

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

SCOTTISH EXECUTIVE CONSULTATION

Responses from NHS Borders

Q1. Do the definitions of words ensure clarity of what premises are covered or exempted from the regulations. If not, how might they be improved?

Response: Whilst there is clarity within the regulations generally to show which premises are covered and which are exempted from the regulations, further clarification would be helpful in relation to sports stadia, bus shelters, train stations/concourses, and the private hire of coaches/buses.

Q2. Display of no smoking notices – view are invited on the approach outlined below.

It is proposed that the minimum size of a no smoking notice be 230mm x 160mm (approx 9" x 6") and specify that an international no smoking symbol of at least 85mm (approx 3") in diameter should be included. The sign must specify the person to whom complaints can be addressed, it must be and be protected from tampering, damage, removal or concealment and be displayed outside and inside the premises. Views are invited on this approach.

Response: Whilst there is a requirement that no smoking signs be conspicuously displayed inside and outside no-smoking premises, there is no mention of how many notices are required per premise. Further detail is required otherwise there will be difficulty in interpretation of the word "conspicuously". For example, in large establishments with a number of different restaurants/bars one sign is clearly inadequate and there should perhaps be a requirement for one in each separate room. If the establishment is large but consists of one "open plan" room then more than one may be required. This further detail would help to avoid confusion, especially for tourists from outside the UK. Greater clarity is also required in relation to who should be specified on the notice as the person to whom complaints should be addressed, i.e. should this be the person in charge of the premises or an officer of the Local Authority enforcing the provisions of the Act.

Q 3. No Smoking Premises

Comments are invited on this formula and how it might be improved.

Response: Schedule 1 defines public transportation vehicles as no-smoking premises whereas schedule 2 exempts private vehicles. Clarification is required where vehicles are privately hired for outings, journeys to events etc.

The position regarding sports stadia, bus shelters and train stations also requires clarification.

Q4. Fixed penalty time limits, amounts and payments

The regulations provide that an enforcement officer can only serve a fixed penalty notice up to 7 days after the event. They also set out the amounts of fixed penalty associated with the various types of offence which are £200 for permitting others to smoke in no-smoking premises, £50 for smoking in no-smoking premises, and £200 for not conspicuously displaying warning notices in no-smoking premises.

Where an offender pays a fixed penalty within 15 days, discounted amounts are charged, these being £150, £30 and £150 respectively.

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

Response: The requirement that Local Authority officers can only serve a fixed penalty notice up to 7 days after the event is felt to be unduly onerous by Scottish Borders Council colleagues. Investigations to confirm the name and address of the person to whom the notice should be served could take longer than 7 days. It is felt that 14 days would be more appropriate.

At present the fixed penalty notice amount for not clearing up after a dog has fouled illegally is £40, rising to £60 if not paid within 28 days. For smoking in premises where smoking is prohibited it is proposed that the fine should be £30, rising to £50 if not paid within 15 days of the notice being issued. There is an inconsistency in this approach, which indicates that it could be seen to be a less onerous offence to be smoking rather than not clearing up after a dog.

There is no provision made for repeat offences and it is felt that consideration be given to increasing the fees for repeat offenders.

Q 5. Application by Councils of fixed penalties and account keeping

Regulation 5 requires Councils to keep accounts of their income and expenditure in respect of administration and enforcement of fixed penalty notices. Any deficit is to be made good by the Council and any surplus used to improve the amenity of the Council area. The Councils will be required to send an annual statement of the accounts they have kept to Ministers along with an explanation.

Views are invited on the general approach outlined.

Response: Requiring the Local Authority to make good any deficit incurred by the administration of this legislation could be counterproductive, in that it could lead to the legislation not being enforced as effectively as perhaps it could be. It would be better if adequate funding was provided to Local Authorities for additional costs incurred in administering this Act.

Q 6. 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 to d below) but which have been omitted from the list in Schedule 1.

Schedule 1 of the regulations sets out the definitive list of premises which will be no-smoking premises for the purposes of the Act. This is required by the Bill which provides that Ministers will make regulations prescribing premises, or classes of premises, as "no-smoking" premises. The Bill also limits the kind of premises that can be prescribed as being "no-smoking" premises by making it a condition that they must be wholly enclosed and also fall within one of 4 stipulated categories. Schedule 2 lists the premises, or classes of premises, or parts of premises which will be

exempted from the no-smoking regime. There are a number of issues in relation to Schedule 1 and 2 on which views are being sought:

No-smoking premises - The kind of premises which can be defined as no smoking are those which are wholly enclosed and:

- a) *to which the public or a section of the public has access*
- b) *which are being used wholly or mainly as a place of work by persons who are employees*
- c) *which are being used by and for the purposes of a club or other unincorporated association*
- d) *which are being used wholly or mainly for the provision of education or of health or care services.*

It is the Executive's intention that the list of premises included in Schedule 1 to the regulations be definitive. Ministers will have the power to add to the list of no-smoking premises by way of amendment of the regulations if it proves to be deficient in any way.

