

ANNEX B

**DRAFT: THE SMOKING, HEALTH AND SOCIAL CARE (SCOTLAND)
ACT 2005 (PROHIBITION OF SMOKING IN CERTAIN PREMISES)
REGULATIONS 2005.**

Regulation 1: Citation, interpretation and commencement.

Response to question 1:

"Club Premises".

This definition may require amendment to clarify the position of those clubs which meet in private residential premises to conduct their activities, business or hold social events associated with the purposes of the club. (See also response to Question 10). In addition, a number of (highly respectable) clubs provide bedroom accommodation for the use of their members and it would seem appropriate to either include an additional definition of "designated club bedroom" or amend "designated hotel bedroom" to read "designated club or hotel bedroom". (see also response to Question 10).

"Designated Police Room"

While the definition is clear in regard to the premises it is silent on the extent of the exemption to those personnel permitted to smoke therein. This may require clarification. (see response to question

10).

"Educational Institution"

Is it intended that bedroom accommodation provided in university halls of residence, colleges or schools will be regarded as living accommodation and come under the definition of "residential premises" and therefore, exempt from the smoking prohibitions? If not, should there not be a further definition encompassing designated bedrooms in such premises?

"Premises"

The definition of premises includes "any land". Does this mean, or could it be held to include, the environs of any wholly enclosed premises and if so, would it preclude the use, by those wishing to smoke, of external structures which, although roofed, would not necessarily come within the definition of "wholly enclosed" as cited in the draft regulations? If so it may be necessary to clarify the situation.

"Hotel"

I would suggest the term "Guest" should be substituted for that of "traveller"; some occupants of hotel accommodation are virtually full time residents.

"Vehicle"

This term includes any vessel which, if used

for the purposes of public transportation, would be subject to the proposed prohibition on smoking. If, however, this restriction were to lapse if the vessel left British territorial waters, it would perhaps be better to clarify this in both the definition and schedule 2.

The following which do not appear in the list of definitions in Regulation 1(2) may be worthy of consideration for inclusion.

"Armed Services Establishments"

Is it intended that Army, Royal Navy, Royal Air force and territorial forces establishments, vehicles and vessels will fall within the scope of the proposed legislation and if not, is it intended that further legislative measures will impose the same prohibitions in respect of both service and civilian personnel employed in these premises and in service canteens and messes. If not they should, in the interest of clarity and public information, be included in the list of exemptions in schedule 2 together with the reasons for their exclusion. If they are to be subject to the restrictions they should be included in schedule 1. In both cases clear definitions of such premises would be required. It may, of course, be that, as defence is not a devolved matter, a decision has already been taken by the United Kingdom parliament and included in its own

legislation on the same subject. In either case it may, given the Scottish parliament's commitment to all-embracing legislation, appear to the general public to be anomolous if premises which clearly fall into the no-smoking category of its own proposed legislation were to be exempted.

"Smoking"

The proposed legislation seeks to make it an offence to smoke or permit others to smoke in no-smoking premises. The act of smoking is defined in section 4(1) of the draft Bill and as this is the substantive act which forms the basis of any alleged offence, the definition should also be included in the draft Regulations.

Regulation 2: Display of no-smoking notices.

I have no comment to make on this regulation.

Regulation 3: "No-Smoking Premises"

Response to question 3:

"Premises"

For comment on Regulation 3(a) (i) "any land", see response offered in answer to question 1 under the heading of "premises".

In regard to sub-sections (b) and (c) I have no comments to offer. Any challenges to the definitions of either in respect of particular premises or "the

public" will have to be decided in the light of experience.

Regulation 4: Fixed penalty time limits, amounts and payments

Response to question 4:

The time limit allowed for payment of the discounted amounts seems sufficient while the 29 day period by which undiscounted fines must be paid is comparable to other fixed penalty limits.

In regard to the amounts chargeable in respect of the alleged offences, I doubt if the level of penalties imposed, whatever they may be, will be the determining factor in whether the proposed legislation will prove to be fully enforceable. This will, instead, depend upon whether there is sufficient public acceptance of and therefore, compliance with the prohibitions.

