

# **THE SMOKING, HEALTH AND SOCIAL CARE (SCOTLAND) ACT 2005, DRAFT (PROHIBITION OF SMOKING IN CERTAIN PREMISES) REGULATIONS 2005 AND REGULATORY IMPACT ASSESSMENT. REPORT OF CONSULTATION RESPONSES**

## **Introduction**

On 10 March 2005 the Scottish Executive invited comments on draft regulations made under powers contained in The Smoking, Health and Social Care (Scotland) Bill 2005 and the Regulatory Impact Assessment (RIA) of this legislation. Comments were invited from relevant business representative organisations, individual businesses, health and other organisations and interested parties (list attached). To enable a wider audience to participate, the consultation material was also placed on the Scottish Executive's web site [www.scotland.gov.uk/smokingregulations](http://www.scotland.gov.uk/smokingregulations). All responses were requested by Thursday 26 May 2005.

## **Background**

The issue of smoking in public places was subject to extensive public consultation from June to September 2004. Following consideration of the findings of the consultation and other evidence gathered on the health effects of passive smoking and the health and economic impact of regulation on smoking in public places, Ministers introduced the Smoking, Health and Social Care (Scotland) Bill in December 2004.

The Bill contained measures to prohibit smoking in certain wholly enclosed public places, and indicates that detailed provisions, including exemptions will be prescribed through regulations. The First Minister stated that the scope of the ban was intended to be comprehensive, although it was recognised that there would be a need for some very specific exemptions for places where people reside or where there are clearly established humanitarian or practical considerations.

## **Summary of Responses and Conclusions**

The consultation materials posed questions about specific matters. However, this approach did not preclude consultees from commenting on any aspects of the draft regulations or the RIA.

We are extremely grateful to all who took the time to respond to the consultation paper. A total of 126 responses were received by the deadline set. Table 1 below sets out the category of respondents. A number of responses dealt specifically with the 10 questions posed in the consultation paper, the others passing general comments on the proposed legislation or the material contained in the RIA. All of the responses were considered individually and this report is a summary of the main issues raised.

Please note that the graphs contained within this report display a significant number of no comments. While some respondents actually offered no comments to the consultation exercise, the majority offered specific comments on one or two of the questions raised and these are reflected in the appropriate graphs.

Table 1: Category of Respondents

THE SMOKING, HEALTH AND SOCIAL CARE (SCOTLAND) ACT 2005 CONSULTATION RESPONSES	
Business	26
Business – transport	3
Charity Organisation	7
Government body	5
Health Promotion Unit	5
Interest Groups	4
Justice	3
Local Authorities	20
MSP	1
NHS bodies	16
Non- departmental public body	1
Other	15
Private club	1
Professional Organisation (Health)	12
Sports	2
Unions	1
Voluntary	4
<b>Total</b>	<b>126</b>

## Next Steps

Ministers and officials have given careful consideration to all responses received as part of the consultation exercise. The regulations will be finalised, taking into account the responses received. If the Smoking, Health and Social Care (Scotland) Act 2005 (Prohibition of Smoking in Certain Premises) Regulations 2005 is approved by MSPs, the regulations will be laid before Parliament for approval following the summer recess, in September 2005.

The introduction of the new law is planned for Spring 2006.

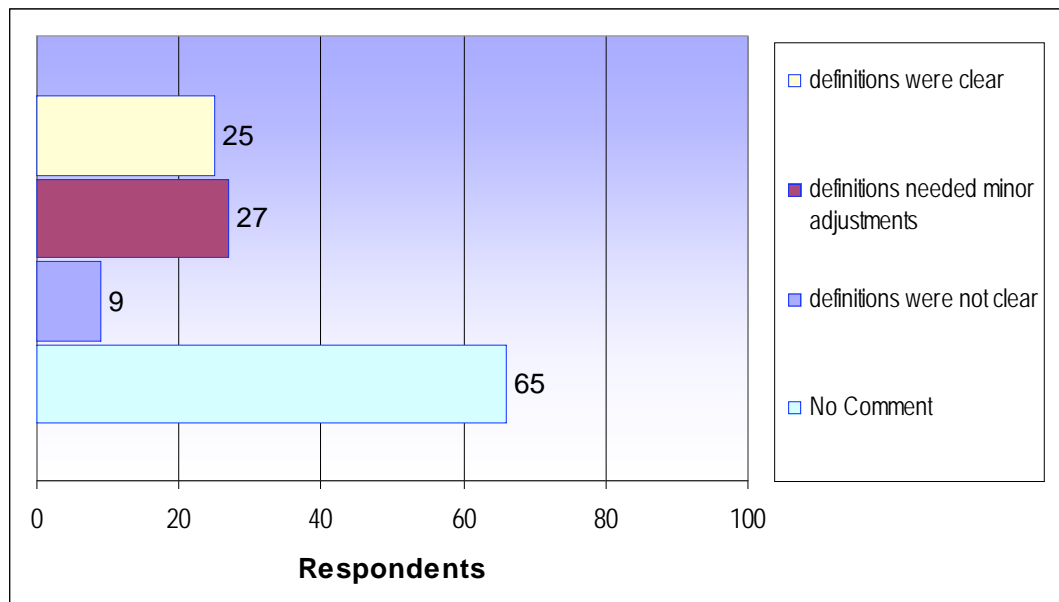
A copy of the updated regulations will be sent to all those who responded to the consultation.

