Consultation Analysis: Prohibiting Smoking Outside Hospital Buildings

Final Report

June 2020

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Economic and Social Development

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Executive Summary

The Scottish Government is committed to raising a tobacco-free generation by 2034 and to reduce the prevalence of smoking to 5% or less by that same year[1]. Indeed, "a Scotland where we reduce the use of and harm from alcohol, tobacco and other drugs" is identified as one of six Public Health Priorities for Scotland[2].

The NHS should be an exemplar of health promotion and support people in their efforts to stop smoking - accessible and open places which promote good health and lifestyle choices. Despite NHS Scotland adopting a smoke-free hospital grounds policy across all of its hospital sites in 2015, people smoking on hospital grounds continues to be a nuisance and poses a potential health risk to patients, visitors and staff. While the smoke-free grounds policy has had some impact, smoking on hospital grounds continues to be the subject of many complaints to health boards and to government.

The Health (Tobacco, Nicotine etc. and Care) (Scotland) Act 2016 amended sections of the Smoking, Health and Social Care (Scotland) Act 2005 to allow offences to be introduced in respect of smoking around hospital buildings. The 2005 Act now provides for the introduction of formal no-smoking areas outside hospital buildings and for offences of allowing smoking in these areas and of smoking in these areas. The main aims of introducing a formal no-smoking area around hospital buildings are to: support the de-normalisation of smoking; help reduce the use of tobacco across the population; and prevent or reduce exposure to second-hand smoke.

The Act gives Ministers the powers to make secondary legislation ("Regulations") to finalise the details before these provisions can be brought into force. The Scottish Government has worked with health boards and other stakeholders to develop practical proposals for an effective set of regulations that will persuade people to respect others and not smoke around hospital buildings.

This document presents the main findings from an analysis of responses to the Scottish Government consultation on Prohibiting Smoking Outside Hospital Buildings. The purpose of this consultation was to seek views on the three matters which remain to be determined:

1. The distance from hospital buildings which will form the perimeter of the no-smoking areas outside a hospital building, and how the perimeter around the building is determined in so far as whether the perimeter ends the specified distance from a wall or from any part of the building structure or otherwise.

2. The manner of display, form and content of no-smoking notices.

3. Whether there are any exceptions required for specific hospitals or specific buildings, or specific areas of land which should not be considered hospital grounds or part of the no-smoking areas respectively under the definitions in the Act.

The consultation also sought views on the use of Nicotine Vapour Products (NVPs) - including electronic cigarettes - around hospital buildings, a question not raised at the time

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[1] The Scottish Government, Raising Scotland's tobacco-free generation: our tobacco control action plan 2018, June 2018.
[2] The Scottish Government and COSLA, Public Health Priorities for Scotland, June 2018.

of the 2005 Act[3]. Many NHS Boards allow vaping but some do not. There is a need for consistency, a Scotland-wide approach, and clear guidance to health boards on whether the use of NVPs on hospital grounds should be allowed as an alternative for smokers visiting or working in hospitals.

The findings from this consultation will be used by Ministers to finalise the detail of the Regulations, and for these provisions to be laid in the Scottish Parliament.

The consultation received a total of 559 responses. The vast majority of submissions were from individuals (92%), many of whom worked in the health sector in Scotland[4]. The consultation attracted responses from a diverse range of organisations, including NHS bodies, third sector organisations (e.g. health improvement organisations and charities, smokers' rights bodies), medical professional bodies, and other public sector bodies.

[3] This consultation question will have no legal bearing, as the use of NVPs is not covered in the 2005 Act in respect of either hospital grounds or around hospital buildings.
[4] Based on a review of the open-ended responses and/or email addresses.

Table 1: Summary Analysis Table

Questions	Main Feedback
Q1 – Do you support the proposal that the distance from hospital buildings which will form the perimeter of the no-smoking areas outside a hospital building should be 15 metres?	**The majority supported the proposal** • The proposed distance was considered justified by a majority to significantly reduce health risks for patients, visitors and staff. The areas around hospital buildings where smoking is most prevalent was considered harmful and presented a public health risk to anyone entering or leaving hospital buildings. • Concerns were raised about the practicalities of effective enforcement, and that it might be complicated to explain and for the public to understand (and gauge what 15 metres looks like). Many noted that the perimeter should extend beyond this distance (ranged from 20 to 50+ metres) or that there should be a statutory ban on all hospital grounds. • There was some feedback that the proposal was restrictive, and lacked compassion for those who want to smoke/who are addicted to nicotine/who smoke as a coping mechanism. • There was support for designated smoking areas, although there were concerns raised about how disabled people, those with mobility issues, older people and the infirm could easily access these areas.
Q2 – Do you support the proposal that the perimeter	**The majority supported the proposal**

Questions	Main Feedback
should be measured from the outside wall of a building and include all land or area under any canopy or overhang even where those extend beyond 15 metres?	• The main feedback was that the perimeter should be greater than 15 metres and/or that the ban should cover all hospital grounds. • These points aside, the proposal was considered vital to ensure that smoking on hospital grounds was undertaken at a safe distance from others entering, leaving or moving between hospital buildings. • It was reported that people tend to congregate under canopies and overhangs to smoke, and that semi-enclosed areas are used as impromptu smoking shelters. A common view was that the proposal could help reduce exposure to second-hand smoke. • However, some respondents suggested that the perimeter distance should be measured from the point where any canopies/overhangs end. • Some felt that managing the implementation of this perimeter could be more challenging than if the ban covered all hospital grounds. • Some respondents felt that the proposal was too “punitive” against smokers.
Q3 – Do you support the proposal to set the wording and dimensions of no smoking notices as described above?	**The majority supported the proposal** • Most of those that agreed with the proposal did not provide any wider comment on proposed wording or dimensions of notices. • General feedback: all notices must be clear and prominent; standardised wording across NHS hospital sites to ensure consistency of key messages; current no-smoking signage is perceived to be largely ignored and the smoke-free hospital grounds policy is not effectively enforced; signage on its own might not be sufficient to encourage people to respect smoke-free areas, or to achieve the Scottish Government’s stated goal of reducing the use of tobacco; comprehensive guidance to be provided to health boards/hospitals on roles and responsibilities and on enforcement; and concerns about the potential verbal abuse, confrontation, and/or aggressive

Questions	Main Feedback
	behaviour staff might receive should they challenge someone smoking in a no-smoking area. • More specific feedback included: some support for “stronger” wording to be used on notices; that signs should include details of the fines that would be imposed; the importance of sign-posting to smoking cessation support services; sign-posting to designated smoking areas. • Some felt it was unfair that the onus was being placed on all hospital staff to enforce the new Regulations, and that there should be a designated person/office (with contact details).
Q4 – Do you support the proposal that no specific hospital or type of hospital should be exempted under the definition of “hospital” in the Act?	**The majority supported the proposal** • It was considered essential that the new Regulations were applied across all “hospitals” as part of a key national health intervention, and for the NHS to be viewed as an exemplar of health promotion and in supporting people to stop smoking. • While there was broad recognition that some “hospitals” might want an exemption (e.g. psychiatric hospitals), respondents that supported the proposal pointed to a range of wider considerations including the strong correlation between poor mental health and smoking behaviour. • Both supporters and non-supporters of the proposal did raise some points of concern, namely: how the Regulations would be managed in psychiatric hospitals where patients, for example, can currently smoke in secure courtyard areas and patients who lack capacity to understand the legislation and its implications, and who might not be able to make an informed choice regarding smoking cessation; issues around risk and security for patients and staff; and support for designated smoking areas for those who are in hospital on a long term basis (e.g. hospices), and those in mental health facilities.

Questions	Main Feedback
	• Some felt that there might be extenuating circumstances for certain "hospitals", and certain categories of patients, and/or that reasonable adjustments could be considered. For example, some felt that it would be discriminatory or inhumane to remove access to nicotine products from people who are detained under Mental Health (Care & Treatment) (Scotland) Act.
Q5 – Do you support the proposal that no-smoking areas will only apply to buildings used wholly or partly as a hospital?	**Around half supported the proposal** • The vast majority of respondents that supported the proposal did not provide any wider commentary. Where comments were made this included: a preference for the Regulations to apply to all NHS buildings to avoid any confusion, or that there should be no smoking allowed on the entire extent of hospital grounds; and that further detail would be important to support implementation. • The main feedback from the cohort of respondents who did not support the proposal was that no-smoking areas and perimeters should apply to all NHS buildings situated on hospital grounds, including any heath care, service and administrative buildings (i.e. all NHS buildings regardless of their use). These respondents also noted the potential for confusion and challenges around enforcement. Wider feedback was that those visiting and/or working in the buildings who are proposed to be excluded from the definition deserve the same level of protection from exposure to second-hand smoke as patients, visitors and staff entering, leaving or walking past buildings used wholly or partly as a hospital.

Questions	Main Feedback
Q6 – Do you support the proposal that public footpaths, cycle paths and footways should be considered hospital grounds for the purposes of establishing no-smoking areas outside the doorways of hospital buildings, and that the size of the grounds would extend up to 15 metres from the centre of doorways?	**The majority supported the proposal** • The vast majority of respondents that agreed with the proposals outlined above did not provide any wider commentary. • Where comments were made, the main point raised was that smoking should be prohibited in areas classed as hospital grounds to limit exposure to second-hand smoke and the harm caused by passive smoking. • A number of respondents also commented on the proposal that the size of the grounds would extend up to 15 metres from the centre of doorways. The main feedback was that it should either extend beyond 15 metres or apply to all hospital grounds. • The main feedback from respondents who did not support the proposal was that no-smoking areas should relate to the entire extent of grounds associated with NHS hospitals. Points raised throughout the consultation were also mentioned (e.g. NHS should be exemplar of health promotion, reduce exposure to second-hand smoke, could be easier to enforce). Linked to these points was that consideration could also be given to sign-posting people to smoking shelters away from hospital building entrances.
Q7 – Do you support the proposal that the	**Around half supported the proposal**

Questions	Main Feedback
use of NVPs should be allowed as an alternative to smoking on hospital grounds but not within the no-smoking area outside hospital buildings?	• The vast majority of respondents who supported the proposal did not provide any wider feedback or comment. Where feedback was provided, the main theme was that vaping e-cigarettes should be treated in the same way as tobacco throughout hospital sites in Scotland – for consistency in messaging and communications about the no-smoking perimeter, and for ease of enforcement. Others mentioned that NVPs can be a good smoking cessation tool. • Many of those who supported the proposal caveated their response by noting a number of points: that the long-term effects of vaping e-cigarettes (to the person using the device and to those exposed to the vapour) were not yet known, and that the evidence base would need to be regularly reviewed; that some people exposed to the flavoured vapour from NVPs can experience breathing irritations (e.g. asthmatics); and that using NVPs emulates the actions of smoking, and could normalise the behaviour among children and young people. • Some 45% of respondents did not support the proposal. The main points raised centred on: insufficient research into the impact on health and longitudinal data that vaping is less harmful than tobacco products; that exposure to the flavoured vapour is unpleasant and can be harmful to health (e.g. people with respiratory problems); that NVPs should be included in the existing smoke-free hospital grounds policy; that e-cigarettes are not currently regulated as a tobacco product or a medicine in the UK; they can mimic the look of smoking, which may make it harder for others not to smoke; and that there could be some flexibility applied and reasonable adjustments made in implementing the proposal for certain groups.
Q8 – Do you consider there to be any positive or negative	**Over one-third agreed that there were positive and/or negative impacts**.

Questions	Main Feedback
impacts on equality as a result of the proposals in this consultation?	• The main groups identified by respondents that noted a negative impact(s) on equality as a result of the proposals were disabled people and older people (e.g. inform, mobility issues) – they might experience difficulties walking (safely) from the exterior of a hospital building to smoke. • People with mental health issues were frequently viewed as a group who could be negatively affected, and in particular those patients detained under the Mental Health (Care & Treatment) (Scotland) Act 2003. Other groups identified who could be negatively affected were people with long-term limiting illnesses, and those from disadvantaged socioeconomic backgrounds. Some respondents noted the negative impact that the proposals could have on smokers (i.e. addictive nature of smoking), while others noted that smokers would be unfairly discriminated against (i.e. legal product/freedom of choice arguments). • The main mitigation actions identified were accessible smoking shelters and access to smoking cessation support services. There were also some references to nicotine patches and NVPs. • Where positive impacts were noted, these typically centred on the following: reducing health inequalities; equal protection of patients, staff and visitors to the health harms of Environmental Tobacco Smoke (ETS); encouraging positive change to harmful behaviour; reducing the visibility of smoking for children and young people; reducing adult smoking rates across all demographics and income groups (although to various degrees); supporting people to stop smoking by increased promotion of, and access to, smoking cessation services.

