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Sent: 24 May 2005 09:33

To: Glen J (John)

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Subject: BHA Scotland Committee submission

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BRITISH
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Our ref JAL/smi/BRI084.0001
Your ref

Mr John Glen
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Edinburgh EH1 3DG

Direct Line: 0131 200 7483

24 May 2005

Dear Mr Glen

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

I refer to your letter of 10 March 2005, with which you enclosed the proposed regulations that will be introduced under the Smoking, Health and Social Care (Scotland) Act 2005, if it is passed by Parliament. The British Hospitality Association Scotland welcomes the opportunity to comment on the draft regulations and would like to submit the following points for consideration.

The main issue for the BHA in relation to the regulations is how best to deal with hotel bedrooms as the definition currently used in the draft regulations may have an unexpected consequence.

The regulations exclude bedrooms from all three sanctions, if the hotelier specifically allowed guests to smoke, but perversely all three sanctions would apply in non-smoking rooms. This creates the situation at odds with the general principle of the Bill as it would be in the hotelier's interest to define all rooms as smoking as this would protect the hotelier from any potential prosecution. It is also worth noting that "designated police rooms" do not require designation by the police as "smoking permitted", so why should hoteliers have to designate bedrooms.

As outlined below we believe that the most effective way of dealing with hotel bedrooms is to exempt all hotel bedrooms rooms from the provisions of the bill.

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Detailed Comment

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?

The BHA believes that the system suggested in the regulations as currently drafted is not workable, overly complex and contradictory.

The regulations can be made a lot more workable by simply dropping the reference to "designated hotel bedroom" and instead simply using the definition "hotel bedroom". This would allow hoteliers to continue to define rooms as either smoking or non-smoking while removing the current contradiction from the regulations.

The BHA is content with the definition of a 'hotel' as currently outlined in the draft regulations. In addition, we are satisfied with the inclusion of hotels within the definition of 'residential premises' in the context of '...hotel accommodation that is occupied or used as a person's principal place of residence'.

If this were not agreed then perhaps a suitable definition for an "hotel bedroom" might be:-

"a bedroom in a hotel which has been designated by the person having responsibility for the management or control of that room as being outside the scope of the Act."

Summary

The BHA believes that the most effective way of dealing with hotel bedrooms would be to exempt them completely from the legislation via the regulations as outlined above. This would allow hoteliers to continue as at present to define their own policy on smoking in bedrooms, including imposing a ban without risking a fine as a result of doing so.

We are content, as always, for our response to be made publicly available.

I hope the points contained within this submission are helpful.

Yours sincerely

John Loudon
Secretary, BHA Scotland