## Draft Regulations and responses to questions posed

### Regulation 1: Citation, interpretation and commencement

*Regulation 1 provides the definitions of words and phrases used in the regulations and the commencement date of the regulations.*

**Q.1. Consultees were asked if the definitions of words and phrases ensured clarity of what premises were covered or exempted from the regulations. If not, how might they be improved?**



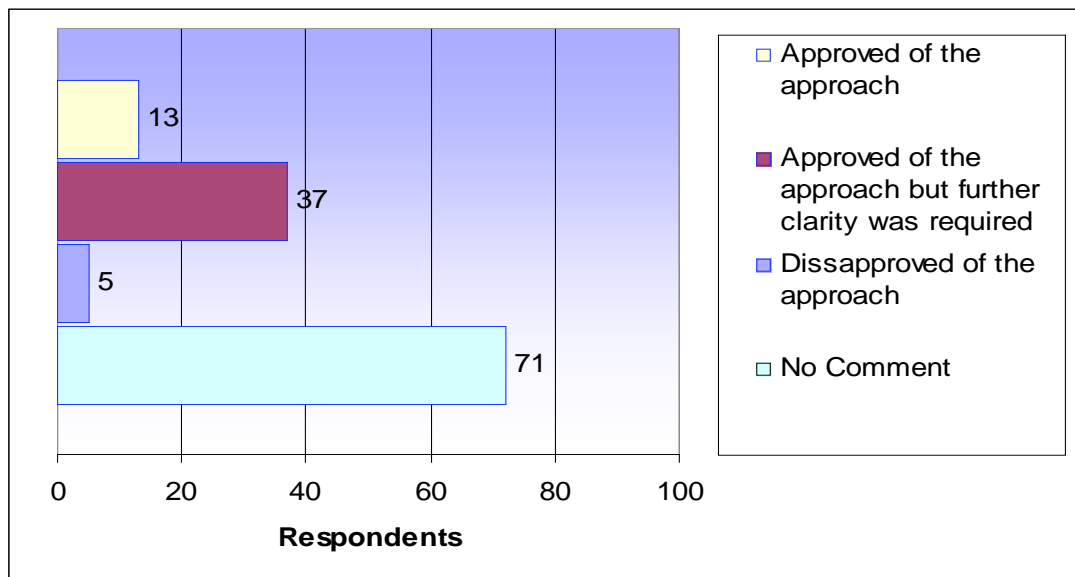
Although, in general, respondents were content with the definitions used in the draft regulations there were a number of responses which provided a range of suggested changes or sought further clarification. The main issues raised were:

- Clarification was sought on the definitions of club premises, designated hotel rooms, educational institutions (e.g. student accommodation), government establishments (e.g. armed forces), residential premises, (e.g. hostels), sports stadia, railway and bus stations, open top tour busses and bars.
- To avoid confusion it was suggested that vehicles should be separately defined.
- Clarification was sought on the definition of wholly enclosed to ensure that there was no ambiguity.

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

*This regulation makes further provision in relation to the display of no-smoking notices, in addition to the requirements already stipulated under section 3(1) of the Bill. The regulation sets out the minimum size of a no-smoking notice (230 mm x 160 mm) and specifies that it should include an international “no smoking” symbol of at least 85 mm. in diameter. The sign must also specify the person to whom complaints should be addressed and be displayed so that it is protected from tampering, damage, removal or concealment.*

**Q2. Views were invited on this approach.**



A range of suggestions were made regarding the issue of signage. Mixed views were received from respondents, some favouring the approach contained in the draft regulations while others felt that the regulations were too prescriptive, excessive or unnecessary. The main issues raised concerned the size, shape, placement and the information to be contained within the signage.