Introduction

About This Report

This report presents the main findings from an analysis of responses to the Scottish Government consultation on Prohibiting Smoking Outside Hospital Buildings. The consultation was open from 8th October 2019 to 17th January 2020.

Background

The Scottish Government is committed to raising a tobacco-free generation by 2034 and to reduce the prevalence of smoking to 5% or less by that same year[5]. Indeed, "a Scotland where we reduce the use of and harm from alcohol, tobacco and other drugs" is identified as one of six Public Health Priorities for Scotland[6].

While smoking rates have significantly declined with fewer people taking up the habit, and the proportion of ex-smokers outnumbering the number of smokers for the first time in 2013, there is still more that needs done to achieve the 2034 target. Indeed, smoking tobacco products continues to be one of the greatest threats to public health in Scotland and remains the most significant cause of preventable disease in the country. It results in up to 100,000 hospitalisations each year and more than 9,000 premature deaths. One in four of all deaths in Scotland are attributable to tobacco[7].

The NHS should be an exemplar of health promotion and support people in their efforts to stop smoking - accessible and open places which promote good health and lifestyle choices. The introduction of offences for smoking in enclosed public spaces in 2006, including inside hospital buildings, is a notable success. Despite NHS Scotland subsequently adopting a smoke-free hospital grounds policy across all of its hospital sites in 2015, people smoking on hospital grounds continues to be a nuisance and poses a potential health risk to patients, visitors and staff. While the smoke-free grounds policy has had some impact, smoking on hospital grounds continues to be the subject of many complaints to health boards and to government.

The Health (Tobacco, Nicotine etc. and Care) (Scotland) Act 2016 amended sections of the Smoking, Health and Social Care (Scotland) Act 2005 to allow offences to be introduced in respect of smoking around hospital buildings. The 2005 Act now provides for the introduction of formal no-smoking areas outside hospital buildings and for offences of allowing smoking in these areas and of smoking in these areas.

The primary aim of introducing a formal no-smoking area around hospital buildings is to support the de-normalisation of smoking and to help reduce the use of tobacco across the population. It also aims to prevent or reduce exposure to second-hand smoke outside and inside hospital buildings to improve and protect public health.

The Act gives Ministers the powers to make secondary legislation ("Regulations") to finalise the details before these provisions can be brought into force.

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[5] The Scottish Government, Raising Scotland's tobacco-free generation: our tobacco control action plan 2018, June 2018.
[6] The Scottish Government and COSLA, Public Health Priorities for Scotland, June 2018.
[7] As per footnote 1.

The Scottish Government has worked with health boards and other stakeholders to develop practical proposals for an effective set of regulations that will persuade people to respect others and not smoke around hospital buildings. The purpose of this consultation was to seek views on the three matters which remain to be determined:

1. The distance from hospital buildings which will form the perimeter of the no-smoking areas outside a hospital building, and how the perimeter around the building is determined in so far as whether the perimeter ends the specified distance from a wall or from any part of the building structure or otherwise.

2. The manner of display, form and content of no-smoking notices.

3. Whether there are any exceptions required for specific hospitals or specific buildings, or specific areas of land which should not be considered hospital grounds or part of the no-smoking areas respectively under the definitions in the Act.

The consultation also sought views on the use of Nicotine Vapour Products (NVPs) - including electronic cigarettes - around hospital buildings, a question not raised at the time of the 2005 Act[8]. Current evidence shows that the use of NVPs is less harmful than smoking and the proportion of smokers who are also using NVPs is growing. This presents an opportunity to consider if the smoking policies of health boards should now allow vaping on hospital grounds to eliminate the continued flouting of NHS policies aimed at preventing smoking anywhere on hospital grounds. Many NHS Boards allow vaping but some do not. There is a need for consistency, a Scotland-wide approach, and clear guidance to health boards on whether the use of NVPs on hospital grounds should be allowed as an alternative for smokers visiting or working in hospitals.

The findings from this consultation will be used by Ministers to finalise the detail of the Regulations, and for these provisions to be laid in the Scottish Parliament.

Analysis Methodology

The Scottish Government provided EKOS Ltd access to all responses via Citizen Space. A few responses were not submitted through this route, and did not always follow the consultation structure (e.g. letter response to the Scottish Government), or answer the individual consultation questions. Where this was the case, the Scottish Government manually inputted the responses into Citizen Space for inclusion in the overall analysis[9]. Quantitative (closed questions) and qualitative (open-ended, free text questions) responses were exported into Microsoft Excel for subsequent analysis. All closed questions have been presented in table format in Appendix A, and qualitative responses have been sorted and analysed to identify common themes. The analysis identifies common themes and issues as opposed to reporting on every point raised.

Profile of Respondents

A total of 586 responses were received to the consultation. During the data “cleaning” phase, 27 responses were either combined or removed for the following reasons:

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[8] This consultation question will have no legal bearing, as the use of NVPs is not covered in the 2005 Act in respect of either hospital grounds or around hospital buildings.

[9] In addition, the Scottish Government received three emails related to the consultation. These were subsequently not included in the total responses or subsequent analysis. The reason for excluding these emails was that they were typically one or two sentences in length and there was no attempt made to answer the consultation questions.

- Duplicate responses (i.e. the same individual responded twice and submitted identical responses). In these cases multiple responses from the same individual were merged into one response[10].

- Responses that did not include a name or an email with an identifiable name.

- Responses that included a percieved made-up name and/or email address that meant responses could not be clearly or easily attributed. These were classed as invalid.

The consultation received a total of 559 valid responses, of which the vast majority were from individuals (Table 2). Based on a review of the open-ended responses and/or email addresses, many of the individuals that responded to the consultation worked in the health sector in Scotland.

Table 2: Profile of Consultation Respondents

	Number	Percentage
Individuals	513	92%
Organisations	46	8%
Total	**559**	**100%**

The consultation attracted responses from a diverse range of organisations. NHS bodies represented almost half of all organisation responses (e.g. NHS Boards, hospitals and health and social care partnerships), Table 3. Further, three NHS responses included the feedback and views gathered through their own consultation process which involved staff and/or patients. This was followed by third sector organisations (e.g. health improvement organisations/charities as well as smokers' rights bodies). Other public sector bodies were represented by local government and a related membership body. Educational institutions comprised medical professionals' institutions and a health research consortium.

Table 3: Organisation Type

	Number	Percentage
National Health Services	21	46%
Third Sector	9	20%
Other	6	13%
Other Public Sector Body	5	11%

[10] The exception is where the same individual submitted two responses – one as an individual (personal views) and the other on behalf of the organisation they work for (often an NHS body). There were no identical responses.

Educational Institution	5	11%
Total	**46**	**100%**

Note: 'Other' organisations included unions, advocacy and trade associations. Percentages have been rounded, therefore totals might not equal 100%.

Consultation Limitations

Respondents to any consultation are self-selecting. Smoking is also a sensitive and emotive topic matter. As is to be expected, the consultation attracted responses from those who strongly supported the proposals as well as some who did not. There did not appear to be any campaigning responses.

Report Structure

The remainder of the report has been structured in line with the consultation document which consisted of eight questions:

- Section 1 covers Questions 1 and 2, and is related to the regulations concerning the perimeter of no-smoking areas.
- Section 2 covers Question 3 on no-smoking notices.
- Section 3 covers responses to Questions 4, 5, and 6 which are related to any exceptions required for specific hospitals or specific buildings, or specific areas of land which should not be considered hospital grounds or part of the no-smoking areas.
- Section 4 covers responses to Question 7 concerning the use of NVPs.
- Section 5 covers responses to Question 8 on equalities.

Additional information is contained within the Appendices.

Section 1: No-Smoking Area

Question 1: Do you support the proposal that the distance from hospital buildings which will form the perimeter of the no-smoking areas outside a hospital building should be 15 metres?

Context

The Scottish Government does not believe it would be practical to introduce a statutory ban on smoking covering the entire extent of NHS hospital grounds. Such a ban could be hard to enforce as many hospitals cover large areas of land, and it is considered to be a disproportionate response to the problem of smoking being visible and potentially harmful where it is most undesirable – around buildings and near building entrances and windows.

The policy memorandum for the 2016 Act highlights that there is evidence from studies of second-hand smoke in outdoor environments which suggest that smoke-drift from outside can lead to levels of second-hand smoke inside building entrances and windows which may be high enough to warrant concern for people inside a building. The highest risk from smoke-drift will depend on the environment, but it is reasonable to expect that a no-smoking perimeter of 10 metres could provide adequate protection while a perimeter of 15 metres would reduce risk significantly.

During the Bill process, Scottish Ministers indicated that the perimeter of no-smoking areas would ideally be 10-15 metres from hospital buildings. This focuses on the busiest areas where the majority of patients, visitors and staff pass through and where the bulk of non-compliance with the current administrative ban takes place. Ministers also committed to consult with health boards on the distance of the perimeter to be applied across all NHS hospital sites, and a distance of 15 metres is proposed.

Overview

A clear majority of respondents agreed that the perimeter of the no-smoking area should be 15 metres from hospital buildings (72%), Table A1.

Organisations noted stronger levels of agreement with the proposal than individuals. There was relatively little variation in responses across most organisation types. That being said, while the majority of third sector organisations supported the proposal, a relatively high proportion did not (25%)[11].

Many of the respondents that were in favour of setting the perimeter at 15 metres considered the proposed distance “necessary”, “justified” and/or “sufficient” to significantly reduce health risks for patients, visitors and staff.

There was wide reference made to areas around hospital buildings where smoking is most prevalent (e.g. at or near entrances, windows, vents), and that this was considered harmful and presented a public health risk to anyone entering or leaving hospital buildings.

There was strong reference made to exposure to second-hand smoke and smoke drifting indoors, including some reference to the existing evidence base. It was frequently noted that smokers often congregate at or near hospital entrances, and this was considered to be “obtrusive”, “unpleasant” and/or “harmful” for patients, visitors and staff, and in particular for those with ill-health, those recovering from illness, people with asthma, children, pregnant women, etc. Others mentioned wider issues such as increased litter around hospital entrances and buildings.

> “Given the health risks associated with smoking no one attending a place of treatment for ill health should be exposed to other risk factors”.
>
> Individual

> “It creates litter, there are wheelchairs being used that should be for emergency cases and smoke travels up to the postnatal ward creating obvious dangers”.
>
> Individual

[11] Note absolute numbers are low.

Wider points made included that the 15 metre perimeter would send a clear message that NHS Scotland hospitals were "health promoting health environments", and would support the "de-normalisation" of smoking. A further comment was that the implementation of smoke-free environments could contribute to a reduction in smoking rates across the population.

However, many respondents in support of the 15 metre perimeter went onto report that they would prefer the no-smoking area to extend beyond this distance[12]. Where suggestions were made, this ranged from 20 to 50+ metres. A related point was that there might be instances when the perimeter might need to be extended if, for example, it ends at a hazard (e.g. a road).

Further, some questioned whether smoking should be allowed anywhere on hospital grounds (i.e. a statutory ban). Here, a variety of comments were made, including that: allowing smoking anywhere near a hospital building sends the wrong message; it gives the impression of "NHS tolerance of the habit"; the 15 metre perimeter would still allow people to smoke on hospital grounds (i.e. signals that it is acceptable behaviour); and/or a statutory ban across all hospital grounds could be easier to understand and implement. Some NHS bodies also noted that allowing smoking anywhere on hospital grounds was contradictory to the smoke-free hospital grounds policy – the general view was that this sends out "mixed messages", could add "confusion", and/or that it goes against the NHS leading the way and being an exemplar of health promotion.

