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Please find attached a response to the consultation on the Smoking, Health and Social Care Bill from Macmillan Cancer Relief. I have also send you a hard copy in the post, enclosing the Respondee Information Form, as I was unable to fill this out electronically.

Kind regards

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

Response from Macmillan Cancer Relief

Macmillan Cancer Relief helps people who are living with cancer. By working closely with people with cancer, their families and communities, we aim to develop services which reflect people's real needs and wishes. We also share our expertise with a wide range of health and social care providers, leading by example and inspiring others to meet our standards.

Macmillan Cancer Relief has never received so much interest, comment and support from patient groups, fundraising support groups and Macmillan NHS professionals as with efforts to prohibit smoking in public places.

Comments on Primary Legislation

Macmillan Cancer Relief strongly supports the Bill and considers that the primary legislation is well written. Our submission focuses on areas of the draft Bill which we feel need to be tightened up, so as not to provide potential loopholes that could be exploited by opponents. We strongly recommend that the principle that no-smoking is the norm should be clearly stated throughout the Bill.

1. Non-tobacco smoking products

Macmillan Cancer Relief has been listening carefully to the evidence of the definition of smoking materials and strongly believe that the current definition which limits regulation to the smoking of tobacco products or products containing tobacco is too restrictive.

Our understanding of the research evidence is that the two principal health hazards in smoke ie carbon monoxide and tars in the form of respirable particles are present in the second-hand smoke from herbal cigarettes. Therefore, although the evidence for harm is thin from herbal cigarettes because of the limited numbers of people currently smoking them, it would not seem sensible to leave such a potentially large loophole when it could quite easily be closed off by a minor change to the wording of the draft legislation.

In addition to the direct impacts of second-hand smoke on health, a subsidiary aim of the legislation is to de-normalise smoking with a view to providing supportive environments for smokers who are attempting to stop smoking, and to reduce the social pressure which leads young people to take up smoking. This aim would be strengthened by capturing all forms of cigarette within the definition.

The omission of non-tobacco cigarettes from the legislation would leave a loophole which is likely to be exploited by the tobacco industry. The history of the tobacco industry's attempts to counter clean air legislation by first of all denying the link between smoking and ill-health, and then putting forward spurious "compromises" to protect staff and customers, would suggest that if there was an opportunity with herbal cigarettes the tobacco industry would be very likely to try and use it.

It is very difficult to distinguish visually between a tobacco and a non-tobacco cigarette, as was so clearly demonstrated by Stewart Maxwell MSP in the debate in the Scottish Parliament on 28th April. Introducing an area of dubiety that could be exploited by people determined to wreck the legislation would make the task of enforcement potentially much more difficult, and much more difficult unnecessarily, because it would be very easy to change the wording.

The proposed legislation would be strengthened in a number of ways by a more comprehensive definition that captures all forms of smoking, but with specific reference to environmental tobacco smoke because of the preponderance of that and the issues of addiction and de-normalisation.

2. “Enclosed” public places

The current draft of the legislation does not include a number of busy public places such as tourist attractions, sports stadia and bus shelters on the basis that they are partially enclosed. Macmillan Cancer Relief strongly recommends that the definition is reconsidered so that premises that are more than 50% enclosed and those where access is controlled to an area that includes enclosed and open areas are covered by the legislation.

We strongly recommend that all hospitals, health centres / healthcare facilities etc be advised in the strongest possible terms to adopt smoke-free grounds and associated car parks.

Comments of the Regulatory Impact Assessment

Macmillan Cancer Relief fully supports the Scottish Executive's decision to bring forward smoke-free legislation, as opposed to the other options. Voluntary approaches have been shown to be ineffective and exemptions for the hospitality sector would betray and undermine the admirable objectives of the legislation. Ventilation systems, favoured by the hospitality sector, do not remove the particles in smoke that cause diseases such as cancer. Comprehensive smoke-free legislation is the only way to protect workers and the 70% of the general public who are non-smokers from second-hand smoke.

Regulation 1: Citation, interpretation and commencement

Q. Do the definitions of the words and phrases ensure clarity of what premises are covered or exempted from the regulations? If not, how might they be improved?