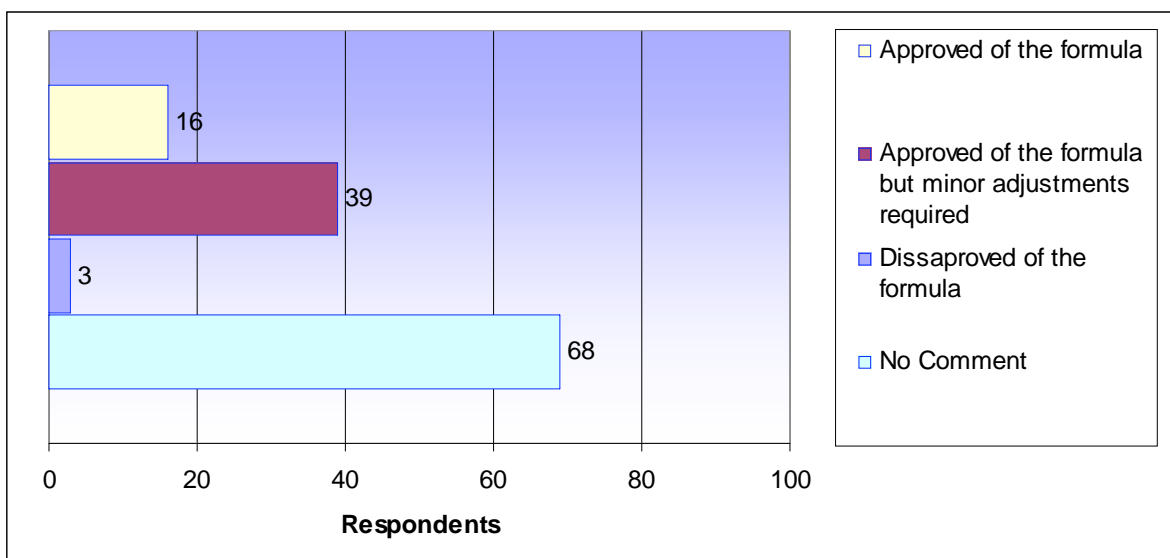
**Regulation 3: “No-smoking premises”**

*Paragraph (1) of regulation gives effect to Schedule 1, which sets out the premises or classes of premise which are to be no-smoking premises, whilst paragraph (2) gives effect to Schedule 2, which sets out the premises or parts of premises or classes of premises or parts of premises which are excluded from the definition of no-smoking premises. The “no-smoking premises” listed at Schedule 1 and the exemptions listed at Schedule 2 are discussed in more detail below.*

*Paragraph 3 of regulation 3 defines and elaborates on the terms ‘premises’, ‘wholly enclosed’ and ‘has access’ as they are used in the Bill.*

*We are continuing to examine whether the given definition of “wholly enclosed” delivers the policy intention, which is to designate as no-smoking premises all those premises listed in Schedule 1 to the regulations, provided that they are either wholly enclosed or, where they are not wholly enclosed, the extent to which they are not wholly enclosed is significant.*

**Q3. Comments were invited on the existing formula and on how it might be improved.**



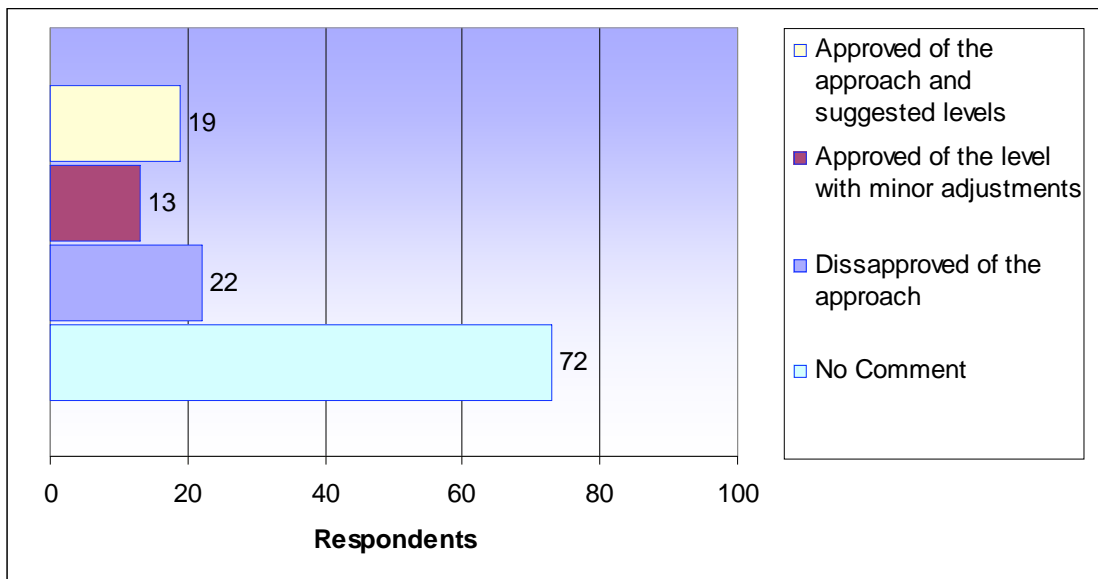
The majority of the respondents felt the need for a clearer definition of the term “wholly enclosed” and whether the premises could be permanent or temporary, based on the definition as drafted.

