

## EXECUTIVE NOTE

### **The Smoking Health and Social Care (Scotland) Act 2005 (Consequential Amendments) Order 2006 S.S.I. 2006/95**

The above instrument is being made in exercise of the powers conferred by section 39 of the Smoking, Health and Social Care (Scotland) Act 2005 (“the 2005 Act”). The instrument is subject to negative resolution procedure.

#### **Policy Objectives**

Scotland’s tobacco control policy *A breath of fresh air for Scotland* was published in January 2004. It highlighted the health risks posed to non-smokers of exposure to second-hand smoke, also known as environmental tobacco smoke (ETS) or passive smoking. Tobacco use is the leading cause of preventable ill health in Scotland, causing 13,000 deaths each year, around 1,000 of which are from the effects of passive smoking. The Scientific Committee on Tobacco and Health reviewed the evidence on the health effects of passive smoking in 2004 and concluded that it increased risk to non-smokers of lung cancer of 24%, increased risk of ischaemic heart disease of 25% and there was a strong link to a number of adverse health effects in children.

International evidence, accumulated over a number of years, advises that the regulation of smoking in public places reduces exposure to second hand smoke and reduces smoking-related diseases and deaths. In addition to the health benefits for non-smokers, research also shows that regulation of smoking in enclosed public places helps to reduce the consumption of tobacco products.

Section 3(1) of the 2005 Act creates an offence if notices are not conspicuously displayed by the person having the management or control of the no-smoking premises in accordance with that section. Section 3(3) of the 2006 Act enables Scottish Ministers, by regulations, to provide further as to the manner of display, form and content of the no-smoking notices and that any such provision is to be treated for the purposes of section 3(1), as if incorporated in it. The Prohibition of Smoking in Certain Premises (Scotland) Regulations 2006 include the making of further provision in relation to the display of no-smoking notices.

The Town and Country Planning (Control of Advertisements) (Scotland) Regulations 1984 (“the 1984 Regulations”) are made under the Town and Country Planning (Scotland) Act 1984. They provide for the control by planning authorities of the display of advertisements. regulation 12 providing for deemed consent for the display of certain advertisements. Consent under regulation 12 is, nonetheless, still subject to the standard conditions set out in Schedule 1 to the 1984 Regulations.

Article 2(3) of the instrument will amend regulation 12(1) of the 1984 Regulations to provide for deemed consent for the display of no-smoking notices under section 3 of the 2005 Act. Article 2(2) will then disapply the fourth standard condition (requirement to obtain the permission of the owner of land prior to displaying an advertisement on land) set out in Schedule 1 to the 1984 Regulations. The effect of this will be to provide in relation to no-smoking notices a statutory exemption from the controls on advertisements in the 1984 regulations.

## **Financial Effects**

The instrument has no financial effects on the Scottish Executive or Local Government.

## **Regulatory Impact Assessment**

There has been no Regulatory Impact Assessment undertaken in respect of this regulation. A Regulatory Impact Assessment (RIA) has been undertaken in respect of the smoking Act. A copy of the RIA has been placed in SPICE. The RIA indicates that the legislation will provide a significant positive net benefit to Scotland over 30 years.

Health Department: Tobacco Control Division  
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