Regulation 5: Application by councils of fixed penalties and account keeping

Response to question 5:

This Regulation requires that any deficit between income and expenditure incurred as a result of the administration and enforcement of Fixed Penalties should be met by the councils concerned. As any such

defecit will, presumably, have to be met from Community Charge revenue and therefore impact on the level of these charges, it is right that proper accounting procedures should be in place and open to public scrutiny.

SCHEDULE 1: NO-SMOKING PREMISES

Response to question 6:

"Armed Services Establishments"

See comments offered in response to question 1.

"Prisons"

If it is intended, as stated in Appendix 1 of the Draft Regulatory Impact Assessment, that prisons, which would appear to fall within the definition of no-smoking premises, are to be subject to smoking restrictions (whatever legislative or regulatory means are employed to achieve this) then, in the interests of clarity and public information, they should be included in the list of such premises in schedule 1. For the same reasons if prisons are to be exempted, wholly or partially, they should be listed in schedule 2 under Regulation 3(2).

Those serving custodial sentences are not only "residential" during their incarceration but their freedom of movement within this context is also severely restricted. They cannot go out of doors

or return to their cells at will if they wish to smoke and in the latter case may in any event, have to share cell accommodation with another prisoner who is a non-smoker. In addition, they cannot, for security and safety reasons be left unaccompanied by prison staff. It would not seem possible, therefore, to avoid the transmission of tobacco smoke to others, the perceived dangers of which is the principal justification for the prohibitions provided for in the proposed legislation.

The dilemma is that a smoking ban in prisons is likely to cause considerable resentment among prisoners and in turn lead to unfortunate consequences. If, however, exemptions were made the anomaly would not be lost on the public that while they, as normally law-abiding citizens, were required to comply with a ban on a formerly legal activity in their places of work and leisure, those who had been convicted of crimes serious enough to require their imprisonment were apparently receiving special dispensation.

"Public Telephone kiosks"

These structures are wholly enclosed and should be included in schedule 1.

Schedule 2: Exemptions

Response to question 7

Adult care homes

These premises must be exempted from the

definition of no-smoking premises. They are as stated, effectively the home of their residents who must, therefore, be free to lead the life-style of their choice, including their right to smoke if they so wish. The rights of non-smoking residents and staff are, however, equally important and the only equitable solution is the provision of separate smoking and non-smoking areas, providing equal facilities for both groups.

In regard to the targeting of cessation services, it may be considered that elderly and therefore, experienced citizens, well-used to making their own decisions and exercising their own choices, will require no more than the provision of such information about the availability of such services sufficient to access them if they so wish.

Response to question 8

Psychiatric hospitals and units

Partly for the reasons already given, lack of private accommodation and limited outdoor access, it is important that premises devoted to the care of patients suffering from psychiatric illness must be exempted. In addition, it may be considered that some patients, because of their illness, may be suffering from heightened stress levels and failure to provide adequate facilities for those who wish to smoke would only increase their discomfort.

In regard to the proposed plan to implement a programme of targeted cessation across this sector to improve patients physical health, it should be recognised that not all poor physical health in this group results from smoking. Other factors, such as alcohol or drug abuse, should perhaps be taken into account together with the self-neglect and self-harm that can result from these. In addition, poor housing and other environmental conditions may play a part in the determination of physical health.

It may also be considered that patients undergoing hospital treatment for psychiatric disorders may not wish the added burden of smoking cessation measures at this time. Such measures would, therefore, perhaps be best left until patients had made sufficient progress to justify their discharge from hospital and even then, in my view, their implementation should be approached with caution.

Response to question 9

Hotel, guest house and B & B bedrooms

There are sound reasons for providing sufficient accommodation within hotels, etc. for those who wish to smoke. (see also response to question 10)

Omissions from schedule 2

Response to question 10

"Club premises"

These are included as no-smoking premises in schedule 1 and defined as: "any premises which are used by and for the purposes of a club or other unincorporated association whether for profit or not." "Premises" includes any building or part of a building while "Residential premises" means, inter alia, "so much of any premises as is for the time being occupied or used by any person for residential purposes or otherwise as living accommodation."