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

*Regulation 4 provides further detail on fixed penalties. The regulations provide that an enforcement officer can only serve a fixed penalty notice up to 7 days after the event. It sets out the amounts of fixed penalty associated with the various types of offence. The fixed penalties are: £200 for permitting others to smoke in no-smoking premises; £50 for smoking in no-smoking premises; £200 for not conspicuously displaying warning notices in no-smoking premises.*

*Where an offender pays the fixed penalty within 15 days, discounted amounts are charged. The discounted amounts are: £150; £30 and £150 respectively.*

**Q4. Views were invited on the level of fixed penalties and time limits for payment**

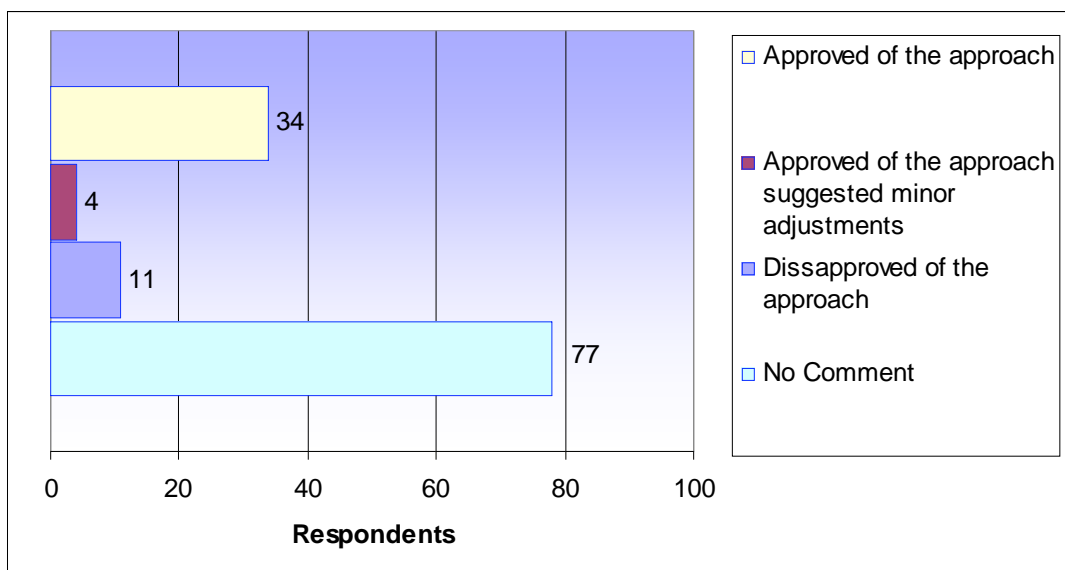


Although the majority of those who responded were generally satisfied with the level and time limit for fixed penalties, a number of responses suggested that fixed penalties should be increased or a sliding scale introduced for repeat offenders. There were, however, some views suggesting that fixed penalties were excessive. The ability to enforce fixed penalties in rural locations within the time limits set was questioned by some respondents.

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

*This regulation requires councils to keep accounts of their income and expenditure in respect of the administration and enforcement of Fixed Penalty Notices. Any deficit will be made good by the council and any surplus used to improve the “amenity” of the council area. Councils will be required to send an annual statement of the accounts they have kept to Ministers along with an explanation.*

**Q5. Views were invited on the general approach outlined here.**



The majority of responses which offered comment favoured the approach set out in the regulations. Caution was expressed to ensure that an over zealous enforcement approach by Environmental Health Officers should not be adopted in an attempt to defray costs.

### Schedules to the Regulations

*Schedule 1 sets out the definitive list of those premises that will be no-smoking premises for the purposes of the Act. This is required by Section 4(2) of the Bill which provides that Ministers will make regulations prescribing premises, or classes of premises, as “no-smoking” premises. Section 4(4) of the Bill limits the kinds 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 parts of 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 were sought:**