Response: The list appears to be comprehensive and the definitions are sufficiently broad to cover premises to be regulated. Further clarification however is required on sports stadia, bus shelters, train stations and private coach hire as mentioned above. The position of train stations is a particularly difficult one. Clearly given the nature of passenger access to and egress from trains, stations cannot be wholly enclosed. However, given that airport terminals are explicitly included there is potentially an inconsistency. As for airport terminals, members of the public who wish to use this form of public transport have to pass through the station and the fact that they are substantially enclosed limits ventilation. Stations are also places that the public may have to spend a considerable period of time in and many of the café and snack bars are in the open concourse areas which, unless an explicit determination and reference is made in the regulations, might be deemed to be not wholly enclosed and therefore allow smoking.

Q 7. Exemptions

- a) **Adult Care Homes** - *Ministers recognise that there are a number of issues which make it desirable to exempt adult care homes from this legislation, not least that these are effectively the homes of the residents.*

Ministers also recognise that safety and other considerations mean that in many such establishments smoking is not permitted in residents' own rooms, the place which most closely equates to their private place of residence. For this reason particular consideration must be given to the impact of second hand smoke on non-smoking residents and of staff. In order to address this issue, the Executive will investigate the best ways of ensuring that care homes implement smoking policies which provide smoke free social areas for non smoking staff and the targeting of cessation services and funds on those groups where it would have the greatest benefit.

The Executive seeks views on 1) general merits of this approach, 2) the development of smoking policies in residential care homes, and 3) the targeting of cessation services on the group.

Response: It would appear that the Executive intend to totally exempt adult care homes from the provisions of the Act. It would be preferable, and in keeping with the intention to normalise non-smoking, if the position was

reversed. This would make adult care homes non-smoking throughout and provide smoking facilities for residents who wished to use them. This would better protect non-smoking residents and staff working in the homes.

Over time and as a result of the reduction in smoking in the general population this will become less of an issue and will gradually lead to a reduction in facilities that have to be provided.

The development of smoking policies and the targeting of cessation services are to be welcomed and supported.

- b) **Psychiatric Hospitals and Psychiatric Units** - *The Executive views the position of patients in psychiatric hospitals and units, whether they are there voluntarily or on the basis of a compulsory order, to be different to general members of the public. They often do not have a private room and may have limited access to the outdoors. For those reasons the Executive intends to exempt these locations and will explore with those involved in the care and treatment of people with mental illness as well as advocacy groups and patients themselves, whether arrangements might be developed to allow the legislation to extend to some or all psychiatric hospitals and units in due course.*

Ministers recognise that the physical health profile of those with mental illness in Scotland is poor and smoking rates are traditionally high. Ministers are committed to reducing the health inequalities experienced by this group of patients and plan to implement a programme of targeted cessation across the sector in support of this aim. Views are invited upon 1) the general merits of this approach, and 2) the targeting of cessation services at this group.

Response: Staff working in psychiatric hospitals and units must be protected from the effects of passive smoking. It is however recognised that patients of these units are a unique group and it is considered that the advice of psychiatrists and doctors treating these patients must be sought and their views taken on board as to the merit of this approach. The general approach suggested for adult care homes above could apply to psychiatric hospitals and units and for the same reasons. This would protect those patients who do not smoke, support those patients who want to give up, and protect staff. Clarity about the standards that are required for such smoking facilities would be required – for example they should be wholly enclosed, smoking rooms and not smoking areas in a larger lounge, and ventilation standards need to be specified. The targeting of cessation services is welcomed because of the known high rates of cardiovascular disease in this group and the health inequalities they experience.

- c) **Hotel, Guest House and Bed and Breakfast Bedrooms** - *The Executive have drafted the regulations to include hotels, guest houses and bed and breakfast establishments to come within the scope of the law but to allow the proprietor the ability, if so desired, to designate bedrooms in which smoking may be permitted.*

Views are invited on the merits of this approach.

Response: Bedrooms in hotels, guest houses and bed and breakfasts establishments are temporarily the homes of individuals, albeit for a very short period, and as such people should be allowed to have the same freedom there as provided in their own homes, providing they have the owners consent. The approach here is to be welcomed and owners of these types of premises can

decide themselves whether they wish to provide smoking rooms or not as marketing conditions dictate.

- d) **Omissions from Schedule 2** - *The Executive invites views as to whether there are any premises which, taking into account humanitarian, practical or other considerations, are omitted from the exemptions list in Schedule 2.*

Response: See previous comments regarding sports stadia, bus shelters, train stations and private coach hire.