> "NHS Grampian has a number of sites with numerous buildings and walkways. It would be easier to enforce the legislation if it covered the whole grounds and not just 15 metres, and easier to explain to staff and the public."
>
> NHS Grampian

> "….if hospital grounds remain "smoke free"....there could be situations where offenders are 16m away and therefore cannot get a fixed penalty notice by Officers, however, are still in contravention of hospital policy".
>
> Renfrewshire Council

Some respondents raised concerns that, despite implementation guidance from NHS Scotland, the existing smoke-free hospital grounds policy had not stopped smoking on hospital sites. There was broad reference to challenges/difficulties in encouraging people to completely respect the smoke-free hospital grounds policy.

> "I am fed up reporting this to security who tell me they are powerless to do anything".
>
> Individual

> "Having approached numerous people over the years to point out they should not be smoking on hospital premises, I have only been ignored or taken some backlash for asking politely for them to move or not smoke".

[12] Note: many of those that expressed a preference for the perimeter to be increased from 15 metres did not specify to what extent.

Individual

Based on their current experience at hospital sites, many respondents touched on the importance of monitoring the effectiveness and enforcement of the perimeter of the no-smoking areas outside a hospital building – it would need to be “better policed”. The main message was that the agreed perimeter would need to be enforced and strictly adhered to - “otherwise people will continue to smoke...beyond the 15 metre line”.

Concerns were widely raised about the practicalities of effective enforcement, and a common view was that this could be challenging. Related points were that:

- It could be difficult for individuals to gauge the exact extent of the 15 metre no-smoking area. It was suggested that this was “vague” and/or that clear demarcation, markings and boundaries would be required to ensure that there was no dubiety - “everyone has a different perception of what 15 metres looks like”. A wider suggestion was that a “real-world object that measures approximately 15 metres could be used to explain what is meant by a perimeter of that size”.

- Signage on its own was considered insufficient to increase awareness and achieve the behaviour or culture shift required around tobacco use – “current no-smoking signs outside hospitals are blatantly ignored”.

- Penalties/fines could be considered for those who continue to flout the ban.

A small minority of respondents that supported the 15 metre perimeter were supportive of designated smoking shelters or areas. There was recognition that smoking was an “addiction” and a difficult habit to break, of peoples’ freedom to choice to smoke, and/or that it might be easier to implement the 15 metre perimeter if there were designated spaces for people to smoke. But there were strong calls for careful consideration of the location of any designated smoking shelters (i.e. not near entrances or windows). A wider point raised was that smoking restrictions could have the potential to “marginalise people who smoke” if “not implemented with care”.

These points are reflected in the quotes below.

> “They're going to smoke anyway, so I think there should be an allocated (covered/sheltered) space that they can go to that won't cause a health issue for everyone else.”

Individual

> “Although depending on how this is implemented, visitors may still need to walk through the "fog" of smoke as they approach the building, so preferably, if setting up designated areas, these are not on the paths en route to the door”.

Individual

Another challenge identified was the perceived lack of clarity around who would be responsible for monitoring the perimeter’s implementation. Specific concerns were raised around hospital staff receiving abuse from people who smoke.

> "A major concern from staff was the enforcement of this legislation as the burden appears to fall on clinical staff although avoided by most for fear of verbal aggression and abuse."

NHS Highland

There were wider comments that the Scottish Government could work in partnership with others (e.g. local government) to implement the legislation, and that there would need to be additional resources and support for the NHS to apply regulatory sanctions and to make it work in practice.

Around one-quarter of respondents did not support the proposal that the distance from hospital buildings which will form the perimeter of the no-smoking areas outside a hospital building should be 15 metres (26%), Table A1.

Individuals were more likely to oppose the proposal than organisations.
There were some similarities in the feedback from respondents that did not support the proposal with those that did. Firstly, a relatively large proportion of these respondents also felt that the perimeter should be greater than 15 metres (e.g. 20 to 30 metres were suggested), or that there should be no smoking on hospital grounds at all (e.g. including car parks, bus stands).

> "I am not exposed to passive smoking anywhere….except from if I go to a hospital, this has to change".

Individual

Other common views provided by those who did not support the proposed 15 metre perimeter were that:

- It would be difficult to police its implementation and concerns were raised about how it would be resourced. Some felt that it would be easier to enforce a complete ban on smoking on all hospital grounds.
- It would be complicated to explain and for the public to understand. It might also be necessary to use different units of distance (e.g. yards, feet).
- It would send a message that it is acceptable to smoke on hospital grounds regardless of the fact that it presents a significant public health risk. Also it could be seen as misleading given the smoke-free hospital grounds policy.
- Some people might react with hostility or aggression if they were challenged about smoking in a no-smoking area, and staff might feel threatened.

Other common themes that emerged from the feedback of respondents that did not support the proposed 15 metre perimeter can be grouped as follows:

- It was perceived to be restrictive, and lacked compassion for those who want to smoke/who are addicted to nicotine/who smoke as a coping mechanism. Individuals have a right to choose to smoke.

- Being denied permission to smoke could be stressful for patients, visitors and staff. Particular reference was made to individuals with mobility issues or those who were grieving, and/or that there might require to be some exemptions (e.g. vulnerable patients, psychiatric patients).
- A few respondents felt that the perimeter should be less than 15 metres (e.g. 5 or 10 metres were proposed).

> "For disabled and infirm people this distance will cause unfair distress at a time that's already stressful".
>
> Individual

> "This should not be the case for psychiatric hospitals due to the need to manage patients who may present an element of risk of absconding".
>
> Mental Health Network Greater Glasgow

Amongst those that opposed the 15m perimeter, there was support for designated smoking rooms/shelters on hospital grounds. Most agreed that these should be located away from the entrances of hospital buildings, although there were some concerns raised about how disabled people, those with mobility issues, older people and the infirm could easily access these areas. A few individuals did suggest designated smoking rooms inside hospital buildings.

Question 2: Do you support the proposal that the perimeter should be measured from the outside wall of a building and include all land or area under any canopy or overhang even where those extend beyond 15 metres?

Context

There will be two situations where the actual perimeter could be greater than or less than 15 metres. The no-smoking area can only cover hospital grounds. So at any point where hospital grounds do not extend to 15 metres the no-smoking area perimeter will match the distance to which the hospital grounds extend.

Hospital buildings are of various age, design and construction. The Scottish Government also want to make sure smoking is not allowed anywhere under canopies or overhangs. Many hospital buildings have incorporated walkways, canopies and other covered structures designed to provide protection from the elements. These structures may extend beyond the 15 metre distance. Some hospitals have reported incidents where people have gathered under canopies and other structures to smoke. This creates an obstruction and air-quality hazard.

To prevent instances such as this, the proposal is that the no-smoking area should include all the land and areas beneath such canopies or overhangs, even where they measure more than 15 metres from the side of the hospital building.

Overview

The majority of respondents agreed that the perimeter of the no-smoking area should be measured from the outside wall of a building, and include all the land and areas beneath

canopies or overhangs, even where they measure more than 15 metres from the side of the hospital building (72%), Table A2.

Organisations noted stronger levels of agreement with the proposal than individuals. The distribution of responses was very similar to Question 1.

Question 2 received fewer open-ended comments than the previous question, with some respondents cross-referencing to the point(s) they made at Question 1. The main feedback from these respondents was that the actual perimeter should be greater than 15 metres and/or that the ban on smoking should cover all hospital grounds.

These points aside, there was strong support that smoking under canopies or overhangs, even where they measure more than 15 metres from the side of the hospital building, should not be allowed, and that these should be smoke-free areas.

Such an approach was generally considered vital to ensure that smoking on hospital grounds was undertaken at a safe distance from others entering, leaving or moving between hospital buildings – even if this meant it is beyond the proposed 15 metres. A common view was that people tend to congregate under canopies, overhangs and entrance ways to smoke, and that these "semi-enclosed" areas are often used as "impromptu smoking shelters". It was further noted that the proposal could help reduce exposure to second-hand smoke "which is likely to be exacerbated in more enclosed spaces".

> "…in the process of engaging with patients (to inform consultation response) we observed many smokers utilising sheltered areas with an overhang to smoke".
>
> Mental Health Network Greater Glasgow

It was also noted by some respondents that adopting this proposal would ensure that outdoor Environmental Tobacco Smoke (ETS) around hospital buildings does not reach levels that pose a health hazard to hospital patients, staff and visitors.

Here, there was wider reference to research that shows when people smoke in "semi-enclosed" spaces, levels of ETS can exceed hazardous levels as defined by the World Health Organization (WHO), and presents a public health risk. Further, when outdoor ETS can reach high levels where tall buildings are close together it was reported that this creates a "canyon" where cigarette smoke can become concentrated.

Some respondents, however, suggested that the actual perimeter distance should be measured from the point where any canopies or overhangs end.

> "At least 15 metres beyond the furthest point of cover canopy. Not 15 metres beyond the outside wall this would defeat the purpose on some hospital grounds".
>
> Individual

> "I think it should be measured from the end of the canopy or overhang as that is still effectively "indoors" since it is covered with little air circulation".
>
> Individual

> "This should be from the exterior doors and walls - it is essential that internal courtyards, gardens canopies, etc. are classed as being inside the building and that the 15m starts from the outer edge of any canopy. We are very concerned that buildings with secure therapeutic courtyards, gardens, etc will no longer be smoke free if the definition is not the outer wall of the building and outer edge of any canopy".
>
> NHS Lothian

A number of similar points were raised to those noted by respondents in Question 1, namely that:

- Managing the implementation of the perimeter of the no-smoking area that includes all the land and areas beneath canopies or overhangs, even where they measure more than 15 metres from the side of the hospital building might be more difficult than a statutory ban on smoking covering the entire extent of NHS hospital grounds.
- It would also be difficult or challenging to explain this proposal to staff, visitors and patients, and for people to be clear on the distance/boundaries.
- There would need to be clear signage, and all no-smoking areas would need to be clearly demarcated and lines displayed (including on the ground) to highlight restricted areas to avoid any confusion or dubiety among patients, visitors and staff alike.

> "For Royal Infirmary of Edinburgh in particular, the public may not be aware that the bus hub would probably be included in the 15 metres away from the hospital building - currently people do smoke at the bus hub, although not inside the bus-shelters".
>
> Individual

Wider points raised, but to a lesser extent, included:

- Concerns about littering around semi-enclosed areas within hospital grounds.
- Questions were raised around how enforcement action would be resourced. Enforcement action was considered key to ensuring people did not smoke near hospital buildings.
- There was some reference to prohibiting smoking near bus stops/shelters/ hubs, car parks, and children's play areas.
- Consideration could be given to creating designated smoking areas/shelters in adherence to the proposed 15 metre perimeter.

One-quarter of respondents did not agree that the perimeter of the no-smoking area should be measured from the outside wall of a building, and include all the land and areas beneath canopies or overhangs, even where they measure more than 15 metres from the

side of the hospital building (25%), Table A2. Individuals and third sector organisations[13] were more likely to note disagreement with the proposal.

The main feedback from these respondents echoed points raised in Question 1, and by those that supported the proposal that the perimeter of the no-smoking area should be measured from the outside wall of a building, and include all the land and areas beneath canopies or overhangs, even where they measure more than 15 metres from the side of the hospital building.

The most common points raised included a combination of the following points: that there should be no smoking at all in hospital grounds, or the actual perimeter should be greater than 15 metres, or it should at least be measured from the point where any canopies or overhangs end.

Further, some respondents felt that the proposal was too “punitive” against smokers. The most common feedback from these respondents was that canopies and overhangs provide shelter for smokers from the elements. These (and other respondents) felt that there could be accessible smoking shelters or smoking zones on hospital grounds.

> “Completely unnecessary and deeply uncaring to patients who may be unable to walk.”
>
> Individual

> “There should be a covered "smoking zone" open on at least 3 sides created a distance away from the normal traffic route and hospital entrances”.
>
> Individual

A couple of specific comments were made about canopies or overhangs which were 50%+ open to the elements, as reflected in the quote below.

> “If the canopy or overhang extends beyond 15 metres, and the area beneath it is over 50 per cent open to the elements (and therefore not an enclosed space) we do not accept that patients, some of whom may be infirm or elderly, should be forced to move even further from the hospital building if they wish to smoke. In the absence of a proper smoking shelter, we believe it is cruel and petty to deny them even a small degree of shelter under a canopy or overhang that extends beyond 15 metres from the hospital buildings”.
>
> Freedom Organisation for the Right to Enjoy Smoking Tobacco (FOREST)

Wider points, but raised to a much lesser extent were:

- Concerns around the practicalities and resourcing of enforcement, and that some people would continue to smoke in semi-enclosed areas or just beyond the 15 metre line.

