



Glasgow City Council

Policy and Resources (Community Safety and Health) Sub-Committee

Report by Director of Development and Regeneration Services

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Scottish Executive Consultation on Regulating Smoking in Certain Premises

Purpose of Report:

To present a Council response to a Scottish Executive consultation on regulating smoking in public places.

Recommendations:

It is recommended that members agree the attached comments as the Council's response to the Scottish Executive consultation.

Ward No(s):

Citywide:

Local member(s) advised: Yes No

Consulted: Yes

No

PLEASE NOTE THE FOLLOWING:

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1. BACKGROUND

Members have previously considered reports on the damage caused by smoking to the health of Glaswegians. The Council is a core partner in the city's Tobacco Strategy and, as part of its commitment to that strategy, has invested an additional £250,000 annually in projects to tackle tobacco use. Subsequently, members also agreed a clear position of support for the Scottish Executive proposals to ban smoking in public places. Following the consultation on this matter, the Scottish Executive has issued draft guidelines which relate to the administration of this ban and to any exemptions from it.

2. DRAFT REGULATIONS

2.1.1 The Smoking, Health & Social Care (Scotland) Bill was introduced to the Scottish Parliament by Ministers in December 2004. The legislation is expected to come into effect by spring 2006. Smoking will be prohibited in most enclosed public places; there will be some exemptions on humanitarian or practical grounds. The appendix to this report provides a list of those premises to which the ban will apply and those for which exemptions will be permitted.

2.2 The regulations contain specific proposals on:

- The definition of enclosed public places
- Appropriate signage
- Levels of fine for breaching the law
- Account-keeping by local authorities for fines collected
- The merits of exempting certain premises, such as adult care homes and psychiatric units.

An annex to the regulations also contains estimates for the potential costs and savings to the Scottish Executive, local authorities, and business of introducing and maintaining the law. The Scottish Executive has asked for responses to these proposals.

3. COUNCIL COMMENTS

3.1 Council services have had the opportunity to consider many of the proposals made in the Scottish Executive consultation since the announcement of the forthcoming ban. In particular, discussions have taken place with COSLA on the potential costs of administering the ban. The principal responsibility for this will rest with Environmental Protection Services through its enforcement function. In a city the size of Glasgow, containing a huge number of premises which will be affected by this legislation, enforcement will be a major exercise if it is to be effective. While the costs of this enforcement could be substantial, it is unclear at this stage what level of fixed penalties could be generated, and therefore what level of deficit might be incurred. The Scottish Executive therefore needs to consider providing adequate funding for the implementation of this legislation, rather than placing the burden of additional costs onto local taxpayers.

3.2 The Council has a clear smoking in the workplace policy, which prohibits smoking for staff and public in Council premises. The only exception to this is in elderly care homes, where a room is set aside where practical for residents to smoke. These rooms have been fitted with extraction systems to remove the smoke. It is recognised that this position is not ideal and will need to be carefully managed with a view to putting alternative arrangements in place. This exemption therefore represents a position which the Council would not wish to accept beyond a short-term period; it offers only an interim approach on pragmatic grounds. The Council is concerned that its staff should be protected from environmental tobacco smoke and that residents should be given smoking cessation support in order to ensure that all Council premises become smoke free.

The following comments relate to the specific proposals made in the Scottish Executive consultation:

3.3 Definitions

The addition of definitions for 'day care centre', 'public', and 'employed' would be helpful. Night clubs should be included along with discotheques in Regulation 3(1)6 and community centres should be added to Regulation 3(1)8.

3.4 Display of no smoking notices

3.4.1 The prominent display of the 'No Smoking' sign is welcomed. The regulations could be more specific in ensuring that notices can be seen by those with a visual impairment by detailing size of text, font, etc. The note of a person to whom complaints should be made could also include a standard paragraph in different community languages to ensure wider awareness. Current Council notices would need to be amended to include such additional details.

3.4.2 This regulation refers to a notice whereas multiple notices might be expected to be displayed dependent on the size and complexity of premises.

3.4.3 The notice does not require an address, only the person to whom complaints should be addressed, and whilst this is not an issue in relation to fixed premises, an address would be essential in relation to vehicles or temporary premises.

