

ANNEX B – Draft response from the Drug, Alcohol & Smoking Action Team, Orkney.

This paper explains the meaning of the provisions of the draft regulations. Whilst we welcome comment on any aspect of the regulations, your views are sought on a number of specific issues.

Regulation 1: Citation, interpretation and commencement

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

Q.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?

“Residential premises” – the wording in this section is confusing. It is our view that communal areas in shared residential premises, such as student accommodation, nurses homes, hostels etc should be designated as smoke free enclosed public areas. Obviously there would need to be a clear definition of shared residences covered.

Regulation 2: Display of no smoking notices

This regulation makes further provision in relation to the display of no-smoking notices, in addition to the requirements already stipulated under section 3(1) of the Bill. The regulation sets out the minimum size of a no-smoking notice (230 mm x 160 mm) and specifies that it should include an international "no smoking" symbol of at least 85 mm. in diameter. 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.

Q2. Views are invited on this approach.

It is our view that a standard, nationally produced notice should be made available to ensure clarity, consistency and an appropriate sense of national commitment. Such a notice should have space for details of both the person designated to implement the ban in the premises, and the local enforcement agency, including telephone numbers e.g. the manager of a hotel and the local environmental health service. The national Smokeline number should also be included for people wanting to quit, as this service can provide people with details of local services.

We also feel that advice and support should be made available to owners and managers of premises in how to handle members of the public who are unhappy about the ban. We see this as a short-term issue with wide public acceptance coming about as people get used to the ban.

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 parts of premises which are excluded from the definition of no-smoking premises. The "no-smoking premises" listed at Schedule 1 and the exemptions listed at Schedule 2 are discussed in more detail below. Paragraph 3 of regulation 3 defines and elaborates on the terms '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 regulations, provided that they are either wholly enclosed or, where they are not wholly enclosed, the extent to which they are not wholly enclosed is not significant.

Q3. Your comments are invited on the existing formula and on how it might be improved.

It is our view that there is a requirement for greater clarity here as it may be anticipated that some premises will open doors during operation and claim not to be wholly enclosed. The legislation should not discourage the use of "bus shelter" type smoking shelters whilst at the same time ensuring that bars and clubs do not get round the regulations by having "partially enclosed" areas outside the spirit of the regulations. Perhaps a roof and walls capable of being wind and watertight at any point during the use of the structure should be qualified as a wholly enclosed area.

Regulation 4: Fixed penalty time limits, amounts 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 amounts 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 amounts are: £150; £30 and £150 respectively.

Q4. Views are invited on the level of fixed penalties and time limits for payment.

No comments

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 Ministers along with an explanation.

Q5. Views are invited on the general approach outlined here.

It is not clear here whether any additional funding will be coming to Councils to cover costs associated with enforcing the Act. It should be noted that in a place like Orkney, a very small number of staff must cover a wide range of premises over a large geographical area, and fines may well not cover the cost of doing this. Staff investigating a complaint on one of the outer isles of Orkney may well have to make a visit to the island, possibly with an overnight stay, in order to gather information for a fixed penalty. It is not reasonable to expect effective implementation without additional staffing. Serving a penalty within 7 days of a breach (see regulation question 4) may not be practicable/ cost effective for remote and rural locations/ outer isles.

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; or
- (d) which are being used wholly or mainly for the provision of education or of health or care services.

It is 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 regulations if it proves to be deficient in any way.

Q.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.

Communal areas of shared residential premises such as hostels, student halls of residence, nurses homes etc.

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 considerations mean that in many such establishments 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.

Q.7 Your views are invited on:

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

We are confused by the reference to “smoke-free social areas for non-smoking staff” and assume that this should refer to residents, not staff. Staff should not smoke on the premises at any time, unless they are residential and using their own rooms for smoking. Cessation services should be targeted firstly at staff working in residential care homes, and then made available to residents.

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 are 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.

Q.8 Views are invited on:

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

It is our view that non-smoking should still be presented as the norm in such units, with a separate smoking room provided that is not the main lounge area. Once again, cessation work should be targeted firstly at staff, who should not be able to smoke whilst at work or with their patients.

Hotel, guest house and B & B bedrooms

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

This approach is acceptable but perhaps premises with more than 3 letting bedrooms should ensure that the majority of their bedrooms are non-smoking. All shared areas should be non-smoking at all times.

Q.9 Views are invited on the merits of this approach.

Omissions from Schedule 2

Q.10 Are there any premises which, taking into account humanitarian, practical or other considerations, are omitted from the exemptions list in Schedule 2?

We feel that promoting non-smoking as the norm and protecting people from environmental tobacco smoke is important in any of these areas used as a workplace or communal rented residence e.g. student halls, nurses homes. It needs to be made clear that in such shared accommodation, single bedrooms may be designated for smoking but not shared rooms, rest areas etc. In such premises it would be better to provide a designated smoking room, provided that this additional to the main rest and refreshment area.

In addition to psychiatric hospitals and units, there is a question mark over other arrangements for such patients – for example, in Orkney we have a “Place of safety” bed as a holding facility for patients being transferred to specialist care off-island. Could this 1 room be an exemption within a general hospital?

The other question mark is over long-stay patients in hospitals for whom the hospital is a home. There are some patients requiring a higher level of medical care than adult care homes provide, within hospital premises, including terminally ill patients.