[13] Note absolute numbers of third sector organisations is low.

- It was considered that 15 metres (and longer if extending the area to include overhangs should that extend beyond 15 metres) was too great a distance for some patients to walk. A few suggested exemptions could be considered for vulnerable patients and/or specific types of hospital (e.g. hospices used for palliative care).

Section 2: No-Smoking Notices

Question 3: Do you support the proposal to set the wording and dimensions of no smoking notices as described above?

Context

It is proposed that the Regulations should prescribe two different types of notice warning people of the existence of the statutory no-smoking area. The Act stipulates that these 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 first type of notice would be placed at the entrance to hospital grounds and measure one metre square. The second type of notice would be A3 size and be placed at the entrances to hospital buildings. However, we will also encourage hospitals to display this size of notice at different strategic locations on or near hospital buildings. The grounds notices would include the wording:

- "It is an offence to smoke or knowingly permit smoking in the no-smoking area outside a hospital building".
- "No smoking areas extend up to 15 metres around affected buildings and include all areas under canopies or other overhangs on those buildings".
- "Penalties and fines apply".
- "If you observe someone smoking in the no-smoking area, a complaint may be made to a member of hospital staff".

Overview

Around two-thirds of respondents supported the proposal to set the wording and dimensions of no-smoking notices as described above (67%), Table A3. Individuals expressed slightly higher levels of support for the proposal than organisations.

Almost three-quarters of respondents who agreed with the proposal did not leave any wider commentary on the suggested wording or dimensions.

Where comments were provided, these can be grouped into generic comments or specific comments on the proposed wording and/or dimensions of notices.

In terms of the more general feedback, the main themes that emerged from the consultation responses were that:

- All notices must be clear, prominent and highly visible at entrances to hospital buildings and at key strategic locations to ensure that staff, visitors and patients are made fully aware of the no-smoking Regulations. Support was expressed for standardised wording across notices at NHS hospital sites to ensure consistency and to reinforce key messages.
- There is a strongly held perception that current no-smoking signage on hospital grounds are largely ignored, that smokers are not always challenged for smoking on

hospital grounds, and/or that the smoke-free hospital grounds policy is not effectively enforced. The main feedback was that signage and better monitoring and enforcement (i.e. penalties and fines) were needed. Concerns were raised that if the perimeter was not policed (e.g. use of Enforcement Officers, CCTV) then notices would have no effect. A related point was that some respondents noted a potential conflict between the 15 metre perimeter and the smoke-free hospital grounds policy - it has the "potential to create confusion".

- There was equally strong feedback that signage on its own might not be sufficient to encourage people to respect smoke-free areas, or to achieve the Scottish Government's stated goal of reducing the use of tobacco. Suggestions included the need for: communications campaigns, media coverage, print materials, a freephone number to make complaints, public announcement systems, collaboration with key stakeholders to increase awareness of the Regulations in communities before people arrive at the hospital, and sign-posting to smoking cessation services.

"We therefore recommend that clear signage and communications highlighting Scotland's 'Quit Your Way' approach, and advertising the stop smoking support available to people for free on the NHS, be placed alongside no smoking signage at hospitals. Doing this would encourage staff, patients and visitors to use a visit to or stay at a hospital as a unique opportunity to start on the road to quitting smoking. It would also raise awareness of the comprehensive and effective stop smoking support already available to them for free through NHS Scotland".

ASH Scotland

"Case studies of smoke-free regulations and policies in other countries show that while visible signage is an important element to encourage people to respect smoke-free areas, successful implementation is hindered without: staff training on communicating the rationale to patients and visitors, clarity on enforcement responsibility, and how to compassionately draw attention to stop smoking services and offer support….By being required to add supplementary signs in addition to mandatory notices, hospitals are more likely to see greater compliance with these regulations".

Cancer Research UK

- There was a strong call for clear and comprehensive guidance to be provided to health boards/hospitals on roles and responsibilities regarding the implementation of the new Regulations and on the practicalities of enforcement. It was noted that all members of staff would need sufficient information, training and support regarding the new Regulations and what is expected of them (e.g. clear protocols).

- Some respondents raised concerns about the potential verbal abuse, confrontation, and/or aggressive behaviour staff might receive should they challenge someone smoking in a no-smoking area. It was further noted that staff might not feel "confident" or "safe" or feel "powerless" to take action – "opens up the possibility of criminalising staff who are aware of smoking within the 15 metre limit, but do not have the confidence, authority, or capacity to prevent it happening". A related point

was that hospital staff are already “stretched” and the Regulations could place additional burden on hospital staff.

Many respondents went on to provide specific feedback regarding the proposed wording of no-smoking notices:

- Some felt that notices should contain “stronger” language to send a clear signal that smoking would not be tolerated on hospital grounds, and for the notices to be taken seriously.
- The signs could include details of enforement action, including more specific information on the penalties/fines that would be imposed. Some felt it would be important to send a clear message regarding on-the-spot fines and/or that legal action would be taken to aid compliance – “…not put off by the threat of penalties or fines. It would have to happen for it to be effective”.
- Sign-posting to smoking cessation support services.
- Sign-posting to where designated smoking shelters or zones can be found.

Table 4 presents a summary of the main points raised regarding the proposed wording of notices.

Table 4: Feedback on Proposed Notice Wording

Proposed Wording on Notices	Main Feedback
“It is an offence to smoke or knowingly permit smoking in the no-smoking area outside a hospital building”.	This could be clearer, more concise, or phrased differently to avoid any confusion and to ensure it is easily understood. A number of comments made specific reference to the term “knowingly permit smoking”, and that this could be rephrased as it was perceived to be subjective. The notice could include additional wording such as “please respect our staff, patients and visitors by not smoking in this area/hospital grounds”, how much smoking related illness costs the NHS, and the benefits of stopping smoking.
“No smoking areas extend up to 15 metres around affected buildings and include all areas under canopies or other overhangs on those buildings”.	There would need to be clarity provided on where no-smoking areas start and end. Many felt that the 15 metre perimeter would need to be defined in a way that is easily understood and marked visually in some way.

Table 4: Feedback on Proposed Notice Wording (cont'd)

Proposed Wording on Notices	Main Feedback
"Penalties and fines apply".	This could be more exact, for example, including numbers or amounts (e.g. total maximum fine). On-the-spot fines could be considered.
"If you observe someone smoking in the no smoking area, a complaint may be made to a member of hospital staff."	The term "hospital staff" was considered too generic (e.g. does it mean any member of staff, or just medical staff?). It might be better to specify reception, security staff, building managers or a specific point of contact during the day and in the evening (e.g. a specific team, office, or department). Details regarding where a complaint can be made should be clear to provide assurance to the public that appropriate action would be taken if a complaint is made. This could include details about the individual, a dedicated telephone number, email address, etc. A wider suggestion was that this could be addressed through the NHS Boards existing complaints procedure.

There were fewer comments made regarding the proposed dimensions of no-smoking notices. Where comments were made, most reported that notices should be at least the size of A3 or larger to be noticed and to increase compliance.

Less than one-third of respondents did not support the proposal to set the wording and dimensions of no-smoking notices as described at Question 3 (29%), Table A3. Third sector organisations and educational institutions were slightly more likely to oppose the proposals. The most common feedback was as follows:

- It was considered unfair that the onus was being placed on all hospital staff to enforce the Regulations. Specific concerns were raised about the inherent challenges of monitoring and enforcing the Regulations and/or staff not having the confidence or authority to take action and/or that it could leave staff vulnerable or subject to abuse. Most considered the proposal "inappropriate" and/or that staff would be "reluctant to intervene". A wider point made was that it could "impact on the therapeutic relationship of staff and patients" linked with mental health services.

- A common suggestion was that any queries and complaints should be made to a designated person or service responsible for monitoring infringement of the smoke-free area rather than any member of hospital staff (and appropriate training provided), or to an organisation charged with the "dispensation of legal sanctions against contraventions of the criminal law" (i.e. Police). Related points included calls for additional resources for Environmental Health Officers to undertake regular spot checks across hospital sites, or the need for security staff to patrol the no-smoking area.

- Similar points to those raised by respondents that supported the proposals outlined at Question 3, were also noted:

- No-smoking notices should be informative, clear and concise – and not misleading (i.e. potential conflict with smoke-free hospital grounds policy).
- Stronger language could be used (e.g. a signal that prosecution is likely).
- Larger and/or more visual notices and signs that are more “hard-hitting” (e.g. notices could include information on the health risks of smoking, graphic images like those on cigarette packets).
- The value of penalties and fines should be made clear on notices and be sufficient to deter smoking.
- The 15 metres should be clearly marked out to aid understanding.
- Sign-posting to designated smoking areas.
- Sign-posting to smoking cessation services.

> “In discussion with colleagues in NHS Boards, it has become apparent to us that the proposed wording may not make clear who is responsible for managing buildings. This is the case where hospital sites also cover areas of University research and teaching facilities. Those responsible for managing the buildings should be responsible for handling complaints - guidance and support will be required for sites to clarify this”.

SPECTRUM - Shaping Public hEalth poliCies To pRevent ineqUalities and harM

> “These signs will be misleading. They would need to set out the overall smoking policy on the grounds generally, including highlighting it is contrary to hospital policy to smoke anywhere in the grounds (except in designated smoking areas) where this is the case. The signs would suggest that it is acceptable to smoke in the grounds as long as someone is more than 15m from a building which is not necessarily the case where an NHS Board has a separate policy banning smoking from all hospital grounds”.

Individual

There were a few comments that the proposed wording was either too “negative” “threatening” or “punitive” (in general but also for people with health issues or who might be anxious or stressed), that the notices were considered “discriminatory”, or that tobacco was a legal product and people should be able to smoke anywhere.

> “I do not believe that penalties and fines should apply, certainly if the person smoking is extremely upset or stressed. It is an overreaction and is likely to make a patient worse, rather than better….. Stress and anxiety are far worse, especially when trying to recover from an illness or surgery, than smoking is, at that time”.

Individual

> “People visiting hospitals, either for treatment or to visit loved ones who are ill, do not need to be confronted with this kind of threatening signage”.

Individual

Section 3: Exceptions

Question 4: Do you support the proposal that no specific hospital or type of hospital should be exempted under the definition of "hospital" in the Act?

Context - Hospitals

As amended, the 2005 Act defines the term "hospital" to include a) any institution for the reception and treatment of persons suffering from illness, b) any maternity home, c) any institution for the reception and treatment of persons during convalescence or persons requiring medical rehabilitation, and any institution for providing dental treatment maintained in connection with a dental school, and d) clinics, dispensaries and out-patient departments maintained in connection with any such home or institution.

The 2005 Act allows Scottish Ministers to provide that hospitals of a specific description are not hospitals for the purposes of Part 1 of the Act and the proposed offences. There would be no smoking offences around this type of hospital as it would be exempt.

Scottish Ministers considered the approach taken in implementing the smoking ban in public places under the prohibition of Smoking in Certain Premises (Scotland) Regulations 2006 ("the 2006 Regulations") which banned smoking inside hospitals, hospices and psychiatric hospitals. The Regulations distinguished between hospices and hospitals, and exempted adult hospices and designated rooms in psychiatric hospitals from the ban.

Those Regulations were made under section 4 of the 2005 Act which allows Ministers to list types of indoor public space where the ban should and should not apply. Those Regulations use the same definition of "hospital" as section 108 of the National Health Service (Scotland) Act 1978 and define psychiatric hospitals as types of hospital. Hospices are distinct from hospitals as they are used for palliative care and so do not fall within the 1978 Act definition of "hospital". Section 4D of the 2005 Act gives Ministers discretion to provide that hospitals of a specified description are not to be regarded as hospitals for the purposes of Part 1 of the Act.

The consultation does not propose to exclude psychiatric hospitals from the definition of hospital and has not, in discussion with NHS boards, identified any other types of hospital that should be exempted from the requirement to have a no-smoking area.

