

The Prohibition of Smoking Outside Hospital Buildings (Scotland) Regulations 2022

Equality Impact Assessment

March 2022



Scottish Government
Riaghaltas na h-Alba
gov.scot

Equality Impact Assessment Results

Title of Policy	The Prohibition of Smoking Outside Hospital Buildings (Scotland) Regulations 2022
Summary of aims and desired outcomes of Policy	This Policy is intended to introduce an enforceable prohibition of smoking outside hospital buildings, providing a smoke-free perimeter of 15 metres; supporting the de-normalisation of smoking on hospital grounds in order to help reduce the use of tobacco across the population and to reinforce that the NHS should be seen as an exemplar of health promotion within society and to support people to in their efforts to stop smoking. The secondary aim is to help prevent and reduce exposure to second-hand smoke by people in NHS hospital grounds, at entrances and near windows/vents to buildings.
Directorate: Division: team	Population Health: Health Improvement: Healthy Living Unit

Executive summary

A full EQIA was carried out to assess the impact of the proposed Smoking Outside Hospital Buildings Regulations to be introduced under the Health (Tobacco, Nicotine etc. and Care) (Scotland) Act.

The EQIA process identified:

- That the policy to support enforceable smoke-free areas in hospital grounds could disproportionately impact the elderly, the disabled and the pregnant in terms of both positive and negative impacts.

The policy has a strong public health rationale and the positive outcomes they will deliver outweigh any disproportionate impacts on protected characteristic groups.

(¹) [Creating a Tobacco-Free Generation A Tobacco Control Strategy for Scotland \(www.gov.scot\)](http://www.gov.scot)
Background

The Scottish Government's 2013 strategy, Creating a Tobacco-Free Generation, set the ambitious target of achieving a tobacco-free generation by 2034. This means that a child born in 2013 would turn 21 in a country largely devoid of smoking, with an adult smoking rate of 5% or less. This goal was carried forward in a [revised action plan in 2018](#)² and, as part of a commitment in this year's Programme for Government, a refreshed Tobacco Action Plan will be going live in 2023. Scotland

cannot realise this ambition without far-reaching policies which prevent young people and children from starting to smoke in the first place; and put tobacco use out of sight and mind.

The Smoking, Health and Social Care (Scotland) Act 2005³ made it an offence to smoke in wholly or substantially enclosed public spaces, which included smoking inside a hospital building. In April 2015, all NHS Health Boards in Scotland implemented smoke free policies across their grounds.⁴ However, there have been significant issues around compliance.

To address compliance issues, section 20 of the Health (Tobacco, Nicotine etc. and Care) (Scotland) Act 2016 (“the 2016 Act”) inserted new sections 4A to 4D into the Smoking, Health and Social Care (Scotland) Act 2005 (“the 2005 Act”), creating new offences of permitting others to smoke in the no-smoking area outside hospital buildings and smoking in the no-smoking area outside hospital buildings. The no-smoking area outside a hospital building is the area lying immediately outside the hospital building and bounded by a perimeter a specified distance from the building, so far as the area forms part of hospital grounds. The distance from the building is specified in these Regulations as 15 metres. Section 20 of the 2016 Act will be commenced for the purposes of laying then making these Regulations and will come fully into force when these Regulations come into force.⁵

The main aims of introducing a formalised no-smoking area around hospital buildings are to:

- support the de-normalisation of smoking;
- help reduce the use of tobacco across the population;
- prevent or reduce exposure to second-hand smoke; and
- to ensure the NHS in Scotland is exemplar in the promotion of good public health.

This EQIA is a refreshed EQIA based on that conducted for the Health (Tobacco, Nicotine etc. and Care) Bill published in August 2015.

² [Raising Scotland's tobacco-free generation: our tobacco control action plan 2018 - gov.scot \(www.gov.scot\)](https://www.gov.scot/publications/raising-scotland-s-tobacco-free-generation-our-tobacco-control-action-plan-2018/pages/1-100.aspx)

³ [Smoking, Health and Social Care \(Scotland\) Act 2005 \(legislation.gov.uk\)](https://www.legislation.gov.uk/ukpga/2005/35/section/20)

⁴ [NHS Smokefree \(smokefreegrounds.org\)](https://www.smokefreegrounds.org/)

⁵ [The Health \(Tobacco, Nicotine etc. and Care\) \(Scotland\) Act 2016 \(Commencement No. 5\) Regulations 2022 \(legislation.gov.uk\)](https://www.legislation.gov.uk/ukpga/2016/11/section/20/regulations/2022)

The Scope of the EQIA

We have a good understanding, based on decades of data, of who smokes tobacco across the Scottish population in terms of some equalities characteristics and socio-economic status.

Creating a designated smoke-free area in NHS hospital grounds will impact protected characteristic groups who work in or use hospitals as patients, the elderly, those with disabilities and the pregnant. These positive and negative impacts are discussed below.

