

# Scottish Cancer Coalition

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05/25/05*

John Glen  
Scottish Executive Health Department  
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3E(R)  
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EH1 3DG

23 May 2005

Dear Mr Glen

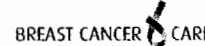
### **The Smoking, Health and Social Care (Scotland) Act 2005 (Prohibition of Smoking in Certain Premises) Regulations 2005: Draft**

Thank you for your letter of 10 March 2005 inviting comments on the draft regulations and the associated Regulatory Impact Assessment. I am responding on behalf of the Scottish Cancer Coalition.

I should clarify at the outset that this response represents the views of the majority of Coalition members. All our members support the general public health benefits highlighted in our submission. The only exceptions to complete endorsement of the Coalition's response are those members who are associated with Scotland CAN! (Cleaner Air Now) group who will be commenting on the implications of the definition of 'wholly enclosed', highlighting the inclusion of designated hotel rooms and psychiatric units in the exempt premises Schedule and seeking amendment to the Regulations to include other non-tobacco smoking products.

In general terms we very much welcome this further step in this important public health measure and wholeheartedly support the twin principles of comprehensive scope and limited exceptions that underpin Ministers' approach.

We would offer the following responses to the specific questions on the draft regulations set out in Annex B to your letter:



### **Regulation 1: Citation, interpretation and commencement**

**Q1:** The draft seems appropriate in terms of content and clarity. The level of complexity is inevitable if the interpretation is to be all embracing with minimal scope for challenge and inconsistency in application.

### **Regulation 2: Display of no smoking notices**

**Q2:** The proposed approach seems entirely logical.

### **Regulation 3: No- smoking premises**

**Q3:** We have no specific comments to offer on this regulation and cannot suggest any improvements to the definition of 'wholly enclosed'.

We do, however, note with some concern that there is no reference to the enforcement of smoke-free areas in prisons and the exclusion of these premises from Schedule 1 to the regulations. While many members of the prison population will be smokers, a proportion of prisoners will be non- smokers and should be protected as far as is feasible from the effects of second hand tobacco smoke. We are advised that the regulation of prisons is covered by separate legislation and would therefore encourage early action to extend public health benefits by legally enforceable measures in this setting.

### **Regulation 4: Fixed penalty time limits, amounts and payments**

**Q4:** The proposals appear appropriate and practicable

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

**Q5:** The approach outlined seems appropriate

### **Schedule 1: No- smoking premises**

**Q6:** We have identified no significant inconsistencies or omissions. (But see comment in response to Q3 above relating to prisons)

### **Schedule 2: Exemptions**

**Q7 Adult Care Homes:** This is a complex issue and one in which it will be essential to balance the personal rights and wishes of those who wish to smoke in what is in effect their own residential

accommodation with the right of those residents who are non-smokers and the staff who provide care. If the latter cannot be achieved by regulation then priority must be given to the development of smoking policies and the sensitive targeting of cessation services.

**Q8 Psychiatric hospitals and psychiatric units:** Our views on this would be in line with those in the response to Q8 above.

**Q9 Hotel, guest house and B&B bedrooms:** The inclusion of these premises within the legislation is appropriate, albeit they are included in the Schedule of exemptions. For the reasons outlined this may be logical but every encouragement should be given to proprietors of such premises to designate the majority of rooms as non-smoking. Quite apart from the health risks the air quality in rooms that have been occupied by smokers is significantly compromised by residual pollution in soft furnishings.

**Q10: Omissions from Schedule 2:** We have identified none.

#### **Annex C: Draft Regulatory Impact Assessment (RIA)**

Section two provides a very useful and informative summary of the scientific evidence of avoidable morbidity and mortality attributable to exposure to environmental tobacco smoke (second hand smoke). This together with the associated risk assessment and resource implications are stark reminders of the urgent need for robust legislation and rigorously enforced regulations.

Of the three options examined, it is evident that the voluntary approach is doomed to failure and that widespread exemptions for the hospitality sector would drastically erode the public health benefits for non-smoking customers and staff.

We are aware of the controversy surrounding option 2 in terms of potential economic and employment impact on the hospitality sector. We note the range of estimates of this impact and would observe that the net economic and societal benefits to Scotland overall and to the NHS in particular would more than offset the losses incurred in the hospitality sector, even at the high estimate of the latter.

We would reiterate our unanimous view submitted in response to the initial consultation that Option 2 is the only defensible way forward if the appalling impact of second hand tobacco smoke is to be reduced.

I trust these comments are helpful and enclose the completed Respondent Information Form.

Yours sincerely

A handwritten signature in black ink, appearing to read 'J Gordon Paterson', written over a horizontal line.

Dr J Gordon Paterson

Chairman

(On behalf of the members of the Scottish Cancer Coalition)