Overview

Around three-quarters of respondents agreed that no specific hospital or type of hospital should be exempted under the definition of "hospital" in the Act (74%), Table A4. Among these respondents there was relatively equal support for the proposal among individuals and organisations.

There was, however, considerable variation by organisation type:

- Stronger levels of support were expressed by: educational institutions (100%), NHS (80%) and other organisations (75%).
- Lower levels of support were expressed by: other public sector bodies (40%) and third sector orgaisations (50%).

The most common themes that emerged from respondents who agreed that no specific hospital or type of hospital should be exempted under the definition of “hospital” in the Act have been summarised below.

Firstly, it was considered essential that the Regulations were applied across all “hospitals” as part of a key national “health intervention”, and for the NHS to be viewed as an exemplar of health promotion and in supporting people to stop smoking. Ensuring “consistency” of approach and that “everyone is treated the same way” were also considered vital to minimise confusion and reduce health inequalities.

Secondly, while there was broad recognition that some “hospitals” might want an exemption (e.g. psychiatric hospitals and mental health sites were frequently mentioned, followed by hospices), the main points raised by respondents was that there should be no exemptions at all with reference made to the following:

- The strong correlation between poor mental health and smoking behaviour was highlighted, as was the importance of increasing awareness and uptake of smoking cessation support services among patients with mental health issues. Some pointed to existing research that shows giving up smoking could have “marked positive benefits for mental health” (e.g. reductions in anxiety, depression and stress).

- Others noted that that the physical and mental health and wellbeing of psychiatric patients were equally important considerations – an exemption “implies their (physical) health is somehow less important than other patients within hospitals”.

- That no exemptions would protect all patients, staff and visitors from the health risks associated with passive smoking and second-hand smoke.

> “The cultural shift away from smoking in the general population has not yet been echoed for people with mental health issues. It was estimated by the Royal College of Physicians and Royal College of Psychiatrists in 2013, for instance, that ‘up to 3 million smokers in the UK, 30% of all smokers’, have evidence of mental health issues and ‘up to one million with longstanding disease’. Further, the high smoking rates in this group produces health inequalities that include high rates of smoking-related diseases and avoidable premature death”.

ASH Scotland

> “We believe that exempting certain types of hospitals would result in the health protections from ETS restrictions being applied unevenly to patients, staff and visitors across Scotland – a potential equalities issue”.

Cancer Research UK

> “Exempting mental health facilities would continue to widen inequalities by permitting health damaging behaviours to continue to disproportionately affect very vulnerable patients, whilst not permitting these behaviours on general hospital sites…. In mental health facilities and also in the case of hospices, we can provide alternatives to alleviate withdrawals as we would for other addictive substances such as alcohol”.

NHS Lanarkshire

While a majority of respondents supported no exemptions, a variety of points or issues were raised by some of these respondents about psychiatric hospitals in particular:

- Many raised concerns around how the Regulations would be managed in psychiatric hospitals where patients, for example, can currently smoke in secure courtyard areas (e.g. often used by those who are sectioned or cannot leave the premises without being escorted). As the hospital is viewed as a "homely setting" for some patients, a view provided was that "they should be afforded the opportunity to smoke" in these areas.

- Issues around risk and security were frequently mentioned for patients and staff. Patients who could not leave their wards to go beyond the 15 metre perimeter, for their safety, or those on constant observations could be impacted negatively by the proposals. It was also noted that hospital staffing levels might be negatively affected (i.e. some patients require a staff member(s) to be with them when they leave the ward). Another respondent mentioned that staff alarms do not work once outside in-patient buildings.

- There would need to be "clear protocols and powers" put in place to support staff manage certain groups of patients that were not exempt from smoking (e.g. psychiatric patients).

- There were also comments made regarding patients who are denied smoking being less likely to agree to hospital admission, and that could impact on their mental health. Cigarettes are commonly used as a "de-escalation technique and to provide a calming effect to patients".

- Some support was expressed for designated smoking areas for those who are in hospital on a long term basis, and those in mental health facilities.

While not mentioned to any great extent, it was noted that it might be helpful to have insight into how the legislation takes into consideration the Mental Health (Care and Treatment) (Scotland) Act 2003 and Adults with Incapacity Act (Scotland), and that the Scottish Government could seek advice from the Mental Welfare Commission on this proposal.

A few respondents went on to highlight other buildings that could be included within the definition of "hospital" for the purpose of the Regulations. Those mentioned most often included[14]:

- All medical centres and surgeries.

- GP Practices, community treatment centres, hospices and private hospitals - some of which are located on hospital grounds.

- Health and social care centres.

[14] This included feedback from those who responded "Don't Know to Question 4.

Around one-fifth of respondents did not support the proposal that no specific hospital or type of hospital should be exempted under the definition of “hospital” in the Act (21%), Table A4. Some third sector organisations were more likely to note opposition.

There was wide-spread reference among these respondents to the specific needs of psychiatric patients. Here, it was generally reported that there might be extenuating circumstances for certain “hospitals”, and certain categories of patients, and/or that reasonable adjustments could be considered. In addition, there was also some reference to exemption for other “hospitals” that look after patients on a long-term basis (e.g. hospices, rehabilitation/care centres).

A number of points were raised by these respondents, namely that:

- It was noted that it might not be appropriate to consider all “hospitals” as the same, and that a one-size-fits-all approach might be neither practical nor managable. Flexibility and different approaches were therefore encouraged.

- Many highlighted challenges in explaining the Regulations to patients with mental health issues. For example, patients who lack capacity to understand the legislation and its implications, and who might not be able to make an informed choice regarding smoking cessation. Others noted that the changes might not be well-received by some patients.

- It was generally felt to be “unfair”, “discriminatory” or “inhumane” to remove access to nicotine products from people who are detained under Mental Health (Care & Treatment) (Scotland) Act e.g. patients who are not free to leave hospital grounds or ward.

- Removing access to nicotine products for certain clients/patients might also bring about “unnecessary suffering” to these groups. There was broad reference to the potential for “increased stress and anxiety” among people with mental health issues, people receiving end-of-life care, people who are infirm or immobile during their convalescence or medical rehabilitation, people with dementia and/or people who are addicted to nicotine.

- There was therefore strong support for access to appropriate smoking areas for certain clients/patients that are located away from entrances and windows.

- If any exemptions were to be agreed by Scottish Ministers, patients should still be connected into smoking cessation support services, as appropriate.

> “The current exemption for psychiatric hospitals should be retained. Patients acutely unwell lack the capacity to consent to treatment, therefore they are often unable to make an informed choice regarding smoking cessation. They are currently under compulsory measures and have their liberty restricted meaning that unless there is an ability to control the environment to a very high degree there will be either an increased level of risk (e.g. absconsion) or damage to the relationship between patient and the hospital team treating them as they will challenge their restrictions. This will lead to incidents with some patients and responses such as restraint”.
>
> Mental Health Network Greater Glasgow

Question 5: Do you support the proposal that no-smoking areas will only apply to buildings used wholly or partly as a hospital?

Context – Hospital Buildings

The 2005 Act defines a "hospital building[15]" as a building situated on hospital grounds. These buildings will be the buildings with no-smoking areas outside them. To distinguish between ancillary or non-medical buildings and buildings which are used to treat or care for patients, it is proposed that a building will not be considered a hospital building for the purposes of these Regulations if it is not wholly or partly used as a hospital, and would therefore be exempt for a no-smoking area. Examples of buildings which would be excluded from the definition include buildings used:

- As a hospice.
- To deliver support to the hospital such as laundry, catering, storage, heating or administration buildings.
- For teaching, learning or research.
- To provide medical, pharmaceutical, ophthalmic and other services to non-resident persons.

The 2016 Act allows Scottish Ministers to provide that buildings of a specific description are not hospital buildings for the purposes of the proposed Regulations. There would not be a no-smoking area around these buildings as they would be exempt.

For further clarity the Scottish Government propose to regulate to say that buildings are not hospital buildings if they are not:

- Used for the reception and treatment of persons suffering from illness
- A maternity home.
- Used for the reception and treatment of persons during convalescence or persons requiring medical rehabilitation.
- Used for dental treatment and maintained in connection with a dental school.
- A clinic, dispensary or out-patient department maintained in connection with any building falling within the four aforementioned bullet points.
- Used to provide a corridor, walkway or other link between buildings used for any of the purposes mentioned in the bullet points listed above.

From engagement with NHS Health Boards on whether any buildings of a specific description should be exempted, the Scottish Government does not believe there is any need to include any further specification in the Regulations.

[15] As per Question 4, the definition of "hospital" comes from the 1978 Act.

Overview

Responses to Question 5 were relatively mixed.

Just over half of respondents supported the proposal that no-smoking areas will only apply to buildings used wholly or partly as a hospital (53%), Table A5. A higher proportion of individuals (54%) than organisations (42%) agreed with the proposal. There were also varied views by organisation type, for example:

- Stronger levels of support was expressed by third sector organisations (63%).
- Lower levels of support were expressed by educational institutions (0%) and other organisations (25%).

The vast majority of respondents that supported the proposal did not provide any wider commentary. Where comments were made, the main points raised were that:

- A preference was expressed for the Regulations to apply to all NHS buildings (i.e. any building deemed as part of a hospital), or that there should be no smoking allowed on the entire extent of hospital grounds.
- Further clarity and detail would be important to support the implementation of the proposal. For example, clarity on how the Regulations would work in practice where, for example, hospital sites have "hospice services integrated into the main hospital building". Questions raised included whether areas such as this would be covered by the exemption rule, and if so, where would patients be able to smoke (e.g. in the department or in the garden). Another example was that if certain buildings are exempt, it could cause confusion (e.g. "a visitor who is visiting the hospital for the first time may see people smoking at an exempt building and then be issued with a fixed penalty notice when smoking at the main hospital").
- The Regulations could also apply to wider healthcare establishments (e.g. GP practices, dentists, health centres), and/or other public buildings.
- A couple of respondents made reference to the need for clearly designated smoking areas outside of the 15 metre perimeter (and appropriate sign-posting), or raised concerns about the capacity of relevant officers to implement the legislation.

> "It could cause confusion as people will not know what buildings they can and can't smoke, and maybe if a no-smoking policy is to be brought in its best to be brought in to all NHS buildings to prevent confusion".
>
> Individual

> "In total, there were a 194 comments on this proposal. Over 60% (n=123) of respondents felt that this should extend to all properties. Specifically responses stated all health premises, all NHS buildings and health facilities including dentists, and GP practices. Many within these comments suggested they would like the proposal to consider all public buildings".

NHS Ayrshire and Arran[16]

> "We would like to see provision made in this legislation, or future legislation, to be able to apply this approach to other publicly owned buildings and spaces such as schools, health centres, council offices, play parks, sports and recreation facilities".

NHS Lanarkshire

Almost 40% of respondents did not support the proposal that no-smoking areas will only apply to buildings used wholly or partly as a hospital, Table A5. Organisations, and in particular educational institutions (100%) and other public sector bodies (60%) were more likely to not support the proposal than individuals.

The main feedback from this cohort of respondents was predominantly that no-smoking areas and perimeters should apply to all NHS buildings situated on hospital grounds, including any heath care, service and administrative buildings (i.e. all NHS buildings regardless of their use)[17].

> "If ancillary buildings are close to "hospital" buildings then anyone walking past who does not wish to be exposed to smoke may have no choice".

Individual

> "We believe that all NHS property should be no smoking. This includes NHS-owned properties which include: primary, secondary and tertiary care; clinical and management facilities; and other services including ambulance stations/garages, laundries, catering, IT, pharmacies, etc".

Royal College of Paediatrics and Child Health Scotland

> "Covering all hospital buildings would have the added benefit of contributing to workplace health improvement. Planning in support of implementation of the legislation should involve engagement with local and national Healthy Working Lives teams to ensure maximum effectiveness".

NHS Health Scotland

[16] NHS Ayrshire and Arran undertook their own consultation with their networks, staff and the public. The feedback informed their submission.
[17] Some of whom all noted that it should be all NHS grounds.

