

Glen J (John)

From: ACPOS Secretariat [ACPOS.Secretariat@strathclyde.pnn.police.uk]
Sent: 30 March 2005 08:20
To: Glen J (John)
Subject: The Smoking, Health and Social Care (Scotland) Act 2005



211b.doc (104 KB)

This email has been received from an external party and
has been swept for the presence of computer viruses.

Mr Glen

Please find attached the ACPOS response regarding the above consultation.

Regards

ACPOS Secretariat.

<<211b.doc>>

The information in this e-mail and any attachment(s) is private and may also be LEGALLY PRIVILEGED. It is intended only for the addressee. If you are not the intended recipient or responsible for delivering it to the intended recipient, you are hereby notified that any use, disclosure, review, dissemination, distribution or reproduction of this e-mail is strictly prohibited. If you have received this e-mail in error please advise the sender immediately by using the reply facility in your e-mail software or contact STRATHCLYDE POLICE FORCE CONTROL on (+44)141 532 2000 and delete the e-mail. (Out P)



ASSOCIATION OF CHIEF POLICE OFFICERS IN SCOTLAND

Police Headquarters
173 Pitt Street
GLASGOW G2 4JS

Tel No: 0141 532 2052
Fax No: 0141 532 2058
Email: acpos.secretariat@strathclyde.pnn.police.uk

Your Ref:

Our Ref: 211b/AK/VR/05

Date: 29 March 2005

By Email

John Glen
Scottish Executive
Health Department
Tobacco Control Division
3E(R)
St Andrew's House
EDINBURGH EH1 3DG
Email: john.glen@scotland.gsi.gov.uk

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 correspondence dated 10 March 2005 in relation to the above subject, which has been considered by members of the General Policing Business Area, and can now offer the following by way of comment.

The draft regulations clarify the position with regards to enclosed spaces. The twin principles of comprehensive scope and limited exemption have clarified where the regulations will apply and limit opportunities for the legal profession to mount a challenge on the grounds that they do not apply to a particular area or premises.

The Act and Regulations are enacted by the Scottish Parliament and, under the terms of the Scotland Act 1998, is open to challenge under the Human Rights Act 1998. The provisions of the Scotland Act are that the Scottish Parliament cannot enact legislation which is incompatible with the ECHR. This has the effect of rendering a particular piece of legislation invalid. This is unlike Westminster, where the provision stands albeit a declaration of incompatibility may be

NOT PROTECTIVELY MARKED

made. It is possible that a challenge could be made as a 'Devolution Issue' as Health is a reserved matter.

The exemptions exempt 'Cell Accommodation', which would include court cells as well as police cells. However, the scope of the exemption, for example the actual cell or cell facility is not detailed. Interview rooms and detention rooms within a police station are also exempt as designated police rooms. There is still scope within this for individual forces to apply stricter rules.

I trust that the foregoing is of assistance to you.

Yours sincerely

A handwritten signature in black ink, appearing to read "William Roe". The signature is written in a cursive style with a large initial 'W'.

Chief Constable
(Hon. Secretary)

NOT PROTECTIVELY MARKED