



The Royal Environmental Health Institute of Scotland

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26 May 2005

Mr John Glen
 Scottish Executive Health Department
 Tobacco Control Division, 3 E(R)
 St Andrew's House
 Regent Road
 Edinburgh EH1 3DG

Dear Mr Glen

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

The Royal Environmental Health Institute of Scotland welcomes this opportunity to comment on the above draft Regulations.

The Institute welcomes and supports the introduction of the Bill and believes that a significant contribution to the protection and improvement of public health in Scotland will result from its implementation.

Comment on the proposals to date

Before dealing with the specific questions set out in Annex B of Sarah Davidson's letter of 10 March 2005 I take this opportunity to make the following general points on behalf of the Institute.

In considering how best to introduce and implement legislation to prohibit smoking in public places the Institute believes that there is much to learn from the Republic of Ireland's approach. The public are encouraged to report any contravention to the person having management and control of the premises in question. If no satisfactory response is made then re-course can be taken through the national smoke free compliance phone line which is operated and manned by Office of Tobacco Control staff on a 24 hour basis. Complaints received from this source are prioritised and investigated by Environmental Health Officers. Late night calls to the compliance line are relayed to Principal Environmental Health Officers early the following morning and are dealt with as a matter of priority. The emphasis for compliance is placed upon the person having management and control of the premises in question and the phone line empowers the general public. This approach reduces unnecessary confrontation between members of the general public and the Environmental Health Officers who are employed to ensure compliance.

In keeping with the Republic of Ireland's non-confrontational approach the Institute recommends that the service of fixed penalty notices on individual members of the general public be considered as part of an overall framework for enforcement with emphasis being placed on taking action, in the first

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instance, against the person having management and control of the premises. Action against individual members of the public would only be considered as a secondary measure.

In view of the above, the Institute recommends the introduction national guidance on enforcement which would result in a uniform approach to enforcement. With 32 local authorities in Scotland there is a concern that a fragmented approach could lead to inconsistent enforcement with a real possibility that new legislation could fall into disrepute and become unusable. The Institute believes that guidance to encourage consistency of enforcement policy and practice would be of assistance to Environmental Health Officers and others employed to ensure compliance. It is also important that a mechanism is introduced to encourage consistency of enforcement and to enable local authorities and their officers to share problems and best practice. The Institute has experience in facilitating such mechanisms in other areas of environmental health activity and would be pleased to work with other stakeholders to take this role in smoking control.

The Institute believes that the use of non tobacco smoking products in premises will provide a real difficulty for the person with responsibility for the management and control of premises or for an Environmental Health Officer carrying out an inspection. It may be impossible to distinguish between tobacco and non-tobacco smoking products such as herbal cigarettes during an inspection. This potential loophole must be carefully considered before any legislation is finalised.

Annex B – Specific Questions Relating to the Regulations

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

Please refer to the responses to Questions 6, 7, 8, 9 and 10 below.

Q2. Display of no smoking notices.

The Institute recommends that, in addition to the provision of Regulation 2, the name of the person to whom complaint should be made should be listed on the notice along with the name of the person having management and control of the premises.

Q3. No-smoking premises.

This is an issue which has created difficulties with enforcement in the Republic of Ireland. The Irish Government is currently considering how the approach to non-enclosed premises and structures could be better managed. The Institute understands that these considerations are ongoing and recommends that regard should be given to the findings so far. In view of this the Institute would encourage the adoption of the current Republic of Ireland approach whereby premises that are more than 50% enclosed are covered by its tobacco control legislation. In addition to this requirement the Institute recommends that a duty of care is placed on the person having management and control of the premises to ensure that environmental tobacco smoke can dissipate from any such premises or structure.

Q4. Fixed penalty time limits, amounts and payments.

The Institute offers no comment on these matters.

Q5. Schedules to the Regulations.

The Institute believes that any revenue arising from the service of Fixed Penalty Notices should be reinvested by local authorities in tobacco control related activities.

Q6. Definition of no-smoking premises.

The Institute believes that the definition of 'enclosed public places' specifically excludes a range of premises on the basis that they are partially enclosed. Such premises include sports stadia, certain tourist venues with a mix of open air and enclosed attractions and transportation facilities such as railway platforms, bus shelters and subways where members of the public would continue to face exposure to environmental tobacco smoke. The Institute believes that a far greater number of public places would be included in the legislation as a result of adopting such a definition.

