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From: Jamie & Deirdre [mailto:bookb@clara.net]

Sent: 23 May 2005 18:05

To: Glen J (John)

Subject: Response to public consultation: Draft smoking ban regulations

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Dear Mr Glen,

Please find below my response to your consultation paper on the Draft Smoking Regulations bill currently before Parliament.

I am responding as an individual:

James Shepherd, Flat 3F1, 17 Cathcart Place, Edinburgh EH11 2HF

My responses are interlaced with a copy of the text from the website:

ANNEX B

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?

Clear as they stand, with the exception of "wholly enclosed" see below.

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.

Surely the specifying of a minimum size is a bit rigid. The public will get the hang of the rules soon enough, in which case a move towards fewer, smaller and more discreet notices would be desirable. Likewise the protection from damage or removal clause is a bit unnecessary, since no sign is bombproof, and what is wrong with the discreet no smoking pyramids on cafe tables that could easily be slipped into a pocket? A few years into the law its going to be a bit like the seatbelt law - people are just going to know anyway and the signs will be a minor issue mainly for the tourists.

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.

The definition of "wholly enclosed" is problematic. It is sufficiently clear to include the bulk of areas where second hand smoke is a health risk due to enclosure and insufficient ventilation, however, it doesn't go far enough and falls down in two areas:

1) There are many situations where mass crowd entertainment is offered where it would be important to extend the definition of a "wholly enclosed" space to include an area not covered by a roof. At a stadium rock concert for example, the crowd density and proportion of smokers is such that the smoke levels are asphyxiating, even "outdoors" in a moderate breeze. Certainly the levels of breathed in 2nd hand smoke at these events exceed those experienced indoors in some pubs, and at, say, airports, and therefore from a health standpoint should be made non-smoking "indoor" areas.

Perhaps a simple "fix" for the current draft would be to add:

"wholly enclosed" means

(iii) for premises without a ceiling or roof, but enclosed by walls or seating, where high crowd densities are likely to cause a significant build-up of smoke concentration.

2) The boundary at which smoking becomes permissible outside a building should be several feet away from the entrance itself. This for a number of reasons. The main one is that smoke at a doorway is always sucked into a heated building. The laws of physics are such that warm air inside is lighter than cool air outside, so the warm air finds its way upwards through various small gaps, causing cool air to be sucked into openings at ground level - usually the doorway if open. Watch the smoke from a smoker standing in a doorway and you will see that this is so. Given that all smokers inside will go and stand as close to the doorway as possible to smoke, there will be many buildings where the inside will end up quite smoky despite the ban. A solution would be to specify a minimum distance away from an open doorway where a smoker may stand. A figure of six to ten feet comes to mind.

A second logical reason re-enforcing this is that because smokers will congregate in doorways, everyone entering and leaving will have to run a 'gamut' of smoke. I feel strongly that a definition needs to be added to the bill for "entrance" that includes a short distance outside a doorway as part of the "entrance" and therefore part of the "enclosed space".

A third good reason is that many smokers currently think that just inside a doorway where there is a bit of a draught is sufficiently "outside" a non smoking building. A specified exclusion outside an entrance would remove this ambiguity.

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.

Two hundred pounds is way over the top for this. The pub and restaurant trade are already facing a hard enough hit on this one - surely we can trust them and the public to comply with this law mainly by psychology and peer pressure. People are fined less for stealing cars and minor assaults to the person. Smoking itself is not being made illegal in this bill, only the location, so make the fine to the premises manager less than the fine for the smoker, with more emphasis on help and support in techniques for dealing with awkward customers. I suggest £30 or £15 for quick payment. This law will be self policing to a large extent like the already existing ban on aircraft and busses - so there is no need to be heavy-handed with large fines. The fine should be at the level of an embarrassing slap in the wrist - and should not be so large as to affect poor people unfairly by fining an amount that in some cases could lead to non-payment and a prison sentence. It should definitely not be set at a level where unscrupulous councils could start treating it as a revenue stream. Perhaps a provision could remain for a larger fine for managers who repeatedly completely ignore the law?

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.

Accountability is a good thing. How about ring fencing any positive revenue to provide, say, street ash-trays and sheltered seating areas outdoors to help smokers stay dry?

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.

As per my point in section (3) above, add Open-air stadia, which I consider "enclosed" due to the high crowd densities.

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.

I have no direct experience in working in an adult care home, but I do know nurses who display noticeable adverse health effects of having to care for smokers while they smoke indoors in these places. Likewise, there must be many non-smokers in care who have to put up with smoky air and whom this bill gives no better protection. I say something has to be firmed up here in the direction of non-smoking policy in care homes, at least a sea-change of policy if not an outright ban.

As for targeting cessation policies on this group, that is fine. However, as an ex-smoker myself, I know of no better help in giving up than being free of exposure to other people's smoke. 2nd hand smoke is a strong trigger for recidivism in cessation attempts, of which I had many before finally succeeding. Cessation is a LONG road.

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.

The problem with psychiatric patients is a broader one than just smoking, there are often multiple drug dependancies involved, both prescribed and otherwise. Of these, I'd say smoking would tend to be among the last to be given up by an individual in this group. It is both the most addictive, and the drug which has the most immediate mood-stabilising effect. I would support any efforts to target cessation programmes at this group, and ask that these take a broader approach to include help in giving up drugs across the board, not just a simplistic tobacco approach.

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.

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

I'd say, ban smoking everywhere in hotels and b&b's. No matter how you enclose a smoker, Scotland is a cold country for 9 months of the year and windows to the outside are mostly kept shut. By the laws of physics, the smoke from a cigarette will eventually dissipate throughout the inside of the whole building - it will not magically rush outward through a closed window in the hotel room. The average air in hotels in this country smells fetid with the low notes of tobacco smoke - lets be bold and ban it in all parts of the hotel. People who work in hotels are being exposed to significant risk, even if the cigarettes are not being smoked in the same room. If you breathe low level smoke circulating inside a building from "smoking" areas while you work, your health WILL be affected.

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?

Common stairs in tenements may need a little clarification to some people. It will be assumed by some that because its outside the flat, the stairwell is part of "the outside". Our stair constantly reeks of tobacco from smokers who don't smoke inside their flats but on the stair - I have to keep the door firmly shut with draught excluders at all times and even then some smoke seeps into my flat.

Thankyou for this opportunity to give my views on this bill. I hope very much you will take them into consideration,

sincerely,

James Shepherd

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