

-----Original Message-----

From: Hilary Howatt [mailto:hilary.howatt@spt.co.uk]

Sent: 24 May 2005 12:36

To: Glen J (John)

Cc: Jonathan Pryce (E-mail); Richardson J (Jim)

Subject: Smoking Act 2005 - Prohibition of Smoking in Certain Premises) Regulations 2005 Draft.

This email has been received from an external party and has been swept for the presence of computer viruses.

John

Please find attached a pdf of SPT's response to the current consultation on the Smoking Act 2005 - Prohibition of Smoking in Certain Premises) Regulations 2005 Draft. I am also sending a copy to TD1 for their information. A hard copy is in the post to you.

<<smoking.pdf>>

Kind regards

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Sent by email: 24 May 2005

Hard copy in post

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

Date : 24/05/05

Dear Mr Glen

**THE SMOKING, HEALTH & SOCIAL CARE (SCOTLAND) ACT 2005
(PROHIBITION OF SMOKING IN CERTAIN PREMISES) REGULATIONS 2005: DRAFT**

Thank you for consulting SPT on the above draft regulations. Our comments are as follow:-

RESPONSE TO QUESTIONS

Regulation 1: Citation, interpretation and commencement

Q1 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?

A1 The regulations are not entirely clear regarding what premises are covered, or exempted, from the regulations. Whilst it is understood that in terms of SPT premises this would include any offices, public transport facilities and 'public transportation vehicles' which are 'wholly enclosed', it is not clear whether areas which have doorways/openings but no closing door, are considered to be 'wholly enclosed'. Examples, include Partick station waiting rooms which have doors but the main entrance to the station is an open doorway entrance. It would appear that this predominantly enclosed public space is not considered 'wholly enclosed'. Also the station concourse at Glasgow Central and Queen Street stations are open for obvious operational purposes, which could imply that the station is not 'wholly enclosed'.

Regulation 2: Display of no smoking notices

Q2 Views are invited on this approach.

A2 The draft regulations take a 'one size fits all' approach to the notices. It should be noted that recurrent smaller signs are often used on public transport vehicles in order to provide frequent reminders on windows but without obscuring the view or being overly obtrusive. Consideration

should be given to introducing a degree of flexibility in the regulations in terms of the form and design of notices, given the varying situations in which they are to be displayed and the information relayed.

No guidance is given in the regulations as to what is considered to be an appropriate level of notices e.g. one per building or one per room. The Bill, as introduced, places the onus on the person having management or control of the premises to prove that they have taken reasonable precautions and exercised due diligence in terms of placing the notices. Further clarification and guidance regarding the meaning of 'reasonable precautions' and 'due diligence' is requested.

Regulation 3: 'No-smoking premises'

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

A3 The existing formula does not seem to cover many public transport public places where smoking can be a nuisance to other users as described in more detail in SPT's response to the Scottish Executive's consultation on *Smoking in Public Places* in August 2004. Examples of the public transport locations not covered include open and semi-open rail stations platforms, open and semi-open areas of bus stations, and bus shelters.

Whilst it is understood that enforcement action at these locations would be an issue, the Scottish Executive is urged to promote measures that could increase voluntary compliance and reconsider the wording of the regulation to cover rail station platforms which are predominantly, but not wholly enclosed, due to service requirements. SPT would welcome discussion with the Scottish Executive's rail division on this matter.

Regulation 4: Fixed penalty time limits, amounts and payments

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

A4 The fixed penalties set, indicate that the levels are some five times higher for those responsible for enforcing and administering the prohibition on smoking than for those breaking this prohibition. Whilst it is understood that those enforcing the prohibition have a significant responsibility, there appears to be an undue degree of imbalance in the relative fine levels.

Regulation 5: Application by councils of fixed penalties and account keeping

Q5 Views are invited on the general approach outlined here.

A5 No comment.

Schedules to the Regulations

Schedule 1: No-smoking premises

Q6 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.

A6 SPT welcomes the inclusion of the following in Schedule 1 :- Offices, factories and other premises or vehicles in which more than one employee works; public transport facilities; and public transport vehicles. However, as stated in response to question 3, it is considered that

many public transport facilities may not be classed as 'wholly enclosed' and so would not be covered by the regulations. SPT would request that this matter be re-assessed.

Schedule 2: Exemptions

Q7 *Adult care homes*

A7 Not applicable.

Q8 *Psychiatric hospitals and psychiatric units*

A8 Not applicable.

Q9 *Hotel, guest house and B & B bedrooms*

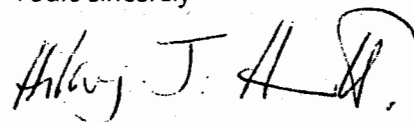
A9 Not applicable.

Q10 *Are there any premises which, taking into account humanitarian, practical or other considerations, are omitted from the exemptions list in Schedule 2?*

A10 No comment

I am sending a copy of our response to the Transport Strategy and Legislation Division for their information.

Yours sincerely



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Our Ref: PDU0238/0222

c.c. Jonathan Pryce, Transport Division, Scottish Executive