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Council**

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Mr John Glen
Scottish Executive Health Department
Tobacco Control Division
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St Andrew's House
Regent Road
EDINBURGH
EH1 3DG

Dear Mr Glen

**The Smoking, Health and Social Care (Scotland Act 2005)
(Prohibition of Smoking in Certain Premises) Regulations 2005: Draft**

Please find attached the response from West Dunbartonshire on the above draft.

Comments have been 'anonymised' and collated as individual responses, and listed below each consultation question in Annex B.

We have also commented briefly on the use of the Regulatory Impact Assessment.

We trust you find this useful, and would be happy to expand or develop on any parts of the response.

Yours sincerely

Mr T. Huntingford
Chief Executive

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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?

Reg. 1 (2) Refers to 'adult care home service' & 'care home service' whilst Schedule 2 refers to 'adult care homes'. It would be better if standard definitions were used throughout.

Reg. 1 (2) Refers to "secure accommodation service" as per Section 2 (10) of the Regulation of Care (Scotland) Act 2001...Section 2 (10) of the Regulation of Care (Scotland) Act 2001 refers to "an offender accommodation service". This needs to be clarified
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Not clear at all! Definitions are fairly comprehensive, but it is difficult to tell what is included and what is exempt.
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No, not clear, would be helpful to have simple list of 'Included' & 'Exempt'
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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.

If the 'person to whom complaints should be addressed' disregards the complaint should signs include contact details of the 'enforcing authority' to which further complaints may be raised?
Will the statutory no smoking signs need to be displayed in 'non-smoking' areas of 'adult care homes'?
Will the signs meet statutory guidance for visual access for disabled?
The regulation could focus responsibility better by including a requirement for location of notices to be logged, with inspection required as part of a health and safety framework. Inspection of notices would pick up on any damage or removal that had not been reported by the public, thereby providing a measure of the effectiveness of complaints procedures.
In terms of facilities provided for people seeking addiction services, having clear information available is important. This is a useful aspect of the regulation.

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.

Regulation 1 requires clarity before regulation 3 can be clear.
Would like to see the formula including enforcement protection rights for business owners who although not necessarily falling under the 'statutory list', choose to designate their premises as 'no smoking'.

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.

The penalties for business are too low. If we choose to use a penalty system at all, then its sole purpose is to act as a deterrent. Low penalties may not achieve this.
Penalties appear low. Unable to assess if these will act as suitable deterrents.

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.

Implementing the legislation should not financially disadvantage Councils.
Given the penalty levels, I suspect the expenditure to administer and enforce will always exceed the income. It is helpful that this is to be monitored.
See answer to previous question in relation to penalties being too low.

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.

Residential Care homes for young people? Are these covered by schedule 1 or schedule 2
Is there any scope for 'residential premises' being classed as 'no smoking premises' whilst a 'care service' is being provided by a local authority, health authority or other 'care provider'?
i.e Could the legislation be so framed as to allow service agencies to insist that whilst its employees are in a residential premise providing a service (e.g midwives, home helps, health visitors) no smoking should be permitted?
It is not clear why Oil Rigs or Designated police rooms should be exempt.
Premises which don't fall into the above description, but whose owners would like the choice of designating them as 'no smoking' – would be good to see these being granted a degree of protection through enforcement.

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.

Common 'smoking areas' are generally provided in Adult Care Homes and some of the other premises identified in Schedule 2. Due to the type of clients in these premises the practicalities of adopting a 'cessation approach' may not be feasible however there is still a duty of care to our employees and others to consider. The best practicable means of achieving this may be a requirement to provide adequate extraction / ventilation system.
This approach would obviously require to be funded and funding provided by the Scottish Executive. To introduce these type of systems would demonstrate commitment by Ministers to achieving, as far as is reasonably practicable, a safe and healthy environment for persons employed within the type of working premises granted exemption under Schedule 2 of the Regulations.
Seems sensible.
This is clearly an area requiring further development. Considering the impact on residential treatment facilities (which I understand to be a "care home service" under the Care Act), implementation with sensitivity to client needs is crucial.

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.

Seems sensible

Hotel, guest house and B & B bedrooms

The regulations have been drafted to include hotels, guesthouses 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.

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

Seems to be a fair approach. If people are using hotels, that could be considered to be their temporary home.
Causes difficulty for enforcers if proprietors are able to chop and change between smoking and non-smoking designated rooms. Suggest that hotel bedrooms are entirely all non-smoking. This would lead to fewer false alarms in terms of fire, which are often set off by guests smoking where they should not.

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?*

None, assuming residential drug and alcohol treatment/rehabilitation services are covered under adult care homes.

No

We welcome the use of proactive impact assessment as a procedure to support decision-making. It is in accord with our aims of improving health through the use of Health Impact Assessment as a tool for 'better policy making'. We also welcome the cost benefit analysis, which clearly places health as the overriding priority, whilst also recognising the economic impact of the regulations.