encouragements to such effect, or making ashtrays available to them in places where smoking is prohibited.



Beyond the offense for which smokers themselves may be held liable, this offense seeks to sanction those responsible for the premises who incite people to break the rules.

This offense, which must be characterized as such, cannot be subject to an on-the-spot fine. An incident report describing the circumstances of the offense in detail is to be drawn up and conveyed to an official of the public prosecutor's office, who shall decide whether or not to prosecute the offender in a local jurisdiction.

## II. – *Enforcement*

Successful experiences, notably in matters of highway safety, show that it is best to closely link actions for prevention and public awareness with enforcement efforts, which should themselves harmonize education of the public with the punishment of offenses. Furthermore, a policy of status assessment, regularly presented to the general public in the form of published indicators, can sustain the efforts undertaken, and lead us together towards sustainable progress.

### 1 *Enforcement agents*

Officers and agents of the judiciary police have jurisdiction to investigate these offenses by virtue of the powers vested in them through the Code of Penal Procedure.

Also competent to do so, pursuant to Article L. 3512-4 of the Code of Public Health, as long as they have been licensed and sworn on the basis of a Decree which is to appear in December, are physician inspectors of public health (MISP – *médecins inspecteurs de santé publique*), public health engineers, (IGS – *les ingénieurs du génie sanitaire*), health and social inspectors (IASS – *les inspecteurs de l'action sanitaire et sociale*), as well as all of the agents indicated in Article L. 1312-1 of the same Code. The pending Decree shall specify the categories of agents licensed to conduct enforcement in the context of this Article.

Others also competent for enforcement are labor inspectors as well as labor supervisors acting under their authority, whether they are acting on behalf of the Ministry of Labor, the Ministry of Agriculture or the Ministry of Transportation.

In public transportation vehicles, as well as in bus and train stations, in application of the prefectural Edicts defining the police measures applicable therein, the agents of the operator, duly sworn, are also competent.

With respect to the Ministry of Defense, general enforcement agents of the armed forces responsible for labor inspection are competent to investigate non-compliance with regulations and call upon the police, who are the only ones licensed to investigate offenses and draw up incident reports.

### 2 *Training*

Training or information activities are to be organized by the Ministries in question for their respective enforcement bodies. They are to insist upon the urgency of implementation of the prohibition of smoking in places that receive the public in light of the public health interests at stake, and shall undertake, if necessary, to respond to offenses by preparing incident reports or issuing fine payment tickets.

A self-training module shall be provided in January 2007 at the website, [www.tobacco.gouv.fr](http://www.tobacco.gouv.fr)

### *3 Implementation of enforcement*

Ministries with enforcement staff must mobilize their decentralized services without delay, on the need to prioritize enforcement with respect to the new legal requirements regarding tobacco among their areas of engagement.

You shall closely coordinate the enforcement actions of the decentralized services in question at the departmental level, drafting enforcement plans based on programs drawn up by the Ministries and incorporating local priorities. In particular, you shall see to the measure's implementation in places of heavy pedestrian traffic, bus and train stations, shopping centers and malls, in venues for athletic and cultural events, as well as in health care institutions, medical and social welfare centers, and institutions intended for the reception, training or accommodation of minors.

You are to stay informed through school inspectors, directors of departmental offices of national education, on behalf of rectors, and through the Departmental Directorate of Agriculture and Forestry (DDAF) and regional departments of work, employment and vocational training (DDTEFP), respectively, for the implementation of these measures in educational institutions and at places of business.

It would be appropriate to inform the public prosecutors of the Republic of the guidelines and results of enforcement plans.

### *4 Procedures for setting up enforcement and evaluation operations*

The decentralized services are to send their data to their central offices as well as to the departmental prefects.

Ministries endowed with enforcement staff shall organize a harmonized system for posting information on enforcement operations carried out by their decentralized services, as well as on the offenses investigated, in order to provide data for a monthly national barometer for the general public and public health professionals, which is to be in effect as of March 1, 2007.