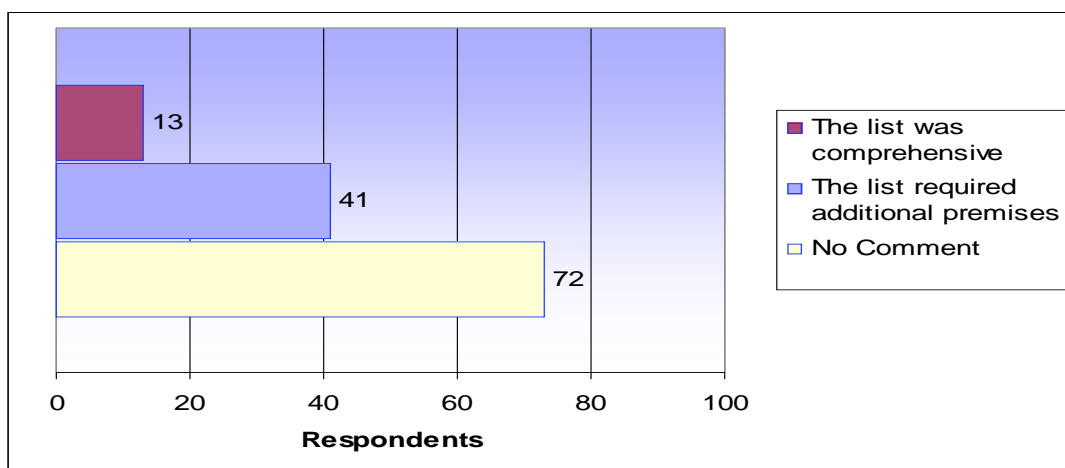
#### **Schedule 1: No-smoking premises**

*Under Section 4(4) of the Bill, 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; or*
- (d) which are being used wholly or mainly for the provision of education or of health or care services.*

*It is therefore intended 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.*

**Q.6 Views were sought on whether there were any premises which fall into the definition of no-smoking premises at section 4(4) of the Bill [(a)-(d) above], but which had been omitted from the list in Schedule 1.**



In response to the specific question asked a number of additional premises were identified by respondents. These included: detention centres, prisons, armed service establishments, public telephone kiosks, bus stop shelters, doorways, stadia, railway stations and bus stations.

## **Schedule 2: Exemptions**

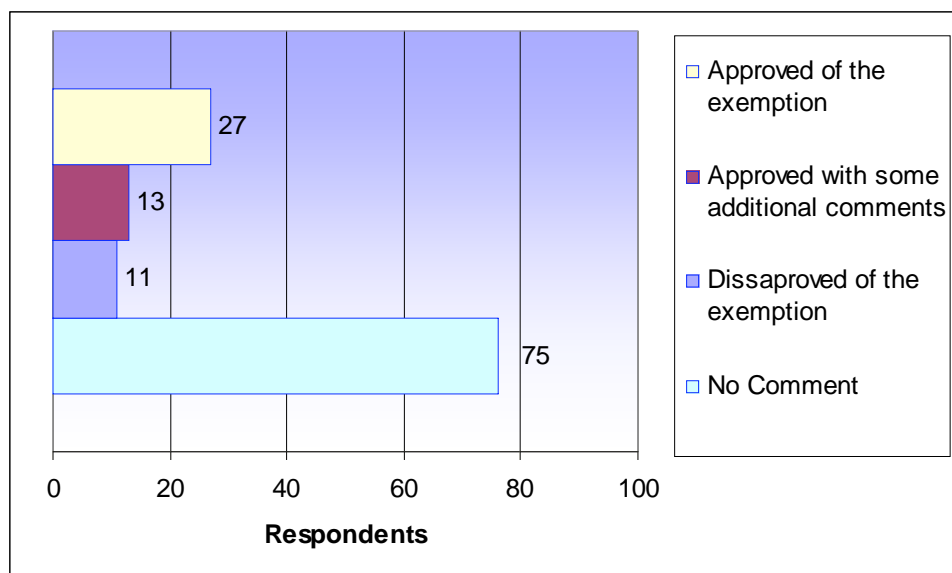
### **Adult care homes**

*Ministers recognise that there are a number of issues which make it desirable to exempt adult care homes from the scope of the legislation, not least that these are effectively the homes of their residents.*

*However, Ministers also recognise that safety and other considerations mean that in many such establishments smoking is not permitted in residents' own rooms, the places which most closely equate 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 on staff. In order to address this, we will investigate the best way 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.*

#### **Q.7 Views were invited on:**

- ***the general merits of this approach;***
- ***the development of smoking policies for residential care homes; and***
- ***the targeting of cessation services on these groups.***



Respondents were mainly in favour of the approach to exempt adult care homes. However, respondents identified a clear need to take account of the rights of non-smoking residents and a duty of care to staff working in these establishments. Respondents indicated that they supported the view that the Scottish Executive should look at the best ways of ensuring care homes implement smoking policies backed up by the education of smoking residents

