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Monday, 28 November, 2016

Dear Chief Executive,

## **SMOKING OUTSIDE HOSPITALS: AN OPPORTUNITY TO COMMENT ON PROPOSALS**

I am writing to you to provide an opportunity for your Health Board, and on behalf of all its hospitals, to comment on the Scottish Government's proposals to support NHS Smoke-free Grounds by introducing regulations under the Health (Tobacco, Nicotine etc. and Care) (Scotland) Act 2016 ("the 2016 Act"). A brief questionnaire at **Annex B** at the end of this letter gives a chance to tell us what the Health Board thinks about our regulation proposals. We would be grateful if you could have someone also complete and return the Respondent Information Form at **Annex A**.

Each hospital will have a different ground lay-out and there may be a variety of opinions among colleagues in individual hospitals or across a Health Board area. We are aware that there is a great deal of interest in this topic and would like to suggest that Directors of Public Health, Facilities Managers, Health and Safety Directors and Health Improvement Managers are consulted. It would be very helpful, if possible, to work with colleagues at hospital and Health Board level to reach a consensus view on each of the questions at Annex B.

The 2016 Act has already made provisions for banning smoking outside NHS hospital buildings in Scotland by inserting provisions into the Smoking, Health and Social Care (Scotland) Act 2005 ("the 2005 Act"). The 2005 Act introduced the ban on smoking in enclosed public places – including inside hospitals.

The Scottish Ministers now have powers to determine some of the finer detail before setting a date for the ban to be in force. Our intention is to lay draft regulations next year at the Scottish Parliament to set these details in law and begin the legally enforceable ban in late 2017.

The aim of the new offences on smoking near hospital buildings is to bolster existing smoking policies in hospital grounds. The new offences are not intended to replace the existing NHS ban on smoking in all hospital grounds nor are they intended to suggest people can smoke freely further from buildings. The new arrangements will mean that hospital staff and others will be able to do more than just ask smokers to respect the hospital grounds no-smoking ban. Now staff will be able to seek support from local authority enforcement officers who can issue fixed penalty notices or refer particularly bad cases to the Procurator Fiscal.

The Scottish Government has committed to engage with NHS Boards and hospitals on some specific details before bringing the new provisions into effect.

## Proposals

The proposals to bring the provisions into effect and what we seek your comment on are:

- a) the distance from NHS hospital buildings within which smoking will be banned;
- b) the form and content of no-smoking notices to be displayed at entrances to NHS hospital grounds and at entrances to NHS hospital buildings;
- c) the descriptions of hospitals, hospital buildings or specific associated land which are not to be covered by the provisions; and
- d) the level of Fixed Penalty Notices to be imposed for non-compliance.

### ***Distance from hospital buildings***

There is good evidence that most of the harmful effects of second hand smoke are limited to around five metres, and further away than 10 metres there is likely to be very little potential harm. The Policy Memorandum for the Bill at introduction indicated that there would likely be a distance set at between 10 and 20 metres. As 10 metres may be difficult for individuals to determine, we propose to take a cautious approach and introduce a perimeter of **15 metres**. The perimeter cannot extend beyond the hospital grounds.

**Question:** Do you agree that the perimeter of the no-smoking area around hospital buildings should be at a distance of 15 metres?

### ***Form and content of no-smoking signs***

The Act requires the Health Board for the area in which the hospital is situated to display no-smoking notices at the entrance to hospital grounds. The person who has the management and control of a hospital building must also display no-smoking notices at every entrance to a hospital building. The Act requires that the notices must state that it is an offence to smoke in the no-smoking area outside a hospital building or knowingly permit smoking there.

The Scottish Ministers have been given powers to make further provision as to the manner of the display and the form and content of no-smoking notices. However, it is probably not possible to prescribe a single form of wording for all notices across all hospitals. There is a great variety of lay-outs of hospital grounds and the mixed occupancy on grounds (which might include non-hospital buildings), as well as the proximity of some hospital buildings to public roads and pathways all make a general wording impracticable.

For that reason the Scottish Government proposes not to restrict the wording which Health Boards and building managers will want to use to cover their own specific circumstances. Instead the manner of display, form and content of no smoking notices will be a matter for individual Health Boards to decide.

**Question:** Should Health Boards and hospitals be allowed the flexibility to use their own wording on signs to reflect the specific descriptions of hospital buildings, or would you prefer the Scottish Government to set out a standardised wording for the manner of display, form and content of no smoking notices ?

## ***Buildings and land to be exempted***

The Scottish Ministers intend to apply the smoking ban to all NHS hospitals, all hospital buildings and the managed land associated with them. However, where there is good reason, exemptions could be made to exclude hospitals or buildings or specific areas of land within the 15 metre boundary for:

- types of hospitals such as psychiatric hospitals;
- individual hospitals such as hospice buildings or where long-term residential care is delivered;
- individual hospital buildings;
- or areas of land such as land outside staff accommodation.

If there are any exemptions like these to be made these will have to be described in secondary legislation.

**Question:** Should any NHS hospitals, individual hospital buildings or specified areas of land be exempt from these new no-smoking arrangements?

## ***Fixed Penalty Notices***

As explained earlier, the intention is to extend the indoor smoking ban outdoors by inserting new offences into the 2005 Act. This replicates the on-the-spot fixed penalties imposed on individuals who flout the ban on smoking indoors. Fixed penalties of £50 could be given to individuals smoking within the 15 metre perimeter area. If the individual failed to pay the notice, it was taken to court and, if convicted on summary conviction, the person could be fined up to £1,000. The decision to impose a fixed penalty notice will be at the discretion of an officer of the local authority who should be sensitive to the needs of patients and their relatives in considering whether a penalty would be appropriate.

