

25 May 2005

Mr John Glen
Scottish Executive Health Department
Tobacco Control Division
3E(R)
St Andrews House
Regent Road
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Dear Sir

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

Further to the above and in consultation with Elected Members any other Departments of East Ayrshire Council, I would offer the undernoted comments:

1. Regulation 1 : Citation, Interpretation and Commencement

1.1 The definitions, when taken into consideration with the lists in schedules 1 and 2 are reasonably clear and comprehensive.

2. Regulation 2 : Display No Smoking Notices

2.1 The overall approach detailed in the legislation for no smoking notices appears to be straightforward and acceptable. However, it should be noted that this will require to be accompanied by information for groups, such as employers, community organisations, building owners, detailing clearly how to comply with the Act, what the offences are, who is responsible for enforcing the legislation and against whom action may be taken.

2.2 In addition, it would be useful to raise awareness of the Act and more specifically what the notices will look like and what they imply before the legislation becomes 'live'.

3. Regulation 3 : "No Smoking" Premises

3.1 The term 'wholly enclosed' appears to encompass all public areas that the Act intends to cover. The only area of ambiguity may be in respect of premises where the roof and/or wall could be removed temporarily. Clarity is perhaps required as to whether smoking would be permitted in these areas under these circumstances.

3.2 A clear definition of what constitutes an enclosed space is required. Partially covered areas or 'constructions' adjacent to bars and public houses could result from a lack of a clear definition of enclosed space.

3.3 It is noted that sports centres are included in Schedule I. Is it the intention to include sports stadia within the definition?

4. Regulation 4 : Fixed Penalty Time Limits, Amounts and Payments

4.1 No comments.

5. Regulation 5 : Application by Councils of Fixed Penalties and Account Keeping

5.1 Appropriate training of officers of the Council will be required in the application and process of the legislation.

5.2 It is noted that any surplus in the account specific to this legislation is to be used for the improvement of the amenity of the Council area. The principle is supported.

6. Schedule I : No Smoking Premises

6.1 The list outlined in schedule 1 is fairly comprehensive; however, a number of areas perhaps require to be revisited to avoid ambiguity.

- Number 14 refers to premises providing secure accommodation. However, the accompanying Draft Regulatory Impact Assessment highlights that prisons currently fall out with the scope of the Bill. Clarity is, therefore, required around which type of secure accommodation this extends to.
- Number 15 refers to hospices, defined in the regulations as being establishments providing palliative care. Hospices are again detailed as an area which will be exempt from the Act. Further clarification is therefore required to address this.
- Should sports centres include sports stadia?

7. Schedule 2 : Exemptions

7.1 Under Schedule 2, it is important to recognise that accepting the exemptions will result in partial protection for staff and the general public. This means that the legislation will not be effective in protecting the health of specific sections of the population, therefore potentially creating inequalities in health. Examples of this include care staff who are required to visit clients in their own homes; residential care staff and prison staff who will, in some cases, find it impossible in the course of their duties to avoid exposure to second-hand smoke; and other often already marginalised services users who do not smoke but reside in these environments. It is important that employers in this situation are supported to enforce the ban if they choose to do so in the interests of protecting their staff and service users.

7.2 The exemptions suggestions in relation to Psychiatric Hospitals and Units, whereby protecting the rights of the individual to smoke in what is effectively their home, may also create confusion in the current policy context of shifting the balance of care from hospital to the community setting. The result may be that individuals are in a situation where they are permitted to smoke in the hospital but not in day centres and community care facilities. This will therefore require an effective and sensitive communication strategy.

7.3 Smoking policies for residential care homes will require to ensure that provisions are made not only for smoke-free social areas for non-smoking staff but that, wherever possible, staff and other service users are not exposed to second-hand smoke in their day to day routine and duties, which will be much more difficult.

7.4 It is important to ensure that smoking cessation services are targeted at those who are in greatest need, which will include target groups such as individuals in adult care homes and psychiatric units. Smoking prevalence is significantly higher among people who have a mental health problem. Within this target group, however, it will be important to explore a range of methodologies and approaches, which take into consideration the association between the individuals condition and the use of tobacco as a coping and self-management tool.

8. General

8.1 A definition of 'smoking' would be of benefit in the body of the Regulations to avoid any misinterpretation.

I trust the above comments are of assistance to you and would advise that East Ayrshire Council welcome the opportunity to comment on the consultation.

Yours faithfully

John F Crawford
Head of Protective Services