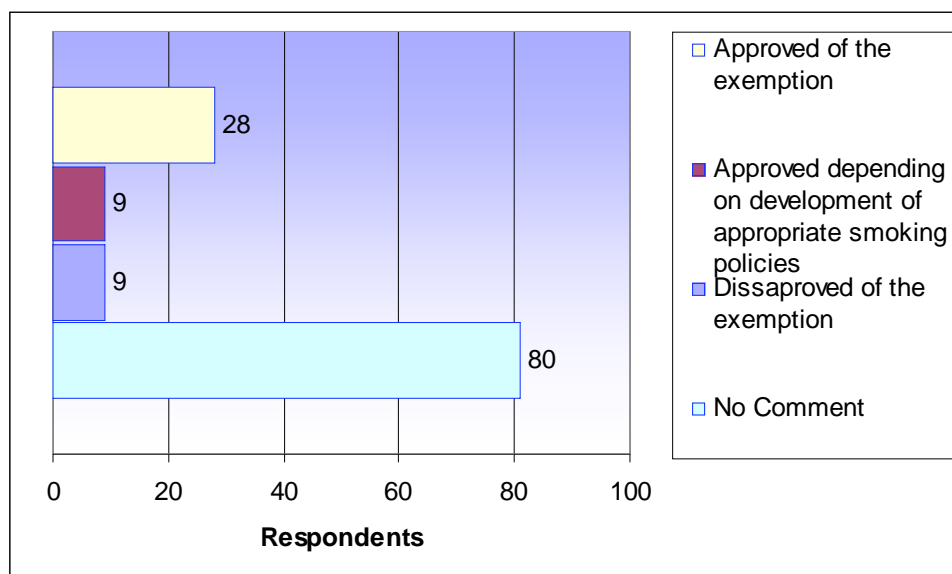
## Psychiatric hospitals and psychiatric units

*The position of patients in psychiatric hospitals and units, whether they are there voluntarily or on the basis of a compulsory order, is different to general members of the public. They do not have a private room and may have limited access to the outdoors. For those reasons, among others, we would for now intend to exempt these locations. We 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.*

### **Q.8 Views were invited on:**

- ***the general merits of this approach; and***
- ***the targeting of cessation services at this group.***

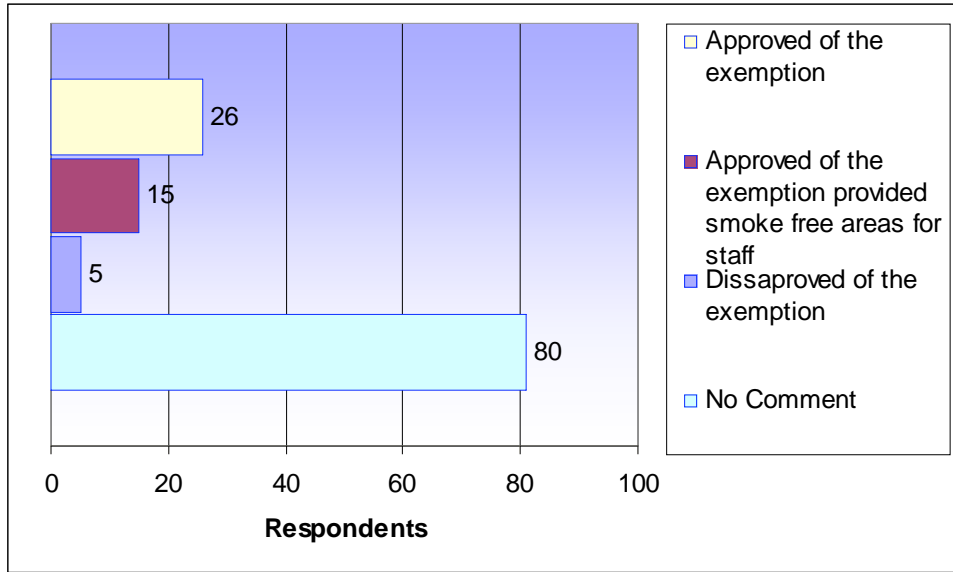


In the main respondents were in favour of the approach and recognised the need for the exemption of these premises. However, respondents identified the requirement to ensure the protection of staff and no-smoking patients by minimising the impact of smoke within these premises. It was acknowledged that patients should be given the necessary support to help them to give up smoking.