While it is the intention of the proposed legislation to impose a complete prohibition on smoking in club premises and exempt residential premises it should perhaps be recognised that a number of clubs meet to carry out the activities of the club, conduct its business and participate in club related social functions at the home of one or other of its members, e.g. writers' clubs or circles, book clubs and many others. It may be that the term "residential premises" is intended to supercede that of "club premises" and, therefore, exempt private homes used for the above purposes from the prohibition. If, however, it is intended that "club premises" should take precedence and include residential premises while used for club purposes, then a very strong case can be made to exclude such private homes from the prohibition. To do otherwise would, effectively, remove the right of a householder to pursue his or her life style choices within the confines of his

or her own home.

In either case the relevant definitions and appropriate inclusions or exclusions in the schedules should be adjusted to make clear the legislative intention.

"Designated club bedrooms"

There exist some, very respectable, club premises in which bedroom accommodation may be made available for use by club members and it would seem, therefore, that the same exclusion accorded to designated hotel bedrooms should apply. If agreed, such exclusions should be included in schedule 2 and the appropriate definitions adjusted accordingly.

"Hotel, guest house, club and b & b accommodation"

It is a long held principle in law that hotel guests, etc. are entitled to regard the premises as their home during the period of their residence there. This is recognised in the law pertaining to liquor licensing which allows the sale, purchase and consumption of excisable liquor to residents outwith the normal permitted hours, i.e. at any time.

While the proposed exemption of designated hotel bedrooms goes some way towards recognising this it would seem sensible, if the above principle is to be maintained, as it should be, that a separate public area should also be provided for guests who wish to smoke there. This would, of course, apply equally

to club premises where bedroom accommodation was made available for members. If approved this exemption should be included in schedule 2 and definitions adjusted accordingly.

"Hospitals"

Hospital in-patients undergoing treatment or convalescence are undoubtedly "in residence" during their stay in such premises and the ability and freedom of those patients who wish to smoke to go out of doors to do so may, for safety or medical reasons, be restricted. In these conditions they may appear to be disadvantaged in comparison to other "residents" in care homes or possibly prisons, who have or may have access to indoor areas exempt from the prohibitions. In these circumstances it would seem sensible, on humanitarian grounds, to provide designated smoking rooms in all in-patient hospitals.

"Halls of residence or living accommodation in or attached to University or other educational establishments"

It should be made clear whether bedrooms or other living accommodation in or associated with educational establishments are to be regarded as a part of such establishments and subject to smoking prohibitions or as residential premises and exempt.

"Jury and witness rooms in court buildings."

Members of the public called for jury service may, depending on the seriousness or complexity of the case, have to spend very long periods of time in court and during their deliberations in a jury room. In neither situation are they able to leave the court buildings should they wish to smoke and in some protracted trials, these conditions may pertain for days, weeks or even months.

Those summoned as witnesses in court cases may also spend lengthy periods in witness rooms while waiting to be called. Again their freedom to leave court buildings should they wish to smoke is severely restricted as it is often not possible to determine when their presence will be required in court.

In these circumstances there are, therefore, sound reasons to exclude jury and designated witness rooms from the prohibition and include them in the list of exemptions in schedule 2.

"Designated police rooms"

Detention and interview rooms and cell accommodation are listed in schedule 2 as premises where smoking is to be permitted. It is not clear, however, whether the exemption is intended to apply only to prisoners, detainees and interviewees or extend to police officers and civilian personnel.

"Private functions in hotels, public houses clubs and halls"

Many of these premises, listed as no-smoking in schedule 1, do from time to time let out part or all of their premises to accommodate private functions to which the general public are denied access. These may, amongst others, include wedding receptions, dinners, dances, anniversary celebrations, post funeral occasions and Christmas and/or new year functions. In circumstances where these take place in a separate part of the premises or in the premises as a whole, e.g. halls, and to which only those attending are permitted access then, provided no staff are required to be present other than to serve food for a limited period when smoking would not be permitted and any alcohol must be provided and served by the organisers of the event or purchased in a non-smoking part of the premises and conveyed to the function by those attending (thus obviating any perceived risks associated with environmental tobacco smoke) there would not appear to be any reason why smoking should not be permitted at such functions. It is, therefore considered that private functions held in otherwise no-smoking premises should be exempted from the proposed prohibitions and included in schedule 2.

