

Health Promotion

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Recd 31/5/05

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Date 25.5.05  
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Dear Mr. Glen

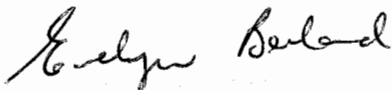
**THE SMOKING, HEALTH AND SOCIAL CARE (SCOTLAND) ACT 2005-05-25 (PROHIBITION OF SMOKING IN CERTAIN PREMISES) REGULATIONS 2005: DRAFT**

Please find attached the response on behalf of Greater Glasgow NHS Board.

The Board welcomes this legislation and considers it will play a vital role in improving health and reducing health inequalities in Scotland.

Please contact me should you require clarification regarding any of the points contained in our response.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Evelyn Borland'.

Evelyn Borland  
Acting Director of Health Promotion

## **Regulation 1 – Citation, interpretation and commencement**

### ***Definitions***

In the main the definitions are clear. The Board would however suggest that further following:

#### **“bar”**

The draft definition of the term “bar” includes any premises exclusively *or mainly* used for the sale of alcoholic drink.

Will the use of the term “mainly” be difficult to determine and provide a potential loophole?

#### **“designated hotel bedroom”**

It would be regrettable if hotel owners chose to designate all or most bedrooms as such, thereby creating in effect premises where smoking will predominate. The regulation regarding exemptions, ensure these will be the exception to the norm – and should there be a limit on the percentage of rooms that could be so designated (e.g. no more than 30% or 20%).

#### **“public transportation facilities”**

Many public transportation facilities are not wholly enclosed – e.g. bus shelters, train shelters – and can result in an unhealthy smoky atmosphere if the public were allowed to smoke there, especially in winter.

#### **“sports centre”**

Many sports facilities – e.g. sports stadiums – are similarly not wholly enclosed but are covered by the regulations.

Consideration should also be given to extending the regulations to cover other facilities which are not wholly enclosed but are significant in terms of public safety and in creating an environment where non-smoking areas should be included. This includes various tourist attractions with both indoor and outdoor areas.

In restricting the regulations to enclosed public places there is also the potential that non-smoking areas provided by pubs and restaurants will be used as ‘smoking areas’. Consideration should be given to regulating the overall proportion of any such area where smoking would be allowed (e.g. that a significant proportion (at least 50%) is designated as non smoking).

## **Regulation 2: display of no smoking notices**

The emphasis should be on all areas being regarded as smoke free, unless specifically exempted (rather than specific areas being designated as smoke free).

## **Regulation 3 : no smoking premises**

The restriction of the regulations to ‘wholly enclosed’ or where ‘the extent to which the area is enclosed is significant’, could undermine the intent of the legislation to make non-smoking the norm in public areas – e.g. children’s play areas – that are not enclosed but where smoking should not be allowed. If such areas would be included in the ‘significant’ category, there is a need for greater clarity in the regulations. This includes:

Please see also my previous comments re transport facilities, sports stadiums, and tourist attractions.

## **Regulation 4: fixed term penalties**

Consideration is required as to whether the penalties are sufficiently high to deter non-compliance. Unless there was stringent enforcement (which may prove difficult in terms of capacity) some smokers and owners of premises could take the view that it was worth taking the risk. Penalties in Ireland are considerably higher.

## **Regulation 5: Enforcement by Councils**

Councils will require additional resources to enable them to enforce the regulations effectively. The hope should be that, provided effective enforcement measures are put in place, the subsequent level of non-compliance would be sufficiently small that the collection of penalties will not provide any significant source of income to authorities.

## **No smoking premises**

It is recommended that reference be made to cafes, coffee/tea shops - either in the list or specifically included as 'restaurants' - even if they do not provide food.

All vehicles used as 'workplaces' should be included as no smoking premises, no matter the number employees normally using them. Allowing employees to smoke while driving in the course of their duties will undermine a non-smoking work environment and culture.

It is unclear why 'adult hospices' are listed as exemptions but 'hospices' are included as no-smoking premises. It is recommended that no exemption should apply to adult hospices.

It is recommended that specific reference be made to child-minder premises. These are usually private homes, but in caring for children and as a 'workplace' should be smoke free, at least during such hours as a childcare service is provided.

## **Exemptions**

The regulations have to make clear that any exemptions will be in allowing designated smoking areas only - as a small proportion of the total premises - and that even in 'exempted facilities' the overall norm should be smoke free.

In health care facilities that have been exempted, the exemption should apply only to patients (not staff or visitors) and only in designated smoking common rooms where separate non-smoking common rooms have also been made available.

While recognising the difficulties re psychiatric hospitals, GGNHSB would recommend that only long stay psychiatric facilities should be exempted.

Adult hospices should not be exempt.

It is important that the regulations should recognise that any exemption does not detract from the employer's duty to protect the health of their staff - and that measures must therefore be taken to minimise the effects of ETS in all 'exempt' facilities.

Only a minority of hotel, guesthouse and B&B bedrooms should be permitted to be designated as smoking - e.g. 20 or 30%.

In considering 'humanitarian considerations' it is important to challenge the mistaken acceptance of smoking as a coping mechanism for people in times of stress. This argument has been made in the past to permit staff in hospitals discretion in allowing relatives to smoke, especially at times of receiving 'bad news'. It however undermines the



efforts to make the NHS smoke free – and unless challenged will continue to present smoking as a ‘support’ rather than a health hazard.