## Hotel, guest house and B & B bedrooms

*The regulations have been drafted to include hotels, guest houses and B & Bs within the scope of the law, but to allow proprietors the ability, if required, to designate bedrooms in which smoking may be permitted.*

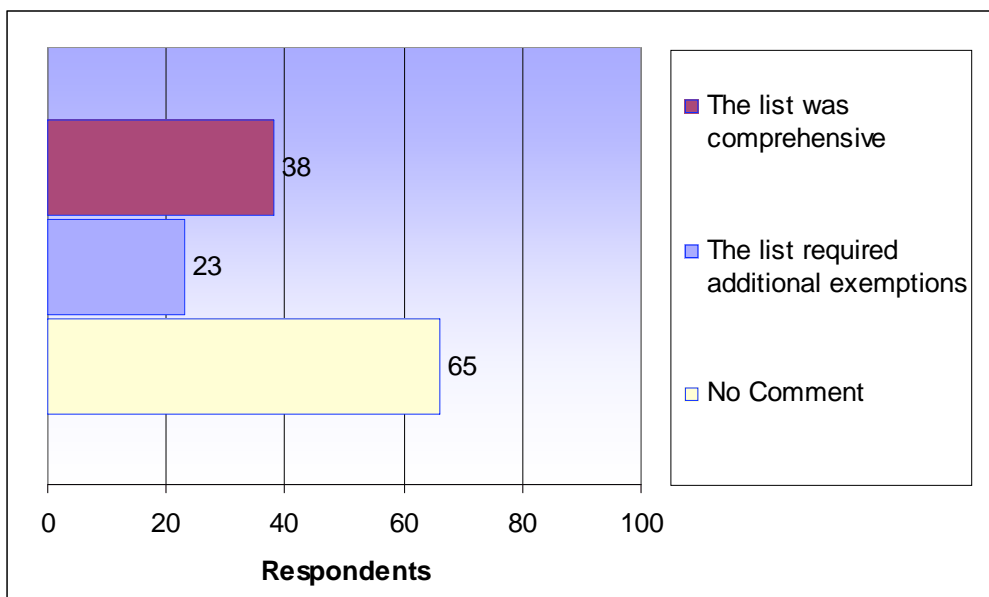
**Q.9 Views were invited on the merits of this approach.**



Respondents were generally in favour of the approach, suggesting that proprietors should have the discretion to designate some of their bedrooms in which smoking could be permitted. A number of respondents recommended that there might be some merit in setting a maximum number of smoking rooms within the premises to prevent all or mainly all being allocated as smoking rooms. Concern was expressed over staff servicing such rooms regarding their exposure to second-hand smoke.

**Omissions from Schedule 2**

**Q.10 Were there any premises which, taking into account humanitarian, practical or other considerations, which were omitted from the exemptions list in Schedule 2?**



While the majority of respondents were content with the list, a number of individual respondents requested that certain premises should be added. These included day care centres for the homeless, day care centres for the elderly, users of mental health drop in centres, theatre productions and on shore gas installations.

### **Regulatory Impact Assessment (RIA)**

The consultation documentation contained a Regulatory Impact Assessment (RIA) which assessed the costs, benefits and the likely impact of the proposed legislation on business based on the best evidence available. Three options had been considered in the development of policy and these were set out in the RIA documentation. The three options were:- option one - voluntary approach, option two - smoke free legislation, option three – legislation, but with the exemption of the hospitality sector.

Only seven respondents choose to make specific comments on the RIA with the majority fully supporting the Scottish Executive's conclusion that option 2 was the best option to deliver improvements in public health. One respondent suggested that the information set out in the documentation was highly speculative. Another respondent raised issues of enforcement, sanctions and level of proof required by environmental enforcement officers. The respondent also suggested that a fourth option should also have been considered i.e. the creation of smoke free premises with the option to provide separate accommodation for those who wish to smoke.

**THE SCOTTISH EXECUTIVE  
HEALTH DEPARTMENT  
TOBACCO CONTROL DIVISION**

**JUNE 2005**

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

**CONSULTATION LIST**

**Business (General)**

CBI Scotland  
Federation of Small Businesses  
McLarens Wholesale  
Scottish Retail Consortium  
Scottish Business in the Community  
Scottish Chamber of Commerce  
Scottish Grocers' Federation  
National Federation of Retail Newsagents

**Business (Leisure, Gaming and Hospitality)**

Association of British Bookmakers  
Bar, Entertainment and Dance Association  
BAT (British American Tobacco)  
Bell Filter Solutions Ltd  
Bingo Association  
British Casino Association  
British Greyhound Racing Board  
British Horseracing Board  
British Hospitality Association  
Carlton Clubs Plc  
Cowells Arrow Bingo  
Gala Leisure Ltd  
National Association of Bookmakers Ltd  
National Greyhound Racing Club Ltd  
Rank Group Gaming Division  
Scottish Beer and Pub Association  
Scottish Football Association  
Scottish Independent Bookmakers Association  
Scottish Licensed Trade Association  
Scottish Premier League  
Scottish Rugby Union  
Sportscotland  
Scottish Tourism Forum  
Stanley Leisure Plc  
Tobacco Manufacturers' Association  
Visit Scotland  
William Hill Plc