"Theatres and premises used as a broadcasting studio or film studio or for the recording of a performance with a view to its use in a programme service or in a film intended for public exhibition"

All of the above are listed in schedule 1 as premises in which smoking is to be banned. There will, however be theatre, television and film productions in which the scripts, screenplays, story lines, themes or entertainments call for smoking by the actors or entertainers as a necessary or, indeed, intrinsic element of the performance. The inclusion of such an element must, of course, be left to the discretion of those responsible for its scripting, production and direction. In these circumstances it is necessary that those concerned are exempted from the restrictions on smoking as failure to do so may well be regarded as interference with or censorship of artistic freedom of expression.

"Vessels used for public transportation purposes"

As passenger cabins serve the same purpose as hotel bedrooms a further exemption should be considered to include "designated passenger cabins" in schedule 2. In addition, if the proposed restrictions on smoking lapse when the vessel leaves British territorial waters, this information should be included in schedule 2.

ANNEX C

DRAFT REGULATORY IMPACT ASSESSMENT

Item 9: Enforcement and sanctions

The proposed legislation creates the following offences:

- (a) smoking in no-smoking premises;
- (b) A person having management or control of no-smoking premises knowingly allowing someone to smoke in such premises or failing to display the required notices therein, and;
- (c) failing to give one's name and address to an enforcement officer.

It is intended that local authority Environmental Health Officers will be responsible for the enforcement of the proposed legislation and will be given power to enter and search, by force if necessary, any no-smoking premises. These officers will also have authority to issue Fixed Penalty notices for alleged offences.

Comment:

In regard to the above a number of difficulties may emerge in the enforcement of the proposed legislation in its present form. These are listed below:

"Power of Entry and Search":

- (a) Included in this power is authority to use any necessary force. Who and by what means is this power to be exercised? Enforcement officers may experience great difficulty in attempting to exercise this power unsupported.

(b) There does not appear to be any specific offence included in the proposed legislation of refusing entry, failing to accord entry or obstructing the entry of enforcement officers to or within premises. It may, of course, be possible to rely on the common law crime of attempting to defeat the ends of justice by such actions but since the other offences and powers are statutory it would seem logical to also include the aforementioned offences in the legislation.

(c) In regard to club premises, it is to the best of my knowledge, only Registered clubs or those that require to be licensed in some other way that are likely to be readily identifiable to enforcement officers. There may, however, be many clubs, meeting in a variety of premises for a range of activities, that do not at present have to register or record their presence. In those circumstances is it intended that **all** clubs will be required to inform local authorities of their existence, activities and venues? If not it is likely that enforcement officers will be unaware of them and therefore, unable to enforce the proposed legislation.

(d) Is the power of entry intended to give enforcement officers unrestricted access to all premises and all parts of premises (as defined in the draft Regulations) at any time? If so many problems could conceivably arise in terms of:

(i) Intrusions on personal privacy, e.g. hotel or

club bedrooms; public toilets; hospital wards and treatment areas; health centres; clinics; non-designated police rooms or other areas within police stations where prisoners are or may be processed and; some shop premises.

(ii) Health and Safety issues, e.g. factories; kitchens; construction areas; laboratories and other premises where personnel without the relevant training or safety equipment or protective clothing are not normally permitted access.

(iii) Potential disruption of normal activity, e.g. cinemas; concert halls; theatres; broadcasting or film studios; conference centres, educational establishments, and; churches and other places of public worship during religious services.

(iv) Issues of confidentiality, e.g. police, fire and ambulance stations, including their offices, personnel and criminal record facilities and control rooms; conference facilities within centres or other office accommodation and; club premises during meetings to which non-members are normally denied access

(v) Residential premises. Will power of entry extend to the private residences of any club members who permit their homes to be used for club purposes i.e. club activities, meetings, social functions, etc. (see also comments in response to questions 1 and 10)

The aforementioned list of examples is not intended to be exhaustive but only an illustration

of those circumstances in which unrestricted entry at any time may prove problematic particularly, as one assumes, there will be no prior notice given of inspections by enforcement officers.