A number of related points were raised, namely that:

- When determining which types of building should be excluded, it was noted that consideration could be given to the impact of permitting smoking outside some occupied buildings while prohibiting smoking outside others - “It would be prudent to apply the extended prohibition at the perimeter of all occupied buildings on a hospital campus”.
- Those visiting and/or working in the buildings who are proposed to be excluded from the definition deserve the same level of protection from exposure to second-hand smoke as patients, visitors and staff entering, leaving or walking past buildings used wholly or partly as a hospital – “this could constitute an equalities issue”.
- Excluding some buildings could cause confusion for staff, patients and visitors about where Regulations apply on hospital grounds and/or make communications and enforcement much more difficult. It might inadvertently make clear messaging around implementation more challenging and/or contribute to a lack of consistency in how the Regulations are applied.
- People who smoke might simply cluster or congregate outside specific buildings – it could create a displacement issue. For example, people who smoke outside hospital buildings could move to smoke outside ancillary or non-medical buildings instead, including those which have an overhang or canopy (creating new “impromptu smoking shelters”).
- It risks undermining the Scottish Government’s aim of de-normalising tobacco use on hospital grounds, and promoting NHS Scotland hospitals as health promoting health environments.
- A further point was that due consideration of the practicalities of the “ability of the duty holder to comply with the requirements must be considered” (e.g. current definition would include pumping stations and storage outhouses). It was considered unreasonable to expect a duty holder to actively challenge smokers within 15 metres of all buildings on hospital grounds – “It is reasonable to exempt such buildings”.

> “Visitors to premises may be unfamiliar with the occupancy of the various buildings and the appearance of smokers in the immediate vicinity of certain buildings may hinder the process of culture change; the potential exists for a misconception to be created that smoking around buildings is an accepted behavioural norm at the premises with the prohibition not being enforced”.
>
> Glasgow City Council

"….several of the areas that are identified as not being used wholly or partly as a hospital are also those that contain concentrations of potentially hazardous or flammable materials so would raise other, practical concerns about compliance with health and safety legislation".

NHS Lothian

There was wider reference to applying the Regulations to GP surgeries, dentists, hospital staff accommodation, etc, as well as some support to apply the approach to any "public building".

Finally, while these respondents felt that no-smoking areas and perimeters could apply to all NHS buildings situated on hospital grounds, some went on to raise the issue of co-location of "hospital" buildings with other public buildings on the same site, as considered below:

"We have identified three issues pertinent to the issue of co-location of hospitals with other buildings on the same site which appear to be absent from the consultation documentation, and should be considered. These are:

Some hospitals impacted could be run by Integrated Joint Boards (IJBs), and thus may not be as exclusive to the NHS as previously experienced. For instance, the Green Curtain campaign was for 'NHS Grounds' only.

There is a question about how Local Authority buildings, where jointly managed health and social care services, should be treated under the legislation, e.g. care homes and administrative centres.

In instances where shared grounds occur with other institutions (such as a University), careful consideration should be given to how adherence and enforcement may be achieved at the non-clinical site. An instance of where this issue may arise is at the NHS Lothian Royal Infirmary of Edinburgh which is located on the Edinburgh BioQuarter".

NHS Health Scotland

Question 6: Do you support the proposal that public footpaths, cycle paths and footways should be considered hospital grounds for the purposes of establishing no-smoking areas outside the doorways of hospital buildings, and that the size of the grounds would extend up to 15 metres from the centre of doorways?

Context – Hospital Grounds

For there to be a no-smoking area outside a hospital building there must be hospital grounds. The extent of the no-smoking area will be limited, in many cases, by the extent of the hospital grounds. The Act defines “hospital grounds” as meaning the land in the vicinity of a hospital and associated with that hospital. This includes land used to access the hospital such as hospital footpaths, cycle paths and footways as well as hospital green spaces and hospital car parks.

The 2016 Act states that Scottish Ministers may provide that any specific types of land should or should not be considered to be “hospital grounds” and may otherwise elaborate on the meaning of “hospital grounds”. There is one type of non-hospital land we propose to include as being hospital grounds for the purposes of establishing no-smoking areas. The aim of this is to help avoid smokers congregating around entrances to hospital buildings on what is public land, not otherwise considered to be hospital grounds.

This is the land in the vicinity of doorways to hospital buildings which open out onto public footpaths, cycle paths and footways such as main streets – where there is no ground which would currently reasonably be considered to be hospital grounds. This would not include public roads.

For public areas outside hospital doorways the proposal would limit the size of the “hospital grounds” to cover a no-smoking area up to 15 metres – measured from the centre of any hospital building doorway leading onto a public footpath, footway or cycle track. This would apply only where hospital building doorways do not obviously open onto what is already clearly regarded as hospital grounds. For areas of public land which we propose would become hospital grounds only in respect of their proximity to hospital building doorways, there would be no requirement on health boards to place notices at the entrance to these grounds.

However, those with responsibility and management of the hospital buildings would have responsibility for placing notices at the doorways themselves.

Overview

A majority of respondents supported the proposal that public footpaths, cycle paths and footways should be considered hospital grounds for the purposes of establishing no-smoking areas outside the doorways of hospital buildings, and that the size of the grounds would extend up to 15 metres from the centre of doorways (71%), Table A6.

Individuals expressed a slightly higher level of support than organisations. There were also varying levels of support by organisation type:

- Stronger levels of support were expressed by educational institutions (100%) and NHS (70%).

- Lower levels of support were expressed by other public sector bodies (40%), other organisations (50%) and third sector organisations (63%).

The vast majority of respondents that agreed with the proposal outlined above did not provide any wider commentary.

Where comments were made, the main point raised in support of the proposal was that smoking should be prohibited in areas classed as hospital grounds to limit exposure to second-hand smoke and the harm caused by passive smoking.

> "Ensuring that the regulations are exercised this way will ensure that a greater proportion of patients, staff and visitors in Scotland are fully protected from the health harms of ETS exposure".

Cancer Research UK

A number of respondents commented on the proposal that the size of the grounds would extend up to 15 metres from the centre of doorways. The main feedback was that it should either extend beyond 15 metres or apply to all hospital grounds.

> "Support the idea that public footpaths etc should be included, but the distance of 15 metres from the centre of doorways is not nearly long enough. Smoking should be banned throughout hospital grounds."

Individual

Wider feedback included the following points:

- It would seem a "reasonable", "proportionate" or "sensible" approach to include those areas/routes that intersect with, or lead to, where people enter or leave hospital buildings.
- Including these areas could make it easier to explain to patients, visitors and staff, and easier to enforce. However, a few respondents raised concerns that people would simply smoke "outside the exclusion zone".
- Including public footpaths, cycle paths and footways could promote physical activity and increased levels of "active travel".
- As with earlier questions, some respondents suggested the provision of designated smoking areas – "areas and signage as to where people can smoke rather than non-smokers having to walk through smokers and exposing them to second-hand smoke".
- That there would need to be further exploration of the implications of this proposal, including resource implications, as illustrated by the respondent quotes below.

> "In principle COSLA supports the intentions to include the land in the vicinity of doorways to hospital buildings which open out onto public footways such as main streets, creating a smoke free environment for those using hospital buildings and aligning to our commitment to reducing the use of tobacco across the population and

experience of second-hand smoke. We would however require early and ongoing dialogue and collaboration on the implications of this for our members. Any additional requirements on Local Government to implement the legislative provisions will need to ensure that the enforcement requirements do not place an additional financial burden on local authorities, and if it does, the financial memorandum accompanying the Bill should take account of the above issues. COSLA officers would like to continue to work with Scottish Government colleagues to help further this aim.

"COSLA would also request that Scottish Government work closely with the representative bodies of Trading Standards and Environmental Health within Local Authorities in Scotland (SCOTSS and SoCOEHS) to ensure that the proposed changes are supported and considered by all those who will have a responsibility for successful implementation".

Convention of Scottish Local Authorities (COSLA)

"However the resource implications for local authorities enforcing the legislation in these areas must be considered and appropriate funding made available as required. Regular engagement with those services implementing the legislation is encouraged, through the Society of Chief Officers of Environmental Health in Scotland".

Royal Environmental Health Institute of Scotland

Around one-quarter of respondents did not support the proposal that public footpaths, cycle paths and footways should be considered hospital grounds for the purposes of establishing no-smoking areas outside the doorways of hospital buildings, and that the size of the grounds would extend up to 15 metres from the centre of doorways (26%), Table A6.

The main feedback from this cohort of respondents was that no-smoking areas should relate to the entire extent of grounds associated with NHS hospitals. Wider points raised throughout the consultation were also mentioned (e.g. NHS should be exemplar of health promotion, reduce exposure to second-hand smoke, could be easier to enforce). Linked to these points was that consideration could also be given to sign-posting people to smoking shelters away from hospital building entrances.

"..the ban should be enforced at the hospital gates with the exception of a designed smoking zone. This is the only way the NHS has a chance of stopping people congregating at entrances and smoking".

Individual

Another common theme related to challenges around the public knowing where "hospital grounds" start and end and in terms of effective enforcement.

"would present significant challenges for enforcement…..a pedestrian who is walking on the pavement adjacent to a hospital building commits an offence if they so do whilst holding a lit cigarette. Moreover, the transient nature of the offence makes it unlikely that any given smoker could or would be challenged as it would not be reasonably

practicable for a local authority to maintain a presence at such locations to so do; this would render such a prohibition unenforceable".

Glasgow City Council

"Members of the public could unknowingly commit an offence while passing through such an area".

NHS Borders

"We have a number of buildings that are adjacent to private properties/gardens and public roads and this legislation would be difficult to enforce. We believe that boundaries should be either 15 metres or where our site boundaries end".

NHS Grampian

"Some hospital sites (e.g. Leverndale Hospital) are surrounded by housing and it is not clear or apparent to many where the grounds begin or end. Likewise, it would not occur to many patients what they specifically were not allowed to smoke on footpaths. Again enforcement was felt to be nearly impossible, particularly if one could avoid the ban by walking say, onto a road or grass verge".

Mental Health Network Greater Glasgow

Wider feedback noted:

- That public footpaths, cycle paths and footways are "public" "land"/ "infrastructure" and some felt that people should be able to smoke there. A related point was that they should only be classed as non-smoking areas if they were enclosed or "connected to the building by means of a covered roof".
- Opposition to any smoking ban - it was viewed as too prohibitive.

Section 4: Nicotine Vapour Products on Hospital Grounds

Question 7: Do you support the proposal that the use of NVPs should be allowed as an alternative to smoking on hospital grounds but not within the no-smoking area outside hospital buildings?

Context

In addition to questions relating to the specifics of the 2016 Act, the Scottish Government sought views on proposals to ask NHS boards to amend their smoking policies to permit the use of NVPs, including electronic cigarettes, on hospital grounds but outwith the proposed no-smoking area.

The intention of the new offences is to eliminate smoking around buildings where continued smoking causes most inconvenience and harm. However, NHS Scotland already has a policy in place which asks people not to smoke anywhere on hospital grounds. The aim of the new offence is not only to move smoking away from the building

but to remove smoking completely from hospital grounds. Allowing smokers to vape on hospital grounds could reduce the 'need' to smoke there for many people.

There is now a consensus statement on the use of NVPs that has been drawn up by a range of signatories including public health professionals – such as the Chief Medical Officer for Scotland, academics – the universities of Edinburgh and Stirling, health lobbying groups - such as ASH Scotland and Cancer Research UK, and many others. It states that, based on current evidence, vaping e-cigarettes is less harmful than smoking tobacco. Although "not risk free", these devices pose "a much lower risk than tobacco" and are useful to public health as a potential route towards stopping smoking.

Given the potential of NVPs in harm reduction and as a means to help people quit tobacco products, to ban their use on hospital grounds would be contrary to the ethos of the consensus statement. In addition, permitting use of a less harmful device for those smokers who may struggle to cope without nicotine during potentially stressful visits to hospital would be in line with the NHS's compassionate approach: that it appreciates smoking is, for some people, a difficult habit to break but advises people to seek support to quit.

Therefore, it is proposed that NHS boards should be asked to amend their smoking policies to permit the use of NVPs as an alternative to smoking on hospital grounds but only beyond the no-smoking area outside hospital buildings.

Overview

There were mixed views provided to Question 7 – some 48% supported the proposal and 45% did not, Table A7.