**Business (Transport)**

Airport Operators Association  
BAA Scottish Airports

British Ports Association  
Caledonian MacBrayne Ltd  
Confederation of Passenger Transport  
Dundee Airport  
Edinburgh Private Hire Association  
First ScotRail  
Glasgow Prestwick International Airport  
GNER  
Highlands and Islands Airport Ltd  
Northlink Orkney and Shetland Ferries Ltd  
Orkney Ferries  
P&O Irish Sea  
Railway Policy and Projects Branch  
Scottish Taxi Federation  
Seacat  
Stena Line Ltd  
Strathclyde Passenger Transport  
The Chamber of Shipping  
The Greater Glasgow Private Hire Association  
UK Major Ports Group  
Virgin Trains  
Western Ferries (Clyde Ltd)

### **Children and Young People**

Barnardos  
Children First  
Children in Scotland  
Save the Children Scotland  
Scottish Youth Parliament  
Youthlink Scotland

### **Disability**

Capability Scotland  
Disability Rights Commission  
Enable  
Inclusion Scotland  
Scottish Association for Mental Health  
Scottish Disability Equality Forum Scotland  
Mental Health Foundation  
Mental Welfare Commission  
National Schizophrenia Fellowship (Scotland)

### **Enterprise**

Highlands and Islands Enterprise  
Scottish Enterprise

### **Equality and Ethnic Groups**

Commission for Racial Equality  
Equality Opportunities Commission  
Strategic Group on Women

**Justice**

Faculty of Advocates  
Scottish Police Federation  
Sheriff's Association  
The Association of Scottish Police Superintendents  
The Association of Chief Police Officers in Scotland  
The Law Society of Scotland

**Local Authorities**

COSLA  
Chief Executives, Local Authorities  
City of Glasgow Licensing Board  
Edinburgh Licensing Board  
VOCAL (Voice of Chief Officer of Cultural, Community and Leisure Service)

**NHS Scotland/ Other Health**

Asthma UK  
British Dental Association (Scottish Branch)  
British Heart Foundation  
British Lung Foundation  
British Medical Association (Scottish Branch)  
Cancer Research UK  
Care Commission  
Chest, Heart and Stroke Scotland  
Chief Executives, NHS Boards  
Chief Executives, Special Boards  
Diabetes UK, Scotland  
Directors of Public Health  
General Managers, State Hospitals  
Health Promotion Managers  
MacMillan Cancer Relief  
Marie Curie Cancer Relief  
RCGP  
Royal College of Nursing  
Royal College of Physicians  
Royal College of Surgeons  
Royal Society of Edinburgh  
The State Hospitals Board for Scotland  
UK Departments of Health

**Older People**

Age Concern  
Alzheimer Scotland  
Help the Aged  
Scottish Care

**Parliament**

Clerk of Committees  
MEPs

**Prisons**

APEX Scotland  
HM Inspectorate of Prisons  
SACRO  
Scottish Prison Officers Association  
Scottish Prison Service

**Private Clubs**

British Legion  
Coal Industry Social Welfare Organisation  
CIU (Scottish Rep)  
CIU – Working Men’s Club and Institute Union Ltd  
CORCA – Committee of Registered Clubs Association  
Grand Lodge of Scotland  
Grand Orange Lodge of Scotland  
National Union of Students  
Scottish Bowling  
Scottish Golf Union

**Sustainable Development**

Friends of the Earth Scotland  
Keep Scotland Beautiful

**Unions**

STUC (for all Unions)

**Voluntary**

Aberlour  
ASH Scotland  
Association of Chief Officers of Voluntary Organisations  
Community Service Volunteers  
Oxfam in Scotland  
Salvation Army  
Scottish Council for Voluntary Organisations  
Scottish Human Rights Centre  
The Poverty Alliance  
The Roy Castle Lung Cancer Foundation  
Voluntary Action Fund  
Volunteer Development Scotland  
Who Cares Scotland  
Women’s Royal Voluntary Service

**Other**

Association of Scottish Community Councils

CAB (Citizens Advice Bureau)

Centre for Tobacco Control Research

Copyright Libraries

FOREST

Highland Users Group

Ministerial Working Group on Tobacco Control

National Smoke-free Areas Implementation Group

Royal Environmental Health Institute of Scotland

Scotland's Health at Work

Scottish Civic Forum

Scottish Consumer Council

Scottish Tobacco Control Alliance

Society of Chief Officers of Environmental Health in Scotland

Society of Chief Officers of Trading Standards in Scotland