If power of entry is not, however, intended to be wholly unrestricted then its limitations should be included in the legislation.

"Power to require the name and address of an alleged offender"

The draft legislation gives enforcement officers power to require an alleged offender or person having information relating to an alleged offence to give their name and address. There does not, however, appear to be any requirement to provide verification of these details and in these circumstances it will be only too easy for someone accused of smoking in no-smoking premises to give a false name and address. In addition there are no powers of detention conferred on enforcement officers who will, therefore be unable to hold any alleged offender until verification is sought or to stop an alleged offender who gives false details, ignores the request or refuses to accept a fixed penalty notice from simply walking away and departing the premises. It should be noted that subsequent enquiries within the premises with a view to identifying such a person may not always meet with success.

To ensure total compliance, therefore, the legislation would have to give power to enforcement officers to demand verification of details and power of detention in the aforementioned circumstances. It may, however, be that there would be considerable public disquiet together with opposition from other quarters if such an extension of enforcement powers were to be contemplated.

"Allowing someone to smoke in no-smoking premises"

This offence is committed by any person having management or control of no-smoking premises who knowingly allows someone to smoke therein.

The relevant word in the section is, of course, **knowingly** and it may well be difficult to prove that in a busy pub, bar, hotel, club or other premises a manager or, indeed, any member of his or her staff was in the part of the premises or could otherwise have been aware of an alleged offence at the time it was committed. This is particularly true of premises where there are several rooms or partitioned areas.

It may be that, on these grounds, the defences included under the relevant section of the draft Bill will frequently come into play and it will be difficult to prove a charge.

"level of proof"

In the event that an alleged offence is denied or contested and the alleged offender resorts to the appeals process, described in the draft Bill, it will be necessary at any subsequent hearing to produce sufficient competent evidence to prove that the substantive act forming the basis of the complaint had, in fact, taken place, namely smoking in no-smoking premises. In the draft Bill "smoke" means smoke tobacco or any substance or mixture which includes it; and a person is to be taken as smoking if the person is holding or otherwise in possession or control of lit tobacco or any lit substance or mixture which includes tobacco. Corroborated eye-witness evidence of this would, of course, be sufficient but it is probable that on the appearance of enforcement officers, smokers would quickly conceal or dispose of their cigarettes, cigars and pipes and other evidence might be difficult to obtain. It may, for example be held that lit tobacco products resting in a makeshift ash tray were insufficient in themselves to prove a charge against any particular alleged offender. Spent or stubbed out tobacco would be even more problematic in this regard. Such items might, of course form the basis of a charge against the person responsible for the premises that he or she permitted others to smoke therein but only if it could be proved that the offence was knowingly committed.

In any event it would, in such a case, be necessary

to enter the physical evidence as productions at any subsequent hearing. In practical terms this would mean that enforcement officers would have to take possession of the items in question and as far as I am aware, the present draft legislation does not confer on them any powers of seizure. Again, any proposed extension of the existing powers accorded to enforcement officers might provoke opposition.

ANNEX C:

DRAFT REGULATORY IMPACT ASSESSMENT

ITEM 3: OPTIONS

COMMENT:

The primary purpose of the proposed legislation is to protect non-smokers from the perceived risks associated with exposure to environmental tobacco smoke in enclosed public places. In pursuit of this objective three policy options were advanced for consideration. Of these, two require enabling legislation while the other depends on voluntary compliance.

The voluntary option (No.1) which depends on non-legislative compliance with restrictions on smoking would, inter alia, ban smoking where and when hot food is served and at bar counters in licensed

premises. In addition all licensed premises would be required to allocate smoking and non-smoking areas and display signs indicating their smoking policy.

While similar measures have had some success in the past, it is unlikely they would fully meet the Scottish Executive's policy objectives.

The legislative option (No.3) which would prohibit smoking in most public places but completely exempt the hospitality sector, would, again, fail to meet the Scottish Executive's policy objectives in that little or no protection would be afforded to employees or non-smoking patrons in such premises. It should, however, be noted that there was strong support for the exemption of the hospitality sector within the consultation process.