As mentioned, almost half of respondents supported the proposal that the use of NVPs should be allowed as an alternative to smoking on hospital grounds but not within the no-smoking area outside hospital buildings:

- Highest levels of support were expressed by other organisations (60%), NHS (50%), and third sector organisations (50%).
- Lower levels of support were expressed by educational institutions (33%) and other public sector bodies (20%).

The vast majority of these respondents did not provide any wider feedback or comments on the Scottish Government proposal.

Where comments were made, the main message was that vaping e-cigarettes "should be treated in the same way as tobacco" throughout hospital sites in Scotland – for consistency in messaging and communications about the no-smoking perimeter, and for ease of enforcement.

> "This will limit the potential for misinterpretation of the regulations governing the no-smoking perimeter on NHS Scotland hospital when it comes to communicating them to patients, staff and visitors…. Prohibiting vaping within the no-smoking zone on the same basis as smoking, but not banning it entirely from hospital grounds, strikes the right balance between protecting the health of patients at the hospital, whilst

respecting that some people who are using e-cigarettes are doing so to quit smoking altogether".

Asthma UK British Lung Foundation Partnership

Secondly, while some of these respondents also noted that vaping e-cigarettes is less harmful than smoking tobacco – others caveated their "yes" response and/or raised points of concern:

- Many noted that the long-term effects of vaping e-cigarettes (e.g. secondary exposure) were "not yet known" – some further noted that if the proposal was agreed it would need to be regularly reviewed and that Scottish Ministers be guided by the scientific evidence base.
- Others noted that some people exposed to the flavoured vapour from NVPs can experience breathing irritations (e.g. asthmatics) – and wider comments around the "plume of smoke" being "just as bad as smoking tobacco".
- That using NVPs emulates the actions of smoking, and could normalise the behaviour among children and young people.
- A few mentioned that there should be separate vaping areas on hospital grounds from areas where smoking tobacco products is permitted.

"That is the current policy in most of NHS Lothian and we have no problems with/complaints about NVP use on our grounds. We would propose that a 'sunset clause' be added, enabling detailed study of the present situation and review in 2023/4. This would enable the current consensus statement to be reviewed, the literature updated and ongoing surveys of patients, staff and relatives regarding how to optimise utilisation of quit your way services and trial smoke free work time, building on the experience of those countries that are already trialling this".

NHS Lothian

"Our policy is that e-cigarettes and other NVP products should be treated in exactly the same way as tobacco smoking. They are not harm free and as such they should not be encouraged within a healthcare facility. While there is not yet the same body of evidence against secondary exposure to vapour as is established for passive tobacco smoking, there are still challenges for some people e.g. asthmatics. In the same way as tobacco they should not be used in enclosed spaces. A pragmatic approach would therefore be to enforce the same rules for vaping as for tobacco smoking and ensure this activity is kept well away from entrances and anywhere that would expose young people to this activity. There should also be information visible and available on "Thinking of Quitting?" and "where to obtain smoking cessation support locally, including at community pharmacies" .

Royal Pharmaceutical Society

Thirdly, some respondents that supported the proposal considered vaping as a good option for people who are trying to stop smoking cigarettes (i.e. an effective smoking cessation tool), and could support longer-term behaviour change.

45% of respondents did not support the proposal that the use of NVPs should be allowed as an alternative to smoking on hospital grounds so long as this was ouwith the no-smoking area outside hospital buildings, Table A7. This was highest amongst educational institutions and some third sector organisations.

The main feedback from this cohort of respondents echoed some of the caveats or points of concern raised by respondents who supported the proposal regarding NVPs. Namely that:

- There is insufficient research into the impact on health and longitudinal data/evidence that vaping is less harmful than tobacco products.
- Exposure to the flavoured vapour from NVPs is unpleasant, can be harmful to health (e.g. people with respiratory problems), and is not "risk free".
- NVPs should be included in the existing smoke-free hospital grounds policy. For example, most but not all of these respondents felt that NVPs and tobacco products should be treated in the same way throughout NHS Scotland premises and subject to the same restrictions. Wider feedback noted that e-cigarettes are not currently regulated as a tobacco product or a medicine in the UK and/or they can mimic the look of smoking, which might make it harder for others not to smoke. The same approach was also considered important for clarity and consistency of message, to limit the potential for misinterpretation of the Regulations, and for ease of public understanding.
- There could be some flexibility applied and reasonable adjustments made in implementing the proposal for certain groups (e.g. psychiatric patients), including some recogition of the role that NVPs play in smoking cessation.

> "Not enough evidence on the consequences of vaping, I think we need to treat it the same as smoking and not authorise".
>
> NHS Grampian

> "Emerging cases of hospitalisations (and deaths) suggest that NVPs may not be as "safe" as originally thought. I think they should not be allowed until further research can prove whether or not they are indeed safe".
>
> Individual

> "There is a clear need to be unambiguous regarding both no-smoking regulations and smoke-free policies throughout hospital grounds. These need to be consistent, easily understood, easily communicable, and straight-forward if they are to be effectively implemented. For this reason, ASH Scotland does not support the proposal….. and we strongly recommend that the use of tobacco and NVPs be treated the same throughout NHS Scotland hospital premises, both in relation to the no-smoking

perimeter around hospital buildings, and under policies applying across hospital grounds.

"… we support the approach to NVPs set out on the NHS Scotland Smoke Free Grounds website. This states that e-cigarettes are not allowed in NHS buildings, or on the majority of NHS grounds, 'because they are not currently regulated as a tobacco product or a medicine in the UK, and we can only recommend the products that are known to be safe and effective. E-cigarettes can also mimic the look of smoking, which may make it harder for others not to smoke'. To give both policy and regulations the best chance of success, ASH Scotland strongly recommends taking a thought-out approach that foregrounds stakeholder engagement and feedback, effective communications with patients and visitors, staff support, and prioritises the stop smoking support options known to be safe and effective, and available without charge from the NHS".

ASH Scotland

"The intended objective of working towards smoke-free grounds around hospitals is likely to be compromised by permitting persons to use NVPs. Additionally, the health effects of NVPs are not yet fully understood".

Individual

A few respondents made specific reference to the part of the proposition that there should be a ban on the use of NVPs within the no-smoking area outside hospital buildings, as illustrated by the quotes below.

"NVPs should be allowed on hospital grounds but we do not support a ban on the use of NVPs within the no-smoking area outside hospital buildings. Without exception, NVPs can be classified as harm reduction products. They are widely credited with helping millions of smokers who wish to quit smoking to switch from a potentially harmful product (combustible tobacco) to a product (e-cigarettes) that is said by Publish Health England to be "95 per cent less harmful" than traditional cigarettes. What sense, therefore, does it make to prohibit within the statutory no-smoking area the use of a product that some smokers are using to quit smoking? Likewise, what good will it do to threaten to fine or penalise someone who is using an NVP, almost certainly in an attempt to stop smoking?"

Freedom Organisation for the Right to Enjoy Smoking Tobacco (FOREST).

"…the Scottish Government should encourage and support health boards to develop solutions that sufficiently distinguish smoking and vaping. Policies should support people attempting to quit smoking to vape (including supporting dual users to quit smoking), while limiting exposure of non-NVP users to vapour. We believe that functionally treating NVP use as the same as smoking could result in people who use NVPs gathering in the same location as people who use tobacco cigarettes (it is not unrealistic to assume that people who smoke will continue to not adhere to NHS Scotland's existing non-statutory smoking policy). For NVP users, this could prove detrimental to both their quit attempt and expose them to the health harms of ETS.

> "The proposal could also functionally prevent some NVP users from using NVPs as part of their quit attempt – particularly those who cannot go outside – which could prove detrimental.
>
> "We believe that functionally treating NVP use as the same as smoking does not reflect the evidence base and sends out an inaccurate message about the relative harms of NVPs. While the long-term effects of e-cigarettes are unknown, the long-term harms of tobacco are indisputable, and e-cigarettes represent an opportunity for harm reduction. The evidence so far indicates e-cigarettes are less harmful than tobacco smoking and can be an effective quitting tool".

Cancer Research UK

> "Not allowing NVPs within the proposed 15m no smoking perimeter puts NVPs into the same category of harm as smoking tobacco. It is recognised that NVPs are less harmful than smoking, there is no good evidence that vapour emitted from NVPs causes harm, and encouraging smokers to switch to NVPs is a harm reduction approach….This is particularly relevant for mental health in-patients where the use of NVPs is a viable alternative for patients addicted to tobacco. A 15m perimeter means that these products could not be used within the secure garden used by patients and reduces the options available to health professionals to help this vulnerable group of patients to manage their smoking whilst in hospital".

Individual

> "While the use of NVPs is supported as part a programme to reduce and cease smoking, there is no evidence that use of NVPs alone and not part of such a programme is safe. There are reports from the United States and the UK of significant lung disease associated with the use of NVPs. While this has not reached the stage of a proven case, we do not consider it appropriate to recommend use of these agents allowing exposure to the general public when their safety is unproven. We would emphasise that all current communications state that neither smoking nor use of NVPs are allowed within the no-smoking areas. Hence there is a consistency of messages and because there are good reasons for not allowing NVPs in hospitals e.g. safety issues, even if they are less harmful than smoking".

Royal College of Physicians and Surgeons of Glasgow

NHS Health Scotland noted in its submission that "e-cigarettes have polarised the public health community across the globe", and in part related this to the different lenses in which NVPs are perceived - a "harm reduction lens" and a "do no harm lens" (as is reflected in the responses to this consultation question). NHS Health Scotland recommended further meaningful stakeholder engagement, including with signatories to the consensus statement, as outlined below.

> "Given that both perspectives are consistent with the consensus statement, we do not agree that to ban the use of e-cigarettes on hospital grounds would be contrary to the ethos of the consensus statement. It should also be noted that the consensus statement is based on a review of the evidence undertaken over two years ago. A number of studies have been published since then, including the first longitudinal

studies, and therefore a review of the best available evidence would be beneficial. We are aware that a number of signatories to the consensus statement have altered their view since 2017 as a result of the emerging evidence. Therefore re-engaging with the signatories would be an important part of seeking to establish a renewed consensus around the place of e-cigarettes in public health.

“We would suggest that the issue of the place of e-cigarettes in public health in Scotland would lend itself well to a process of deliberative democracy akin to the Citizens’ Jury on realistic medicine held by the Chief Medical Officer last year. Taking this approach would align with the Scottish Government’s commitments around human rights, including the National Performance Framework outcome on human rights. It would enable staff, patients and visitors – smokers and non-smokers alike – to engage in the discussion.

“We know from work undertaken in 2018 that while the current policies on vaping on NHS grounds are variable, the majority of NHS Boards do not allow the use of e-cigarettes. We also know from this work that the majority of Boards were in support of direction from the centre on this matter and supported the need for consistency across the country.

“Consistency of approach would be beneficial for members of the public visiting hospitals as well as providing the sought-after national position on the place of e-cigarettes in public health.

“The standpoint taken by NHS Scotland on whether or not to permit vaping on hospital grounds will have ramifications across the rest of the country. While it may not be the intent, permitting their use in this context could be seen as promoting their use more broadly even though the active promotion of vaping is not being directly expressed by NHS Health Scotland.

“In summary therefore, it is our view that this question cannot be answered without meaningful stakeholder engagement and a review of the best available evidence. NHS Health Scotland, and from April of this year, Public Health Scotland, can support the Scottish Government in this regard”.

NHS Health Scotland

Section 5: Equalities

Question 8: Do you consider there to be any positive or negative impacts on equality as a result of the proposals in this consultation?

Context

The basic perimeter size of 15 metres for a no-smoking area outside certain hospital buildings will potentially impact more on some people than others. For that reason the Scottish Government sought views on how the proposals may impact on people with respect to age, gender, sex, sexual orientation and identity, ethnicity, religion or belief, disability, pregnancy and maternity or socioeconomic disadvantage (i.e. potential positive and negative impacts, and, if applicable, advise on any mitigating actions that could be taken).

Overview

Over one-third of respondents considered there to be positive or negative impacts on equality as a result of the proposals in this consultation (37%), Table A8. Organisations were far more likely to note positive and/or negative impacts on equality than individuals.