At the departmental level, you are to draw up a balance sheet on the implementation of the prohibition of smoking in places that receive the public, as of February 15 and March 31, 2007.

## Part Five

### **The entry into force of the Decree**

The provisions of the Decree of November 15, 2006, shall enter into force on February 1, 2007.

However, taking into consideration their activities, and the need to keep in mind possible changes of their clientele, some establishments, permanent facilities for on-site consumption of beverages, casinos, gaming clubs, discotheques, hotels and restaurants, have an additional period up until January 1, 2008 to implement the new regulations.

Up until this date, Articles R. 3511-1 to R. 3511-8 and Article R. 3511-13 of the Code of Public Health, in force on the date of publication of the Decree of November 15, 2006, shall continue to be applicable to them.

I ask if you would be so kind as to personally see to the enactment, promotion and actual implementation of these new provisions. It is up to you to closely coordinate the combined decentralized services with regard to raising awareness and enforcement, as well as the regular evaluation of the efficacy of the measures put into effect.

XAVIER BERTRAND

## A N N E X

### SHEET REGARDING ON-THE-SPOT FINES

Legal texts governing on-the-spot fines appear in Articles 529 and following, R. 48-1 and A.37 of the Code of Penal Procedure.

#### **1. Scope of application**

The use of a procedure for the imposition of on-the-spot fines is not possible (and never required) unless three conditions are met:

1. An offense of the 1<sup>st</sup> to the 4<sup>th</sup> class is involved;
2. The offense in question appears on the list set forth in Article R. 48-1 of the Code of Penal Procedure;
3. The enforcing officer does not observe several offenses simultaneously, some of which cannot be subject to an on-the-spot fine. In such instances, he should then proceed to draw up a traditional incident report.

#### **2. Procedures**

Depending on the class of the offense, the offender shall be obliged to pay an amount determined by Decree:

## Unofficial Translation

1<sup>st</sup> Class offense: 11 euros;

2<sup>nd</sup> Class offense: 35 euros;

3<sup>rd</sup> Class offense: 68 euros;

4<sup>th</sup> Class offense: 135 euros.

He can either immediately pay the amount directly to the official, or pay it to the office indicated on the payment ticket within a period of 45 days.

The offender may file an appeal for exoneration with this same office, which is then to be forwarded to the public prosecutor. The latter may approve the appeal, or prosecute the offender, either by penal ordinance or by a summons before a judge of the first instance to have the matter brought to judgment. In the absence of payment or an appeal within a period of 45 days, the on-the-spot fine is to be increased as a matter of ordinary law and collected for the benefit of the Public Treasury.

The amounts for increased on-the-spot fines are as follows:

1<sup>st</sup> Class offense: 33 euros;

2<sup>nd</sup> Class offense: 75 euros;

3<sup>rd</sup> Class offense: 180 euros;

4<sup>th</sup> Class offense: 375 euros.

This increased on-the-spot fine may also be challenged by a letter stating the grounds thereof addressed to the public prosecutor.

It should be emphasized that the system for the reduction of on-the-spot fines only exists for violations of the highway code.

Once an offender has challenged the grounds for his fine and a judge of first instance has become involved, the standard law governing offenses shall apply.

Accordingly, a person stands to incur (as maximum penalties) the following penalties:

1<sup>st</sup> Class offense: 38 euros;

2<sup>nd</sup> Class offense: 150 euros;

3<sup>rd</sup> Class offense: 450 euros;

4<sup>th</sup> Class offense: 750 euros.

In the event of conviction, the amount of the fine imposed by the court cannot be less, depending on the particular case, than the amount of the on-spot-fine, or the increased on-the-spot fine that has been challenged.

### **3. The effect of payment of the on-the-spot fine**

The prosecution is extinguished at the moment that the full amount of the fine is paid.