The following organisations were contacted as part of the original EQIA for the 2016 Bill that led to these Regulations and were contacted again for this review. No changes have been requested:

- Age Scotland;
- Children First Scotland;
- Inclusion Scotland;
- Black and Ethnic Minority Infrastructure Scotland;
- Scottish Women's Convention;
- Engender;
- Equality Network;
- Interfaith Scotland; and
- Scottish Transgender Alliance.

Key Findings

The EQIA process identified that overall this proposal will effectively support the de-normalisation of smoking and will support NHS Boards in becoming exemplars in providing smoke free environments and promoting healthy choices.

However there would be mixed equality impacts on those with the following protected characteristics:

- Persons with disabilities, including those with mental health disorders or illness;
- Elderly persons; and
- Pregnant persons and new mothers

Members of these groups are more likely to be hospital patients and are exposed to others smoking when entering and leaving the building. These groups may feel vulnerable to the effects of second-hand smoke and may find it more difficult to move away from groups of smokers that may congregate near entrances at hospital sites so this policy would be positive for them.

⁶ [Equities Impact Assessment \(EQIA\) for the Health \(Tobacco, Nicotine etc and Care\) \(Scotland\) Bill - gov.scot \(www.gov.scot\)](https://www.gov.scot/Equities-Impact-Assessment-EQIA-for-the-Health-Tobacco-Nicotine-etc-and-Care-Scotland-Bill)

The policy would also be beneficial for smokers in this group who have been advised to give up or cut down on smoking during their treatment (for example, a very high proportion of pregnant smokers are referred for cessation support). It also supports ex-smokers in maintaining a successful cessation attempt. Evidence shows that increased exposure to smoking cues, such as seeing other people smoke, can reduce the likelihood of a quit attempt being successful. Successful cessation positively impacts not just those quitting, but those around them from any risk of second-hand smoke and for those that are pregnant, their unborn child. We also know that people with mental health conditions are more likely to smoke than the general population, and so any measure that may support a cessation attempt is positive.

However, some people in these equality groups may experience negative impacts by being more at risk of committing an offence. Smokers in these groups who struggle with mobility may find it harder to comply with the smoke-free area rules and may be more tempted to knowingly commit an offence. Smokers who do not have capacity to fully understand the policy may inadvertently commit an offence by smoking within the perimeter. Those unable to read the required signage due to visual impairments or not being able to read English well may also be more likely to commit an offence.

Specific concerns raised regarding the enforceable ban in psychiatric units were investigated, with consideration given to an exemption. After thorough examination and further consultation with Health Boards and organisations such as the Royal College of Psychiatrists in Scotland, we formed the view that these concerns can be mitigated against and that there are no compelling, fundamental reasons to exempt psychiatric hospitals and that to do so may actually contribute to health inequalities.

The signage will feature the international no-smoking symbol to mitigate any language barriers. No further mitigating action can be taken in legislation to address the specific issues above, however it is intended that enforcement officers and hospital staff would offer the necessary support to such individuals in the first instance to prevent them from inadvertently committing an offence. Cessation support will continue to be provided. Further to this, section 4B(2) states that it is a defence for an accused charged with an offence under this section to prove that the accused did not know, and could not reasonably be expected to have known, that the place in which it is alleged the accused was smoking was within the no-smoking area outside a hospital building.

There have been no changes to the impact to equality groups since the original EQIA that was published in August 2015.

Recommendations and Conclusion

Smoking contributes to significant negative outcomes for all that engage in it. The

policy behind these Regulations has a strong public health rationale. Any negative impacts of building on the smoke-free policies already in place on hospital grounds with an enforceable 15 metre perimeter ban will be offset with positive impacts felt by all. The continued progress of the de-normalisation of smoking is necessary to ensure that young people do not pick up the habit and that Scotland reaches the 2034 target where tobacco is out of sight and out of mind.



Scottish Government
Riaghaltas na h-Alba
gov.scot

© Crown copyright 2022

OGL

This publication is licensed under the terms of the Open Government Licence v3.0 except where otherwise stated. To view this licence, visit nationalarchives.gov.uk/doc/open-government-licence/version/3 or write to the Information Policy Team, The National Archives, Kew, London TW9 4DU, or email: psi@nationalarchives.gsi.gov.uk.

Where we have identified any third party copyright information you will need to obtain permission from the copyright holders concerned.

This publication is available at www.gov.scot

Any enquiries regarding this publication should be sent to us at

The Scottish Government
St Andrew's House
Edinburgh
EH1 3DG

ISBN: 978-1-80435-159-8 (web only)

Published by The Scottish Government, March 2022

Produced for The Scottish Government by APS Group Scotland, 21 Tennant Street, Edinburgh EH6 5NA
PPDAS1039230 (03/22)

W W W . g o v . s c o t