In terms of protected characteristics, the main groups identified by respondents that noted a negative impact(s) on equality as a result of the proposals were disability (as defined in the Equality Act 2010) and age (i.e. older people). These respondents typically highlighted the difficulties people with mobility issues (e.g. older people, infirm) might face in walking (safely) from the exterior of a hospital building to smoke, and “which may include negotiating a hazard such as a road”.

> “…we predict there will be a largely negative impact on anyone who is infirm or largely immobile without third party support. Patients who may be mobile but are attached to a drip (for example) will also be among the hardest hit. Forcing such patients away from hospital buildings and even off site will discriminate against those who have disabilities or may be recuperating in hospital following an operation and are unable to move unaided to an area where smoking is permitted”.
>
> Freedom Organisation for the Right to Enjoy Smoking Tobacco (FOREST)

> “The overall impact of this policy is likely to be positive in terms of reduction in exposure to second hand smoke and also environments which are supportive for people trying to be smoke-free. However, there may be some groups for whom a negative impact could be experienced: people with long-term conditions or mobility issues who may find it difficult to move to external areas could be negatively affected; and people with learning disability or for whom English is a second language may inadvertently commit an offence due to potential confusion relating to signage and understanding of policy/legislation”.
>
> NHS Borders

People with mental health issues were frequently viewed as a group who could be negatively affected, and in particular those patients detained under the Mental Health (Care & Treatment) (Scotland) Act 2003.

> "We are concerned that some patients will resist hospital treatment based upon these restrictions, and witnessed patients state this. Within the context of psychiatric care, engagement with some patients is already problematic, this may provide an additional disincentive to engage. It is well evidenced that many patients, especially those who receive psychiatric care, are less likely to be in employment, financial penalties for smoking will effectively penalise those least able to pay. We would suggest a full equality impact assessment should be carried out on all hospital sites in Scotland in relation to this policy".

Mental Health Network Greater Glasgow

Other groups identified who could be negatively affected were people with long-term limiting illnesses, and those from disadvantaged socioeconomic backgrounds.

> "It should also be noted that smoking rates are highest in deprived areas which means that statistically it is more likely that smokers affected by the prohibition, or indeed by enforcement action, will be from deprived areas".

Glasgow City Council

Some respondents noted the negative impact that the proposals could have on smokers (i.e. addictive nature of nicotine), while others noted that smokers would be unfairly discriminated against (i.e. legal product and freedom of choice arguments).

> "…smokers rights and freedom of choice are not being given fair treatment".

Individual

> "I believe there to be a negative impact in equality because nicotine is an addiction. I understand that it is detrimental to the health of others and believe that there should be designated areas that are weather proof".

Individual

The main mitigation actions identified were accessible designated smoking shelters and access to smoking cessation support services. There were also some references to nicotine patches and NVPs.Where positive impacts were noted, these typically centred on the following:

- Reducing health inequalities.
- Equal protection of patients, staff and visitors to the health harms of ETS.
- Encouraging positive change to harmful behaviour.
- Reducing the visibility of smoking for children and young people.
- Reducing adult smoking rates across all demographics and income groups (although to various degrees).

- Supporting people across social groups to stop smoking by increased promotion of, and access to, smoking cessation services.

There was some specific reference to the benefits that the proposals could have on individuals from all protected characteristic groups (in particular pregnancy and maternity).

> "There will be positive impacts in that people within specific protected characteristic groups will have added protection, through the reduced risk of exposure to second hand smoke, which is evidentially known to affect health".

Royal Environmental Health Institute of Scotland

> "The proposals have the capacity to support and promote equality and diversity. They will provide further protection for staff, patients and visitors from second hand smoke/environmental tobacco smoke and this includes pregnant women and children. Existing primary studies and systematic reviews of smokefree policies show that they can benefit all groups and have the capacity to support smoking cessation".

SPECTRUM - Shaping Public hEalth poliCies To pRevent ineqUalities and harM

> "These positive impacts relate to ensuring patients, staff and visitors to psychiatric hospitals are protected from the hazards of ETS, as well as ensuring pregnant women in, working at or visiting NHS Scotland hospitals are also fully protected from these hazards. Smoke-free areas have also been shown to impact adult smoking rates among all demographics and income groups (though to varying degrees)".

The Scottish Coalition on Tobacco (SCOT)

Over half of respondents did not consider there to be any positive or negative impacts on equality as a result of the proposals (53%).

Common themes from across the responses emphasised that:

- While people have the freedom of choice to smoke, this should not be to the detriment or harm of others.
- The Scottish Government has a duty to put in place measures to help de-normalise smoking and reduce the use of tobacco across the population.
- The importance of improving and protecting public health.

> "As long as appropriate, accessible and safe smoking areas are made available, and not positioned in such a way that non-smokers need to walk through or close to them, there should be no equality issue. Equality is smokers smoking, and non-smokers not breathing in their smoke".

Individual

“Equalities are about making reasonable adjustments, so moving a permissable smoking area… away from a building is protecting non-smokers, whilst maintaining an open area for smokers. This, I would say, is a more than reasonable adjustment”.

Individual

“I can appreciate that it is harder for physically disabled people to go further off the site to smoke than others would, but smoking in itself is a choice (there is support to stop if wanted) rather than something related to their disability. The health impact on others of their choice needs to be considered, especially when they are attending a place where other people with disabilities may be adversely affected by their choice, such as in the case of people with respiratory conditions or vulnerable children”.

Individual

“All people are treated equally. It's a personal choice to smoke, one that is made and reinforced each time a person chooses to smoke. They should respect other peoples’ rights to clean quality air to breathe, and not have it contaminated”.

Individual

Appendix A: Distribution of Responses

Table A1. Question 1: Do you support the proposal that the distance from hospital buildings which will form the perimeter of the no-smoking areas outside a hospital building should be 15 metres?

	Yes	No	Don't know	Total
Individual	70%	27%	3%	513
Organisations:	86%	14%	0%	43
National Health Services	80%	20%	0%	20
Other Public Sector Body	100%	0%	0%	5
Educational Institution	100%	0%	0%	6
Other	100%	0%	0%	4
Third Sector	75%	25%	0%	8
Total	72%	26%	2%	556

Note: Question not answered by 3 respondents. Percentages have been rounded therefore percentage totals may not equal 100%.

Table A2. Question 2: Do you support the proposal that the perimeter should be measured from the outside wall of a building and include all land or area under any canopy or overhang even where those extend beyond 15 metres?

	Yes	No	Don't know	Total
Individual	70%	27%	3%	512
Organisations:	86%	5%	9%	43
National Health Services	85%	0%	15%	20
Other Public Sector Body	100%	0%	0%	5
Educational Institution	100%	0%	0%	6
Other	75%	0%	25%	4
Third Sector	75%	25%	0%	8
Total	72%	25%	3%	555

Note: Question not answered by 4 respondents. Percentages have been rounded therefore percentage totals may not equal 100%.

Table A3. Question 3: Do you support the proposal to set the wording and dimensions of no smoking notices as described above?

	Yes	No	Don't know	Total
Individual	66%	30%	4%	509
Organisations:	73%	20%	7%	44
National Health Services	75%	15%	10%	20
Other Public Sector Body	100%	0%	0%	5
Educational Institution	67%	33%	0%	6
Other	60%	20%	20%	5
Third Sector	63%	38%	0%	8
Total	67%	29%	4%	553

Note: Question not answered by 6 respondents. Percentages have been rounded therefore percentage totals may not equal 100%.

Table A4. Question 4: Do you support the proposal that no specific hospital or type of hospital should be exempted under the definition of "hospital" in the Act?

	Yes	No	Don't know	Total
Individual	74%	21%	5%	511
Organisations:	72%	19%	9%	43
National Health Services	80%	15%	5%	20
Other Public Sector Body	40%	20%	40%	5
Educational Institution	100%	0%	0%	6
Other	75%	0%	25%	4
Third Sector	50%	50%	0%	8
Total	74%	21%	5%	554

Note: Question not answered by 5 respondents. Percentages have been rounded therefore percentage totals may not equal 100%.

Table A5. Question 5: Do you support the proposal that no-smoking areas will only apply to buildings used wholly or partly as a hospital?

	Yes	No	Don't know	Total
Individual	54%	38%	8%	511
Organisations:	42%	49%	9%	43
National Health Services	50%	40%	10%	20
Other Public Sector Body	40%	60%	0%	5
Educational Institution	0%	100%	0%	6
Other	25%	25%	50%	4
Third Sector	63%	38%	0%	8
Total	53%	39%	8%	554

Note: Question not answered by 5 respondents. Percentages have been rounded therefore percentage totals may not equal 100%.

Table A6. Question 6: Do you support the proposal that public footpaths, cycle paths and footways should be considered hospital grounds for the purposes of establishing no-smoking areas outside the doorways of hospital buildings, and that the size of the grounds would extend up to 15 metres from the centre of doorways?

	Yes	No	Don't know	Total
Individual	72%	26%	3%	512
Organisations:	67%	26%	7%	43
National Health Services	70%	30%	0%	20
Other Public Sector Body	40%	40%	20%	5
Educational Institution	100%	0%	0%	6
Other	50%	0%	50%	4
Third Sector	63%	38%	0%	8
Total	71%	26%	3%	555

Note: Question not answered by 4 respondents. Percentages have been rounded therefore percentage totals may not equal 100%.

Table A7. Question 7: Do you support the proposal that the use of NVPs should be allowed as an alternative to smoking on hospital grounds but not within the no-smoking area outside hospital buildings?

	Yes	No	Don't know	Total
Individual	48%	47%	5%	510
Organisations:	45%	36%	18%	44
National Health Services	50%	35%	15%	20
Other Public Sector Body	20%	0%	80%	5
Educational Institution	33%	67%	0%	6
Other	60%	20%	20%	5
Third Sector	50%	50%	0%	8
Total	48%	45%	7%	554

Note: Question not answered by 5 respondents. Percentages have been rounded therefore percentage totals may not equal 100%.

Table A8. Question 8: Do you consider there to be any positive or negative impacts on equality as a result of the proposals in this consultation?

	Yes	No	Don't know	Total
Individual	31%	58%	10%	505
Organisations:	67%	24%	10%	42
National Health Services	58%	32%	11%	19
Other Public Sector Body	60%	20%	20%	5
Educational Institution	67%	33%	0%	6
Other	50%	25%	25%	4
Third Sector	100%	0%	0%	8
Total	37%	53%	10%	547

Note: Question not answered by 12 respondents. Percentages have been rounded therefore percentage totals may not equal 100%.

Appendix B: Publish Response

106 individuals and 20 organisations who responded to the consultation selected "publish response with name". Table B1 includes the organisations, while the list of individuals is omitted due to length. The Scottish Government will publish the responses separately.

A further 343 individuals and 19 organisations selected "publish response only (without name)", and the latter are shown in Table B2. Finally, 71 respondents selected "do not publish response" or left the question blank.

Table B1: Organisations – Publish Response with Name

ASH Scotland	Asthma UK British Lung Foundation Partnership
Cambridge Citizens for Smokers' Rights (USA)	Cancer Research UK
East Ayrshire Council	Freedom Organisation for the Right to Enjoy Smoking Tobacco (FOREST)
Mental Health Network Greater Glasgow	National Centre for Smoking Cessation and Training
NHS 24	NHS Grampian
NHS Health Scotland	NHS Orkney
NHS Tayside	Renfrewshire Council
Royal College of Paediatrics and Child Health Scotland	Royal College of Physicians of Edinburgh
Royal Pharmaceutical Society	SPECTRUM - Shaping Public hEalth poliCies To pRevent ineqUalities and harM
The Royal College of Psychiatrists in Scotland	UNISON

Table B2: Organisations – Publish Response without Name

COSLA	Glasgow City Council
Independent British Vape Trade Association (IBVTA)	NHS
NHS Ayrshire & Arran	NHS Borders
NHS Greater Glasgow and Clyde	NHS Highland
NHS Lanarkshire	NHS Lothian
NHS Shetland	NHS TAYSIDE (NINEWELLS HOSPITAL)
Public Health, NHS Greater Glasgow and Clyde	Royal College of Physicians and Surgeons of Glasgow
Royal Environmental Health Institute of Scotland	Scottish Ambulance Service
The Scottish Coalition on Tobacco (SCOT)	UK Vaping Industry Association (UKVIA)
Unite the Union	

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