

-----Original Message-----

From: HeggieSR [mailto:HeggieSR@angus.gov.uk]

Sent: 28 April 2005 11:45

To: Glen J (John)

Subject: Response to Consultation

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has been swept for the presence of computer viruses.

Mr John Glen, Tobacco Control Division -- With reference to the consultation papers issued on 10th March on the Smoking, Health and Social Care (Scotland) Act 2005 (Prohibition of Smoking in Certain Premises) Regulations 2005 I attach a report agreed by the Angus Council Environment and Leisure Committee on Tuesday 26th April as the Angus Council response. This report is already in the public domain so we have no objections to the response being made public on your website.

Stewart Heggie, for Angus Council.

-----Original Message-----

From: KinmondG

Sent: 27 April 2005 12:09

To: HeggieSR

Subject: Report 462/05

<<Report No 462.05.rtf>>

Gillian

Environmental & Consumer Protection Dept

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ANGUS COUNCIL

ENVIRONMENTAL AND LEISURE COMMITTEE – 26th APRIL 2005THE SMOKING, HEALTH & SOCIAL CARE (SCOTLAND) ACT 2005 (PROHIBITION OF SMOKING
IN CERTAIN PREMISES) REGS 2005

REPORT BY THE DIRECTOR OF ENVIRONMENTAL AND CONSUMER PROTECTION

ABSTRACT

This draft legislation has been issued for consultation with specific questions posed by the Scottish Executive to which responses are offered.

1. RECOMMENDATIONS

The committee is recommended to endorse the comments in the report in response to the specific consultation questions.

2. BACKGROUND

The issue of smoking in public places was subject to extensive public consultation from June to September of last year. Following consideration of the findings of the consultation and other evidence gathered on the health effects of passive smoking and the health and economic impact of regulation on smoking in public places, Ministers introduced the Smoking, Health & Social Care (Scotland) Bill in December 2004.

This Bill contains measures to prohibit smoking in certain wholly enclosed public places and indicates that detailed provisions including exemptions will be prescribed through Regulations. The consultation now being undertaken on the draft Regulations recognises that there would be a need for some very specific exemptions for places where people reside or where there are clearly established humanitarian or practical considerations.

Ministers have stated that the twin principles of comprehensive scope and limited exemptions continue to underpin the approach taken upon which comments are now invited.

Ten specific questions have been asked by the Minister as set out below.

3. CONSULTATION RESPONSE**Regulation 1 – Citation, Interpretation and Commencement**

Regulation 1 provides the definitions of words and phrases used in the regulations.

Question 1

Do the definitions of words and phrases ensure clarity of what premises are covered or exempted from the regulations. If not how might they be improved?

Response

In general the definitions are clear although in the case of designated hotel bedrooms which means a bedroom in a hotel which has been designated by the person having the management or control of the hotel as being a bedroom in which smoking is permitted, the definition should be extended to specify the percentage of bedrooms in an establishment that can be so designated. Otherwise there is a risk that a hotelier could designate all of his bedrooms as smoking permitted which would negate the thrust and purpose of the regulations.

Regulation 2 – Display of No-Smoking Notices

This regulation makes further provision to the display of no-smoking notices and specifies the size and message to be displayed. The sign must also specify the person to whom complaints should be addressed and be displayed so that it is protected from tampering, damage, removal or concealment.

Question 2

Views are invited on this approach.

Response

It is important that the size and message on the sign is specified. There will require to be clarity for enforcement officers in whether a fixed penalty notice can be applied for not providing a sign if the business premises are not in use at the time of the inspection. The Act permits the local authority to affix a fixed penalty of £200 for failure to display notices.

Regulation 3 – “No Smoking Premises”

Paragraph (1) of regulation gives effect to Schedule 1, which sets out the premises or classes of premise which are to be no-smoking premises, whilst paragraph (2) gives effect to Schedule 2, which sets out the premises or parts of premises or classes of premises or part of premises which are excluded from the definition of no-smoking premises. The “no-smoking premises” listed in Schedule 1 and the exemptions listed in Schedule 2 are discussed in more detail below.

