

Your Ref:

My Ref: B\F\JPH\DOCS\Smoking Control\SmokingRegs2005consult\

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Date: 26 May 2005

John Glen  
Scottish Executive Health Department  
Tobacco Control Division  
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St Andrew's House  
Regent Road  
EDINBURGH  
EH1 3DG

Dear Sir

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

I refer to your letter dated 10 March 2005, inviting comments on the proposed regulations under The Smoking, Health and Social Care (Scotland) Bill 2005. Please find herewith the response from Renfrewshire Council, reflecting comments from all relevant Departments affected by the proposals. I hope that the views expressed will be of some assistance. Please note that it is intended to submit this response to Members for their approval, and I will confirm their decision as soon as possible.

This Authority is supportive of the proposed smoking ban in public places and workplaces envisaged by the Executive, provided that adequate financial support is given to us to assume the additional enforcement responsibilities involved.

Renfrewshire has already introduced a smoking ban in the workplace which took effect from 1 January 2005.

**A. Response to Annex B questions in Consultation**

***Q1 Regulation 1: Citation, interpretation and commencement***

This appears comprehensive.

***Q2 Regulation 2 : Display of no smoking notices***

The Irish definition where the name of the occupier or person in charge must be listed together with the name of the person to whom complaint should be made is recommended

31 May 1905

### ***Q3 Regulation 3: "No-smoking premises"***

Greater clarity is needed as to when premises should be regarded as 'wholly enclosed'. For example, how many doors, windows and passageways can 'enclosed' premises have before they become 'non-enclosed'? LACORS reports that there are some interesting constructions alongside some of the licensed premises in Ireland where smokers move outside the main building and into partially covered areas equipped with patio heaters.

### ***Q4 Regulation 4: Fixed penalty time limits, amounts and payments***

The proposed current fixed-penalty levels may not provide a sufficient disincentive to smoking or allowing smoking to occur within non-smoking premises. They should be higher, particularly those targeted at business owners for allowing smoking to take place or for failing to display adequate notices.

Our experience with the fixed penalty scheme for litter enforcement, shows that issuing fixed notices is very confrontational and needs a Police presence to be effective. The presence of a uniformed officer results in compliance, and they also have the power to ensure that a person gives their name and address, whereas Council officers cannot require this to be divulged resulting in no further action being taken. Dealing with under 16's is also a problem, with complaints from parents whose children have been issued with written warnings, and a need for corroboration (i.e. another officer present) to refute any unfounded allegations made by children. These issues could have an impact on the enforcement of the smoking ban, although it is noted that The Smoking, Health and Social Care Bill creates an offence for failing to give enforcement officers their name and address.

### ***Q5 Regulation 5: Application by councils of fixed penalties and account keeping***

The income generated by fines could be used to support schemes designed to encourage and facilitate Health Improvement such as smoking cessation work, or the development of additional leisure facilities. This would enable direct linkages to be made between the source and deployment of the funding in a similar way to the use of congestion charges to support the development of public transport infrastructure. Alternatively there could be a more direct link with income being used to fund additional overtime visits; increased signage in premises and provision of external bins, or to support additional campaigning. The latter would be particularly important if there were a lot of fines being issued, indicating that the message was not getting across to the public.

### ***Q6 : Non-smoking premises***

No obvious omissions. However is the list of premises sufficient to address takeaway premises and cafes?

### ***Q7 : Exemptions***

The list of premises in Schedules 1 and 2 are consistent with this Council's corporate response to the initial consultation on smoking in public places, which recommended that only premises which are people's normal place of residence should be exempt, which in the case of Local Authorities, would apply to care homes

31 May 1905

for older people. This was particularly a Social Work management concern. The Council's response did, however, indicate that there should be a requirement for such premises to provide designated enclosed smoking areas with adequate separate ventilation systems, to prevent staff members, visitors and other residents being exposed to smoke. Consideration must be given to the siting of such areas so that users are not placed at additional risk from e.g. traffic, weather or from personal mobility and mental health issues. This requirement should be introduced within the Act.

While supporting a ban, the Council recognised the importance of the Executive increasing investment both nationally and locally in order to encourage and support people to stop smoking and to adopt healthier lifestyles. Residents do not enter these homes through choice and it would seem appropriate that specific efforts are made, therefore, to target support such as smoking cessation services, at residents and staff who work within them.

#### **Q8**

As with question 7, presumably there should also be a requirement for psychiatric hospitals and units to provide designated enclosed smoking areas with adequate separate ventilation systems, to prevent staff members and other residents being exposed to smoke.

It also appears appropriate that specific efforts are made to target smoking cessation services at people who are ordinarily resident within psychiatric hospitals and units. Again, they do not choose to reside there and this group already experience health inequalities.