Q7, Q8 and Q10. Exemptions

The Institute reminds the Scottish Executive that this legislation is primarily aimed at protecting and improving the health of the people of Scotland and endorses the Scottish Executive view that the scope of the ban is intended to be as comprehensive as possible. The Institute's submission on the Bill stated that '... ideally there should be no exemptions from compliance with any legislation introduced to ban smoking in public and work places'. The Institute has however taken cognisance of the views of others on this matter and recognises that there may be a need for some very specific exemptions for premises where people reside or where there are clearly established humanitarian or practical considerations and now recommends that, where an exemption would not be in the interest of certain individuals or groups, the introduction of a legally enforceable smoking policy which restricts smoking to certain well defined areas. Such a policy must be designed to protect staff, visitors and other residents and patients from exposure to environmental tobacco smoke. In practical terms such restricted areas for smoking must be self contained and so ventilated as to prevent the escape of smoke into adjoining areas where smoking is not permitted. Examples of such premises would be adult care homes, psychiatric hospitals, long stay homes and hospices. Residents do not enter such premises through choice and it would seem appropriate that specific efforts are made, therefore, to target support such a smoking cessation services, at residents and at staff and volunteers who work within them.

Q9. Hotel, guest house and bed and breakfast bedrooms

In Regulation 1 a 'designated hotel bedroom' is defined as 'a bedroom in a hotel which has been designated by the person having management or control of the hotel as being a bedroom in which smoking is permitted'. The Institute is concerned that the definition proposed may be interpreted as allowing all bedrooms to be designated as smoking areas and believes that this would not be in the spirit of the legislation nor the intent of the drafters of the regulations. The Institute believes that the proposed definition should include a maximum proportion of rooms in any one hotel premises which could become designated and that such a proportion should be strictly limited. The figure of 20% has been suggested as a maximum by some groups and the Institute would endorse the adoption of such a figure. For the regulations to have the intended effect smoke from designated hotel bedrooms should not be able to infiltrate areas where smoking is prohibited. All hotel bedrooms designated for smoking must therefore be clearly identifiable and must be adjacent only to other bedrooms where smoking is designated. The status of rooms as smoking or non-smoking may not be changed unless, of course, the intention is to turn smoking rooms into non-smoking rooms on a permanent basis.

Annex C - Regulatory Impact Assessment

The Institute fully commends the Scottish Executive's conclusion that smoke-free legislation is the best option (Option 2) to deliver significant improvements in public health.

The Institute believes that voluntary approaches (Option 1) provide poor protection to the visiting public and staff. Such approaches have been promoted in the past and were not adopted to any great extent. As a consequence the Institute believes that they are not a solution.

The Institute believes that exemptions for the licensed hospitality sector (Option 3) would not work either as the visiting public and staff would not be adequately protected. The Institute is satisfied that scientific evidence has properly demonstrated that that no ventilation system effectively removes the harmful products of cigarette smoke.

Should you require clarification of any point or further information please do not hesitate to contact me.

Yours sincerely



Tom Bell
Chief Executive

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The Royal Environmental Health Institute of Scotland (the Institute) has been in existence for over 125 years and has around 1,200 members the majority of whom are Environmental Health Officers working in that capacity for Scottish local authorities.

The objects for which the Institute is established are for the benefit of the community to promote the advancement of Environmental Health by:

- stimulating interest in and disseminating knowledge concerning Environmental Health;
- promoting education and training in matters relating to Environmental Health; and
- maintaining, by examination or otherwise, high standards of professional practice and conduct on the part of Environmental Health Officers in Scotland.

Environmental Health Officers in Scotland are part of a graduate only profession and by virtue of their under-pinning academic education, professional practical training, professional qualifications and experience are well placed to apply a holistic public health approach to the education of the public and to the enforcement of a wide range of environmental and public health legislation.

The Institute, which is Incorporated by Royal Charter, is an independent and self-financing organisation. It neither seeks nor receives grant aid. The Institute's charitable activities are funded significantly by the subscriptions received from its members.