Paragraph 3 of regulation 3 defines and elaborates on the terms of ‘premises’, ‘wholly enclosed’ and ‘has access’ as they are used in the Bill.

We are continuing to examine whether the given definition of “wholly enclosed” delivers the policy intention, which is to designate as no-smoking premises all those premises listed in Schedule 1 to the regulation, provided that they are either wholly enclosed or, where they are not wholly enclosed, the extent to which they are not wholly enclosed is significant.

Question 3

Your comments are invited on the existing formula and on how it might be improved.

Response

The formula appears to be logically worded and no comments on adjusting the text can be offered.

Regulation 4 – Fixed Penalty Time Limits, Amount And Payments

Regulation 4 provides further detail on fixed penalties. The regulations provide that an enforcement officer can only serve a fixed penalty notice up to 7 days after the event. It sets out the amount of fixed penalty associated with the various types of offence. The fixed penalties are: £200 for permitting others to smoke in no-smoking premises; £50 for smoking in no-smoking premises; £200 for not conspicuously displaying warning notices in no-smoking premises.

Where an offender pays the fixed penalty within 15 days, discounted amounts are charged. The discounted amount are £150; £30 and £150 respectively.

Question 4

Views are invited on the level of fixed penalties and time limits for payment.

Response

The discounted payment system should ensure prompt payment of fixed penalty fines although the principle of reducing the amount is at odds with the Dog Fouling fixed penalty system which increases the penalty if no prompt payment is made.

The level of fine seems reasonable at this stage and should act as a deterrent.

Regulation 5 – Application by Councils of Fixed Penalties and Account Keeping

This regulation requires councils to keep accounts of their income and expenditure in respect of the administration and enforcement of Fixed Penalty Notices. Any deficit will be made good by the council and any surplus used to improve the “amenity” of the council area. Councils will be required to send an annual statement of the accounts they have kept to Minister along with an explanation.

Question 5

Views are invited on the general approach outlined here.

Response

No difficulty with the principle of accounting for expenditure assuming grants are made available particularly for the early years. This Council expects that much of the expenditure will be related to giving advice and encouraging compliance particularly in workplaces and that only a portion of staff resource required will be targeted at enforcement and the issue of fixed penalty notices. It is unlikely that the penalty fine income will exceed expenditure.

Schedules to the Regulations

Schedule 1 sets out the definitive list of those premises that will be no-smoking premises for the purposes of the Act. This is required by Section 4(2) of the Bill which provides that Ministers will make regulations prescribing premises, or classes of premises, as “no-smoking” premises. Section 4(4) of the Bill limits the kinds of premises that can be prescribed as being no-smoking premises by making it a condition that they must be wholly enclosed and also fall within one of 4 stipulated categories.

Schedule 2 lists the premises or parts of premises or classes of premises or parts of premises which will be exempted from the no-smoking regime.

There are a number of issues in relation to Schedule 1 and 2 on which your views are sought:

Schedule 1: No-Smoking Premises

Under Section 4(4) of the Bill, the kind of premises which can be defined as no-smoking are those which are wholly enclosed and :-

- (a) to which the public or a section of the public has access
- (b) which are being used wholly or mainly as a place of work by persons who are employees
- (c) which are being used by and for the purposes of a club or other unincorporated association
- (d) which are being used wholly or mainly for the provision of education or of health or care services.

It is intended therefore intended that the list of premises included in Schedule 1 to the regulations be definitive. Ministers will have the power to add to the list of no-smoking premises by way of amendment of the regulation if it proves to be deficient in any way.

Question 6

Your views are sought on whether there are any premises which fall into the definition of no-smoking premises at section 4(4) of the Bill [(a) – (d) above], but which have been omitted from the list in Schedule 1.

Response

The lists of the kind of premises which are defined as no-smoking seems full and comprehensive and any anomalies that cannot currently be foreseen can be dealt with by way of amendment of the regulations once they have been tested.

Schedule 2 – Exemptions

Adult Care Homes

Ministers recognise that there are a number of issues which make it desirable to exempt adult care homes from the scope of the legislation, not least that these are effectively the homes of their residents.