#### **Q.9 Hotels, guest house and B&B bedrooms**

This is a reasonable approach. Workers would not normally be present when smoking took place.

#### **Q.10 Other potential exemptions**

No obvious omissions.

### **B. Experience of Enforcement in Ireland**

It is considered that an appreciation of the approach of our Environmental Health colleagues in Ireland to enforcement of the Smoking ban there, would help inform this consultation. Our understanding of this reflects presentations made by them at the Royal Environmental Health Institute of Scotland's Annual Congress in November 2004, and a recently issued report by the Office of Tobacco Control in Ireland (Smoke-Free Workplace Legislation Implementation Public Health (Tobacco) Acts 2002 and 2004 - March 2005). A three pronged approach was taken in Ireland. People who observe contraventions are encouraged to raise the issue with the proprietor of the premises concerned - and if no satisfactory response is given to contact a **national smoke free compliance line**. Complaints are then passed to the appropriate enforcement agency and are then prioritised in their inspection programmes. The phone line is seen to empower the public employees and others; ensure that proprietors are aware of the desire of customers/employees to see the law enforced and helps target enforcement by highlighting non-compliance.

A **national inspection programme**, initially to raise awareness and understanding and to build compliance with new law, was first targeted at the hospitality sector (hotels, restaurants and licensed premises), and carried out by Environmental Health Officers (EHO). Significant additional resources were invested with nearly 35,000 inspections over a 9 month period. They looked at both evidence of anyone smoking and also at 'No Smoking' signage. Finally, market research on public attitudes in respect of the new law, before implementation and several times subsequent to it being enacted. In the conclusions of the report they state that there has been widespread support for the ban, reflected by high compliance levels and 'the ease with which the measure has been introduced and implemented. A new media campaign to build on this success has been introduced 'Smoke free is working lets keep it that way'.

EHOs in Ireland carry out daytime and overtime unannounced programmed monitoring visits and respond to complaints. They do not take a confrontational approach and find this more effective particularly early in the implementation process. Any infringements are advised to the responsible person in writing after the visit has taken place, outlining the legislation, legal obligations and referring to published guidance. There are expectations that managers/operators/bar staff will take action where they see contravention of the ban, seeking the assistance of the Gardai, if threatened. A similar expectation is placed on employers/employees in the workplace with the added reference to the workplace smoke-free policy, with the final sanction of getting assistance from the Gardai if all else fails.

In the Scottish context, whilst our Environmental Health Officers would be able to include this enforcement under inspections carried out for other purposes, such as food or health and safety, there would also be a requirement for extra inspections, particularly in the early days of the legislation. Our inspection programmes are rated to reflect the risk presented by the premises, so that some premises only receive inspections every few years. In addition in both food and Health and Safety at Work there is now a large number of premises which do not require to be inspected and 'alternative enforcement approaches' other than actual visits now take place. This would mean that in addition to the extra workload in premises subject to inspection there would be a significant number of inspections of premises which would not otherwise be either due a visit at the time or be outwith the inspection programme. There will also be additional premises which are not currently under our jurisdiction which will however be affected by the proposed legislation. This assumes that in terms of enforcement we would expect to increase the profile of no smoking inspections, particularly when the legislation is just introduced. The resolution of complaints is also likely to add to the workload for EHO's. Overtime costs would also rise.

### **C. General**

From a Social Work perspective there may be client capacity issues where service users with dementia, or suffering from injuries, may respond violently to controls being applied. The main problems we have had are in day centres and similar premises, where it is difficult for users with these issues to remember "the rules" or understand them. In addition they may have no concept of time. The resulting behaviour can impact on other users, since many who attend can have a number of conditions and be extremely frail. It is difficult to manage.

31 May 1905

It is our view that engaging active public participation is likely to be a major factor in the success of the self policing approach to maintaining the ban. This will require effective local communication to supplement any national campaign to raise awareness and inform the public. A national reporting line for people to report smoking in premises (as in Ireland) would be effective in helping to target enforcement, and it could also help to provide businesses with information.

There will likely be an increased demand for smoking cessation/awareness support, with insufficient NHS resources to provide the level of support needed, which they currently provide free of charge. Funding could be made available to support private counselling services for employees and service users. Training of care workers and specialist staff to support any smoking cessation interventions directed at the service users they work with, could also be funded.

The enforcement responsibilities associated with the smoking ban may not decline, resulting in significant added costs for authorities. An ongoing commitment to maintain additional funding which remains appropriate is also required.

I hope that this is sufficient for your needs. If you require any further clarification on the contents, please contact my Business Services Manager, Andrew Jamieson on 0141 840 3126, in the first instance.

Yours faithfully,

**Bernard J Forteach**  
**Director of Environmental Services**

**ENC. Respondent Information Form**