The 2016 Act keeps the fixed penalties for the new offences aligned with the existing penalty levels from the 2005 Act. This is for consistency, reflecting that the effect of the existing and new offences are the same.

**Question:** Do you have any reason to suggest we make the fixed penalties higher or lower for the new offences?

## ***Electronic cigarettes***

The approach taken will effectively extend the indoor smoking ban under the 2005 Act. In keeping with this and the Scottish Government's policy to maintain an open and proportionate approach towards developing evidence around electronic cigarettes and other similar products, we have not included these devices in the perimeter ban. Therefore, the offence remains to smoke or permit someone to smoke tobacco products within the restricted area.

## **Enforcement**

Fixed penalty notices can be issued to those who smoke, or permit others to smoke, within the 15 metre perimeter area under the same terms as those that exist for the 2005 Act prohibiting smoking in enclosed public spaces. The outdoor smoking ban will be enforced by an authorised officer of a local authority. While local arrangements may vary, it will enable NHS hospital staff to report persistent offenders to local authority enforcement officers who can issue fixed penalty notices or refer particularly bad cases to the Procurator Fiscal.

### **Date the provisions come into effect**

The Act introduced a variety of regulations which have since been included within a legislation timetable. It is our intention to introduce the formal ban on smoking within the perimeter distance of a hospital building in late 2017.

Yours faithfully,

A handwritten signature in black ink, appearing to read 'Elaine Mitchell', with a long horizontal line extending from the end of the signature.

Elaine Mitchell

Elaine Mitchell, Tobacco Control Team, Health Improvement Division, Population Health Directorate. Tel: 0131 244 1707

#### Copied to:

Directors of Public Health  
Directors of Human Resources  
Cessation Co-ordinators

## RESPONDENT INFORMATION FORM

Please Note this form must be returned with the completed questionnaire to ensure that we handle your response appropriately.

### 1. Name/Organisation

Organisation Name

Title Mr ☐ Ms ☐ Mrs ☐ Miss ☐ Dr ☐ Prof ☐ Other ☐

Please tick as appropriate

Surname

Forename

### 2. Postal Address

Postcode	Phone	Email

### 3. Permissions - I am responding as...

Individual

/

Group/Organisation

☐

Please tick as appropriate

☐

(a) Do you agree to your response being made available to the public (in Scottish Government library and/or on the Scottish Government web site)?

Please tick as appropriate

☐ Yes ☐ No

(b) Where confidentiality is not requested, we will make your responses available to the public on the following basis

Please tick ONE of the following boxes

(c) The name and address of your organisation **will be** made available to the public (in the Scottish Government library and/or on the Scottish Government web site).

Are you content for your **response** to be made available?

Please tick as appropriate

☐ Yes ☐ No

Yes, make my response, name and address all available	<input type="checkbox"/>	or	
Yes, make my response available, but not my name and address	<input type="checkbox"/>		
Yes, make my response and name available, but not my address	<input type="checkbox"/>		

(d)	<p>We will share your response internally with other Scottish Government policy teams who may be addressing the issues you discuss. They may wish to contact you again in the future, but we require your permission to do so. Are you content for Scottish Government to contact you again in relation to this engagement exercise?</p> <p><b>Please tick as appropriate</b></p> <p><input type="checkbox"/> <b>Yes</b></p>
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## PROPOSALS FOR RESTRICTIONS ON SMOKING OUTSIDE HOSPITAL BUILDINGS

The Scottish Government would like your comments on proposals to support NHS Smoke Free Grounds by introducing regulations under the Health (Tobacco, Nicotine etc. and Care) (Scotland) Act 2016.

Please complete the questionnaire below and return it to the Tobacco Control Team, 3W St Andrew's House, Regent Road, Edinburgh, EH1 3DG. The questionnaire should be returned along with the Respondent Information Form by 18 January, 2017.

### ***Perimeter Distance***

A) Do you agree that the perimeter of the no-smoking area around hospital buildings should be at a distance of **15 metres**? (Note: If you do not agree, please suggest a distance you would prefer and why.)

Agree	Disagree
<b>Comment:</b>	

**B) *Display, form and content of notices***

Should Health Boards and hospitals be allowed the flexibility to use their own wording on signs to reflect the specific descriptions of hospital buildings, or would you prefer the Scottish Government to set out a standardised wording for the manner of display, form and content of no smoking notices ? (Note: You may wish to indicate what you would like the notices to contain and why.)

Yes	No
<b>Comment:</b>	

**C) *Buildings and land to be exempted***

Should any NHS hospitals, individual hospital buildings or specified areas of land be exempt from the new no-smoking arrangements? (Note: Please say which type of hospitals, buildings or land and why.)

Yes	No
<b>Comment:</b>	



**D)     *Fixed penalties***

The 2016 Act keeps the fixed penalties for the new outdoor offences aligned with the existing indoor penalty levels from the 2005 Act. This is for consistency, reflecting that the effect of the existing and new offences are the same. Do you have any reason to suggest we make the fixed penalties higher or lower for the new offences? (Note: Please say why you think these should remain the same/ differ.)

Yes	No
<p><b>Comment:</b></p>	

**Ends**