The other legislative option (No.2) and that which most closely reflects the Scottish Executive's policy objectives, the principal elements of which are contained in the draft legislation, provides for a complete prohibition of smoking in all enclosed public places with only limited exemptions on humanitarian grounds. Unfortunately, this option fails to make any provision for those who wish to continue to exercise their right to smoke, particularly in premises associated with the hospitality sector, despite the support for such provision expressed in various strands of the consultation process and in particular in the MRUK Omnibus survey.

In the light of the above it would seem that

the Scottish Executive's policy objectives will not be met by either the voluntary option or the legislative option providing for complete exemption for the hospitality sector. While the other legislative option, which calls for a complete prohibition of smoking in all enclosed public places may do so, it may be considered that it will not achieve the level of public support necessary for successful implementation and enforcement. In view of this it may be prudent to consider the following suggested further legislative option.

PROPOSED FURTHER OPTION:

SMOKE FREE LEGISLATION IN ENCLOSED PUBLIC PLACES BUT WITH THE PROVISION OF SEPARATE ACCOMMODATION FOR THOSE WHO WISH TO SMOKE.

The purpose of this proposed further legislative option is to provide a completely smoke-free environment, for those who wish it, within the work place and in premises associated with the hospitality and leisure sectors while ensuring that in both cases, provision and accommodation is made available for those who wish to exercise their right to smoke.

"The work place"

For practical reasons it would not seem possible for most organisations to provide separate non-smoking and smoking work areas or stations. It is, therefore,

envisaged that all such places will be non-smoking. All employers do, however, permit regular work breaks, e.g. tea, coffee and lunch breaks and it is proposed that adequate accommodation, separate and sealed off from similar non-smoking facilities should be provided for those who wish to smoke during their breaks. The advantages of this provision would be that: non-smokers would be fully protected from the effects of environmental tobacco smoke; those who smoke will have comparable facilities to those who do not; smokers will not be forced to leave the premises in our all too frequent inclement weather if they wish to smoke; there will be less risk of resentment on the part of smokers who may feel that their needs are not being met by employers and that they are less advantaged than their non-smoking colleagues, and; it would avoid groups of workers gathering immediately outside their places of employment to smoke.

It is emphasised that smoking lounges, rooms and areas, etc., would have to be completely sealed off from non-smoking facilities, that no other employees, e.g. catering staff would be required to enter smoking areas and that smoking would not be permitted in any other part of the premises such as work or dining areas.

"Pubs, clubs, hotels, restaurants and cafes"

It is proposed that no smoking should be permitted

at any time in any part of these premises where food is being prepared, served or consumed. In addition, smoking should be prohibited in any part of such premises in which employees are required to provide service. These would include bar counters and tea or coffee lounges where waiting service is provided.

Smoking would, however, be permitted in designated smoking rooms or areas completely separated and sealed off from the non-smoking part of the premises. The owners, managers or those otherwise responsible for such premises would, in the light of their knowledge and experience of the requirements of their smoking and non-smoking clientele, have to make an equitable determination of the space within the premises to be made available to each group.

In practical terms this would mean that in restaurants, cafes hotels and pubs or clubs serving food, meals would always be served and consumed in non-smoking areas. Those who wished to smoke after their meal would have to move to the separate smoking lounge or room and if they wished tea, coffee or other drinks, would require to purchase them in the non-smoking area and convey them personally to smoking accommodation.

Similarly, in pubs, clubs and hotels, a strict no smoking policy would be in force in all parts of the premises with the exception of those designated smoking rooms or areas which would have to be completely separate and sealed off from the rest

of the non-smoking premises. Those choosing to make use of smoking areas would, if they wished to purchase drinks, have to do so at non-smoking bar counters and convey them personally to the smoking area.

It should be noted that in many restaurants and cafes it is the present practice for customers to purchase tea, coffee or other drinks and convey them personally to the place where they will consume it and there can, therefore, be no practical reason why this should not be done in relation to a separate smoking area. Similarly, many, if not most, pubs and clubs, etc. at present serve drinks at bar counters which are then conveyed by the purchaser to another part of the premises.