3.5 No Smoking Premises

3.5.1 Regulation 3 (1) Schedule 1

The schedule does not appear to include the undernoted premises:

- building sites at certain stages of construction i.e. which do not come within the definition proposed of wholly enclosed but could result in significant exposure to Environmental Tobacco Smoke
- scout halls and similar – i.e. premises, but not a club and not open to the public
- workplaces where only one person is employed but others may be self employed or congregate e.g. hairdressing salons, retail. There are many situations in commercial operations where workers are required to be self employed although for most intents and purposes they have the same status as employees
- the common parts of multiple occupied buildings – many commercial buildings have large areas of common parts including stairs, landings, lifts, toilets, etc
- the lower decks of open top buses
- crematoria and associated waiting rooms provided for use by mourners and similar waiting rooms/shelter facilities at cemeteries
- it would be relevant to include school hostel/residential accommodation, such as is required for some of the national centres of excellence, such as the Dance School of Scotland. Some schools serving remote areas also have hostels. All these types of premises could be considered as falling under existing categories in Schedule 1, but some clarification would be helpful
- clarification on waiting areas which are semi-enclosed in facilities such as bus stations is required

3.5.2 **Regulation 3 (2) - Schedule 2**

Difficulties in interpretation could arise in relation to the inclusion of day centres for adults in schedule 1 and the inclusion of residential care facilities for adults in schedule 2. The use of residential facilities for daycare is understood to be common practice. As indicated in the last bullet point just above, school hostel or residential accommodation should be included in Schedule 1, to clarify that Schedule 2 does not include such establishments.

3.5.3 **Regulation 3(3)(b) – Wholly Enclosed**

Difficulties in interpretation could arise in relation to tented bars/restaurants such as those used at outdoor events in relation to the door space. Bus shelters, whilst not being fully enclosed, are often places where people waiting for their bus are subject to close contact with second hand tobacco smoke from others, and further consideration on tackling this position might be given in due course.

3.6 **Fixed penalties and fines**

3.6.1 **Regulation 4(2)**

The fines in relation to Section 1 of the Act are low, particularly when compared with the situation in Ireland (€3000). It could also be argued that the low level of fines could encourage entrepreneurial operators of businesses to ignore the prohibition and bear the fines, particularly if business were to increase dramatically as a result. For these reasons it is recommended that the level of fine be increased and that specific reference be made to repeat offences. It is also considered that self –policing is one of the keys to success and the increase in fines would assist this process. Public information to ensure that people are fully aware of who exactly is liable to fines (ie, proprietors or the individual smoker) would help to support this approach.

3.6.2 **Regulation 4(3)**

The discount proposal is not considered appropriate and other suitable arrangements should be put in place to ensure payment of fines, such as doubling of the fine unless paid within the specified period. It is also recommended that the period for payment be extended to 20 days, which is more in line with other fixed penalty schemes. Various issues in relation to non payment of fines require clarification. It is also considered essential that civil recovery of fines is specifically permitted, including the addition of recovery costs.

3.6.3 **Appeals against Fixed Penalties**

Clarification is required in respect of the procedure for appeals against fixed penalties.

3.6.4 **Regulation 5 Application by Councils of Fixed Penalties and Account Keeping**

Clarification should be provided in relation to the use of surplus funds with particular reference to the 'amenity of the area' and it is strongly recommended that this should be specifically linked to health benefits.

3.6.5 **Adult care/Psychiatric Hospitals and Units**

Whilst it is accepted that exemptions are necessary in some instances, these should be considered on a short to medium term basis until such times as alternative arrangements can be put in place. It is also considered essential that smoking minimization /cessation programmes are targeted at patient groups in these categories.

3.6.6 Hotel guest house and B&B bedrooms

It is proposed that this exemption should be accepted only on an interim basis and that specific timetables are drawn up to ensure that these become entirely smoke-free premises. It may be necessary to ensure that hotel and guest house proprietors are proactive in informing non-smokers of potential exposure to tobacco smoke in the event that the only accommodation available happens to be that which is normally let as smoking permissible accommodation. This should allow potential customers (and particularly those with any respiratory illnesses) to make an informed decision based on their personal circumstances and/or preferences.

4. CONCLUDING COMMENTS

The Council is committed to the aim of a smoke-free Glasgow. It is working with its partners through the Tobacco Strategy on a range of initiatives to combat smoking and to make a smoke-free Glasgow the norm. New projects funded through the Council's investment to tackle smoking in Glasgow will strongly complement the Scottish Executive regulations. These include:

- A responsible retailing project to combat the availability of tobacco products to under-16s
- A 'Smoke Free Homes' initiative to support families to set aside some or all of their home as a no smoking area
- A project to work on tackling tobacco use with young people who are looked after or accommodated
- A video project by young girls to provide messages on smoking issues to their peers
- A major annual No Smoking Week for Glasgow.

5. SERVICE IMPLICATIONS

Financial : There are potentially significant implications for Council services, particularly EPS, in administering the new ban. Discussions are taking place through COSLA on funding support from the Scottish Executive to meet any such additional costs to the Council.

Legal : Council premises are already compliant with the proposed ban through existing policy, with the exception of those premises which are likely to be exempted under the legislation.

Personnel : Additional staff may be required to support the introduction and enforcement of the ban.

Service Plan : These proposals support the Council's Key Objective no.3 to promote equality and social inclusion and to improve health and well-being, together with the DRS Service Plan objective 19 and the priorities set against 19.8, 19.9 and 19.12.