1. Definition of the term “designated hotel bedroom”

The current definition leaves it too open to the management of a hotel to designate all hotel bedrooms as smoking areas. We are of the view that the definition should allow no more than 30% of hotel bedrooms in any premises to be designated as smoking areas, as this relates directly to the proportion of smokers in the population. We also believe that there should be a review of this in a couple of years, with a view to further increasing the proportion of non-smoking areas, in order to gradually phase out designated smoking areas altogether. The principle on all sections should be that no smoking is the norm, and that smoking areas should be specifically designated.

2. Definition of the term “designated police room”

Once again the agreed upon definition should ensure that areas are smoke-free with designated smoking areas. The current designation could render the vast majority of a police station exempt from legislation, which would seem to go against the spirit of the legislation and potentially cut across employees' rights.

3. Definition of the term “public transportation facilities”

Under the current proposals “no smoking premises” refer to places which are wholly enclosed and meet 4 subsidiary criteria. However, on this basis many public transportation facilities will not be covered, for example waiting areas such as bus shelters which are rarely fully enclosed and train platforms. In addition many train stations are not fully enclosed and consequently restricting the legislation to fully enclosed areas presents a missed opportunity to eliminate exposure to second-hand smoke in public places, and hence to the de-normalisation of smoking in society. Macmillan Cancer Relief is of the view that the Scottish Executive should follow the example set by the Republic of Ireland, whereby premises that are more than 50% enclosed are covered by legislation, and on this basis railway stations and platforms, and bus shelters, would be much more likely to be covered by the legislation.

4. Definition of the term “restaurant”

We think that the current definition is not broad enough and could offer a possible loophole for some establishments to try and undermine the legislation. We are concerned that it is not clear whether for example coffee shops, internet cafés and cafés within bookshops would be subject to the legislation and would like to see the definition broadened to specifically include such premises.

6. Definition of term "sports centre"

Similar to the issue about public transportation facilities we are concerned that outdoor and partly enclosed sports stadia would not be covered by legislation. We cannot think of anything more pertinent to the de-normalisation of smoking in Scottish society than the elimination of smoking from sports stadia where exercise is being taken. We suggest that, for public places including some enclosed and some open areas where entry has to be achieved in a controlled way, the entire facility should be a no-smoking facility.

Annex A: "No smoking premises"

Where premises are not wholly enclosed, the extent to which they are not must be "not significant" in order for them to be classed as no-smoking premises under the regulations. Macmillan Cancer Relief recommends that the definition of "not significant" be clarified. We recommend that the Scottish Executive adopts the example set by the Republic of Ireland, where premises that are more than 50% enclosed are covered by legislation. This could also be combined with the comment above about where access is controlled to an area that includes enclosed and some open areas.

Schedule 1: No Smoking Premises

In the list of no-smoking premises we recommend that the regulations specifically list warehouses, corridors, lifts, stairwells, toilets, washrooms and other shared internal areas as no-smoking areas.

We recommend that a similar approach to educational establishments should be taken as to sports facilities requiring all buildings, grounds and associated car parks to be smoke-free at all times (including evenings, weekends and other occasions when premises are rented out). Macmillan Cancer Relief believes this is especially important in order to reduce the visibility and negative influence of smoking in public places that are primarily used by young people.

With regard to airport passenger terminals and other public transportation facilities we strongly recommend that the whole area is no-smoking, in line with the previous comments on controlled access to sports centres.

Schedule 2: Exemptions

The general presumption on each category for exemption should be that no smoking is the norm, and therefore Macmillan Cancer Relief would support the provision of smoking rooms in the following areas:

- a Adult residential care homes (but not day care)
- b Adult hospices
- c Psychiatric hospitals and psychiatric units
- d Oil rigs

The principle must be that smoking rooms can only be provided if there are non-smoking areas for the 70% of people who do not wish to smoke and also in order to protect the staff.

We strongly recommend that day care centres are not exempted from the legislation as only premises that are equivalent to someone's home should be even considered for exemption.

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