An objection sometimes raised against the principle of segregated areas is that it would be difficult to ensure that smoke would not drift from smoking to non-smoking accommodation. It may, however, be considered that by exercising goodwill and determination and utilising modern technology, it should not be beyond human ingenuity to seal smoking rooms or lounges in such a way that this perceived risk could be overcome.

A further concern has been expressed that it would be more complicated to police a system of segregation than a comprehensive prohibition. There does not, however, seem to be any valid reason why this should be so if designated smoking areas are notified in advance and both smoking and non-smoking

rooms are clearly signed. In any event any apparent complications would be off-set by the probability of higher voluntary compliance levels.

It is emphasised that these proposals are not intended to be voluntary and that there would be a legislative requirement on those who wished to continue to accommodate their smoking clientel to provide the facilities described above.

There will, of course, be some, smaller, premises which will not have sufficient space to provide a separate smoking area. In these instances, in order that such venues should not be disadvantaged because of patrons moving to premises able to provide smoking facilities, it is proposed that, in consultation with local licensing authorities, they should, at the time of the grant or renewal of their liquor licences, be able to opt for designation as wholly smoking or wholly non-smoking premises. In these circumstances it would be a further legislative requirement that notices, prominently displayed both outside and within the premises, should clearly indicate their status in regard to smoking policies.

Some concern has been expressed that legislative measures should ensure that a "level playing field" is created in order that smaller venues are not disadvantaged by their inability to provide both smoking and non-smoking accommodation in a competitive market. It should, however, be recognised that in the licensed trade, as in all other commercial fields,

businesses, large and small, exist by meeting the demands of their customers and these can differ greatly. At present some pubs provide meals, music, quiz nights and other entertainments while others do not because there is no customer demand for it.

In the same way owners and managers will be very well aware of the smoking habits of their clientele and in premises where there is high percentage of smokers, will opt to meet that demand. In other premises the situation will be reversed and a no-smoking policy will be the preferred option. In both cases neither will be disadvantaged commercially and customers will be able to exercise their choice of preferred venues.

ADVANTAGES OF THE PROPOSED FURTHER LEGISLATIVE OPTION

Of the options listed in the Draft Regulatory Impact Assessment neither Option 1 nor option 3 are likely to meet the scottish executive's policy objectives. Option 2 will do so but makes no provision for those who wish to exercise their right to smoke - a right that attracted some support from smokers and non-smokers alike in the consultation process. The further suggested option, outlined above, will do both in that, if properly implemented and enforced, a completely smoke-free environment will be available to those who wish it, thus obviating any perceived risk from environmental tobacco smoke, while also

accommodating and making provision for smokers. It would also have the effect of allaying the concerns of smokers that they risk being ostracised as a result of the proposed legislation in its present form and reassuring those who may fear that the proposals might be a precursor of future restrictions.

While the further proposed option does, therefore, meet the principal policy objective, i.e. providing protection from environmental tobacco smoke, it would not have any effect on the prevalence or consumption of tobacco by active smokers nor would it help to "de-normalise" smoking within society. It may, however, be considered, in the interests of balance and equity, that it would be prudent to restrict efforts to achieve these objectives to the provision of information, education, advice, recommendation and the continued provision of cessation services to those who wish them.

While no definitive costings or benefits are available on the proposed further option it is possible that, because of greater public acceptance and therefore, voluntary compliance with the revised measures outlined, there would be savings in enforcement costs in both the short and long term.

In regard to the enforcement of the proposed legislative measures in option 2, I am not optimistic that the prohibitions will prove to be largely "self-policing" but rather that enforcement will be found to be a difficult, costly and protracted commitment.

In addition, as one who has some knowledge and past experience of the mood and temper of some sections of the scottish people, I greatly fear that attempted enforcement may, on some occasions, lead to serious disturbances and instances of violence. While I sincerely hope that I am wrong in this assessment I do believe such dangers exist and I do not think those risks would be removed or lessened by the imposition of higher penalties for alleged offences.

In conclusion may I venture to suggest that the difficulties and risks I foresee in regard to the draft legislation could be avoided by the adoption instead of the proposed further legislative option outlined above. I would, therefore, respectfully request that consideration be given to this alternative proposal.