



**West Lothian
Council**

Development & Regulatory Services

Recd 31/5/05

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25 May 2005

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

Dear Mr Glen

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

I refer to your letter of 10th March inviting comments on the above draft regulations.

Prior to answering the specific questions, may I firstly clarify that all new enforcement activities placed upon a local authority must be financed. Without adequate funding, the legislation cannot be enforced. I am aware that Cosla has carried out a consultation on anticipated costs however it is not yet clear what level of funding is to be provided or for what period of time. The proposal within the legislation that authorities cover the cost of the implementation of the legislation from the fines gathered is untenable. The implementation costs are likely to be high over the first two years as there will be a significant proactive and reactive enforcement activities. Continued compliance with the legislation will be dependent upon continued enforcement – albeit at perhaps a lower level. This matter needs to be clarified as a matter of urgency.

In relation to the questions asked in Annex B of your letter, I would offer the following.

- Q1** No comments
- Q2** As the legislation will cover most premises, there is the potential that a whole area/street will consist of premises displaying notices. Consideration should be given to the design of the notices in order that they are noticeable yet do not become obtrusive/unsightly.



Awarded for excellence



INVESTOR IN PEOPLE

It is not clear who the "person to whom complaints should be addressed" is. Is it the proprietor or the enforcement authority.

Annex C of the consultation suggests there will be provision for a "Smoke-Free Areas Compliance Helpline". This should be a freephone number and it should be displayed on the notice.

Clearer guidance needs to be given as to where the notices should be displayed. The requirements need to take account of premises with more than one entrance and where the premises has separate areas or rooms, e.g a public house with a bar, lounge and function room.

- Q3** There have been problems in Ireland where bar owners have constructed open sided "shelters" outside and there are disputes over whether these come within the definition of the Irish legislation. It is possible that permanent or temporary erections may be used to evade the legislation and therefore fail to deliver the policy intention of the legislation. This may also result in infringements of planning requirements, noise and disturbance issues as proprietors move activities outside and suggestions of unfair competition from proprietors whose premises do not have an outside area.
- Q4** It seems odd that the penalty for not conspicuously displaying the no smoking notice is the same as actually permitting smoking to take place. Particularly as there may be a subjective judgement in relation to the former and that permitting smoking is, presumably, a more serious offence.
- Q5** As suggested in Annex C to your letter, the income generated from fines is likely to be small. It is therefore of concern that any deficit in enforcement costs is to be "...made good by the council". Since it is unlikely that income will be adequate to fund enforcement activities the additional provision of an "annual statement of accounts to Ministers" seems an unnecessary bureaucratic cost.
- Q6** There are no obvious omissions from the list of premises in Schedule 1 to the draft regulations.
- Q7** While the argument for exemptions for adult care homes is appreciated, it is difficult to see how non-smoking staff, and others, can be protected from the effects of second hand smoke. It may be difficult to argue that the measures taken to protect staff, and others, in these circumstances could not also be used in premises open to the public. Perhaps exemptions to allow adequately ventilated smoking rooms within this type of premises would be more appropriate.
- Q8** While the argument for exemptions for psychiatric hospitals and psychiatric units is appreciated, it is difficult to see how non-smoking staff, and others, can be protected from the effects of second hand smoke. It may be difficult to argue that the measures taken to protect staff, and others, in these circumstances could not also be used in premises open to the public. Perhaps exemptions to allow adequately ventilated smoking rooms within this type of premises would be more appropriate.
- Q9** It is not clear how staff, and others, will be protected against the effects of second hand smoke in these circumstances.

Q10 No comments

Yours sincerely

A handwritten signature in black ink, appearing to read 'A Blake', written in a cursive style.

Andrew R Blake
Environmental Health & Trading Standards Manager