However, Ministers also recognise that safety and other consideration mean that in many such establishment smoking is not permitted in residents' own rooms, the places which most closely equate to their private place of residence. For this reason, particular consideration must be given to the impact of second hand smoke on non-smoking residents and on staff. In order to address this, we will investigate the best way of ensuring that care homes implement smoking policies which provide smoke-free social areas for non-smoking staff; and the targeting of cessation services and funds on those groups where it would have the greatest benefit.

Question 7

Your views are invited on:

- the general merits of this approach
- the development of smoking policies for residential care homes
- the targeting of cessation services on these groups

Response

Recognising that adult care homes are the permanent homes of the residents it is agreed that detailed work on identifying the needs of smokers and non-smokers in the same building is required. Concerns have also been expressed regarding the need of staff to enter designated smoking areas for cleaning purposes etc. It is recognised that local solutions within these buildings will be required and that no “one size fits all” solution is apparent.

Psychiatric Hospitals and Psychiatric Units

The position of patients in psychiatric hospitals and units, whether they are there voluntarily or on the basis of a compulsory order is different to general members of the public. They do not have a private room and may have limited access to the outdoors. For those reasons, among others, we would for now intend to exempt these locations. We will explore with those involved in the care and treatment of people with mental illness as well as advocacy groups and patients themselves whether arrangements might be developed to allow the legislation to extend to some or all psychiatric hospitals and units in due course.

Ministers recognise that the physical health profile of those with mental illness in Scotland is poor and smoking rates traditionally high. Ministers are committed to reducing the health inequalities experienced by this group of patients and plan to implement a programme of targeted cessation across the sector in support of this aim.

Question 8

Views are invited on:

- the general merits of this approach
- the targeting of cessation services at this group

Response

Although councils do not have a responsibility or knowledge of operating these types of units it is agreed that targeting of cessation services within this group is required although it is likely to be difficult in practice.

However, we feel this regulation should clearly state "Adult" Psychiatric Hospitals and Psychiatric Units. This authority has responsibility for some children and young people in these types of units and the practice of allowing children as young as 12 years of age to freely smoke must be stopped and brought into the full cover of this legislation.

Hotel, Guest House and B & B Bedrooms

The regulations have been drafted to include hotels, guest houses and B & B's within the scope of the law, but to allow properties the ability, if required, to designate bedrooms in which smoking may be permitted.

Question 9

Views are invited on the merits of this approach.

Response

Agreed although there requires to be a maximum percentage of bedrooms which can be designated for smoking to prevent a hotelier or guest house proprietor from designating all of their bedrooms as "smoking permitted" which would negate the thrust of the legislation.

Omissions from Schedule 2

Question 10

Are there any premises which, taking into account humanitarian, practical or other considerations, are omitted from the exemptions list in Schedule 2?

Response

None of which we are aware.

4. FINANCIAL IMPLICATIONS

There are no financial implications as a result of this consultation exercise. Once the regulations are enacted the Environmental Health Officers and support staff will have promotion and enforcement duties. There are no resources within the ECP 05/06 Revenue Budget to meet any such costs but the Minister has indicated that grant payments will be made to councils. The Director proposes that the council costs for promotion and enforcement will not exceed the levels of grant payment.

5. HUMAN RIGHTS

There are no human rights implications in connection with this report, however, implementation of any future legislation will require to take into account Article 8 which is the right to respect for private and family life, home and correspondence. Whilst there is no right to smoke, encroaching upon someone's activities in their home may be a breach of their human rights. It is hoped that

this issue will be fully addressed by the executive in advance of any legislation and a considered view taken on where exemptions should be applied.

6. CONSULTATION

The Chief Executive, Director of Law and Administration, Director of Finance, Director of Social Work & Health, Director of Property Services and the Personnel Services Manager have been consulted on the contents of this report.

S R Heggie
Director of Environmental and Consumer Protection

No background papers, as defined by Section 50D of the Local Government (Scotland) Act 1973 (other than any containing confidential or exempt information) were relied on to any material extent in preparing the above report.

29/03/05
SH/GK