
To: Communities and Housing Policy Board

On: 25 October 2022

Report by: Director of Communities and Housing Services

Heading: Prohibition of Smoking Outside Hospital Buildings

1. Summary

- 1.1 In 2017, the Scottish Government advised of its intention to introduce new legislation to address concerns about persons smoking within the immediate environs of hospital buildings. Progress on this was suspended due to the COVID-19 pandemic but the programme has been resurrected, with the new legislation having come into effect from 5 September 2022.
 - 1.2 The Prohibition of Smoking Outside Hospital Buildings (Scotland) Regulations 2022 introduce new offences for knowingly permitting smoking and for smoking within fifteen metres of hospital buildings, with an additional offence for not displaying signage at hospitals to make persons aware of the requirement not to smoke within a prescribed distance, being fifteen metres from a hospital building.
 - 1.3 Local authorities and Police Scotland have enforcement powers to issue fixed penalty notices where persons breach the requirements of the Regulations and to report offences to the Procurator Fiscal. It is the intention that enforcement will be intelligence-led and follow the 4E's approach (Engage, Educate, Encourage and Enforce), with a principle focus on Education and Encouragement. Enforcement will only be actioned as a last resort.
 - 1.4 NHS Greater Glasgow and Clyde Health Board are working with the four local authorities which have a hospital within the Board area to ensure consistency of approach and that any potential issues with them complying with the legal obligations placed upon them can be resolved.
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2. Recommendations

- 2.1 It is recommended that the Communities and Housing Policy Board:
- (i) Notes the implementation of these new Regulations and a further report will be brought back to a future meeting of this Board to update on enforcement activity in respect of this new legislation.
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3. Background

- 3.1 In April 2015, all NHS Health Boards in Scotland introduced voluntary smoke-free grounds policies, requesting that those using the facilities refrained from smoking on hospital grounds. This built on existing Scottish Government guidance to Health Boards seeking the development and implementation of smoke-free policies and the creation of health-promoting hospitals.
- 3.2 Many Health Boards have continued to experience significant issues whereby people continue to smoke on hospital grounds and, in some instances through congregating near entrance doorways and windows create a nuisance and hazard for others. With no sanctions available to enforce the voluntary ban, Boards have been unable to effectively challenge anyone refusing to comply other than by asking the person to leave the grounds. This option not being desirable if the person is a patient.
- 3.3 The introduction of The Prohibition of Smoking Outside Hospital Buildings (Scotland) Regulations 2022 (amending sections 4A to 4D of the Smoking, Health and Social Care (Scotland) Act 2005) will help to resolve this issue of non-compliance by introducing an enforceable 15 metre no-smoking perimeter around certain hospital buildings (these are defined within the Regulations). Whilst there is no statutory duty to do so, NHSGGC will provide visual delineation of smokefree perimeters at key entrances and sites to aid communication and assist with enforcement.
- 3.4 Communication is seen as a key element to encouraging compliance at relevant areas and NHSGGC will develop a phased communications plan to be implemented utilising both routine and targeted media. The campaign will build between now and December as materials become available from the Scottish Government and on site implementation progresses. They intend the campaign will comprise both awareness raising and educational initiatives - reinforcing the 4 principles of Engage; Educate; Encourage; Enforce.
- 3.5 It is expected that by introducing a statutory no-smoking area around hospital buildings this will support the wider public health agenda of improving health across the population:

- supporting the de-normalisation of smoking;
- helping reduce the use of tobacco across the population; and
- preventing or reducing exposure to second-hand smoke,

- 3.6 Hospital buildings have specific definitions within the Regulations and Act but essentially the definition requires that there is both the treatment and care of patients taking place within it. This will remove some buildings from being within scope such as administrative, facilities management and service buildings. Therefore, within Renfrewshire, the Regulations will only apply at the Royal Alexandra Hospital and Dykebar Hospital.
- 3.7 Due to the variable size of grounds across hospital buildings estates within Scotland, the introduction of a 15 metre no-smoking zone was seen as more practicable and allows a focus on areas with the highest traffic of people entering and leaving buildings, as well as the highest risk of smoke entering hospital buildings. Regardless of whether it is within 15 metres of a building's external wall, any land lying directly beneath an awning, canopy or other overhanging structure attached to that building, will fall within the no-smoking area.
- 3.8 Hospital buildings which have existing areas of land which are accessed from the building and form a designated smoking area have a one-year exemption from the legal requirements. This exemption expires on 5 September 2023 and allows hospitals time to relocate smoking areas away from the 15-metre zone. This may, for example, be an area of land close to a psychiatric unit which has a shelter.
- 3.9 There is a specific duty placed upon Health Boards to display signage at every entrance to hospital grounds that meet the legal definition warning of the no-smoking perimeter which applies at buildings. The signage is being designed and provided at a national level by the Scottish Government to ensure consistency across the NHS estate.
- 3.10 Persons having management and control of no-smoking areas outside a hospital building commit an offence where they knowingly permit someone to smoke in that area. A person will be considered to knowingly permit smoking if they knew or ought to have known that the person was smoking in the no-smoking area. There is a defence for an accused person to prove evidence that they took all reasonable precautions and exercised all due diligence not to commit the offence, or that there were no lawful and reasonably practicable means by which the accused could prevent the person from smoking in the no-smoking area. It is not anticipated that this will apply to every member of staff, beyond them reporting anyone found to be smoking to nominated persons within the NHS GGC Management Team. Signage and awareness raising initiatives are seen as a part-means of demonstrating that Health Boards have discharged their duties in this regard.

- 3.11 Whilst it is an offence to smoke within the designated no-smoking area, it is recognised that the creation of an enforceable no-smoking perimeter is foremost about encouraging behaviour change. Given the nature of the environment and the possibility that people in a hospital setting may be vulnerable or upset, it is the intention that enforcement should be conducted as sensitively as possible (and as a last resort). Enforcement Officers will place an emphasis on education and behaviour change, following the 4E's principles of Engagement, Education, Encouragement and Enforcement, the latter only being implemented when other steps to resolve issues have failed.
- 3.12 It is the intention that Enforcement Officers will support NHSGGC by attending on site, however this will primarily be intelligence-led or on a complaints basis to target areas where non-compliance is occurring. As explained above, the emphasis will be on education and encouragement for those identified as smoking within the 15-metre zone as well as ongoing engagement with the nominated persons at each hospital site to ensure they are also meeting their statutory duties. It is not expected, at least within the early period of the legislation being effective that there will be any enforcement activity, unless circumstances arise which warrants this e.g. a blatant disregard to desist from smoking within the 15 metre zone, despite repeated attempts to encourage those persons to move.
- 3.13 Meetings between NHSGGC and local authorities making up the Health Board area will continue to take place to discuss implementation of the legislation, any areas of concern and issues arising from these, with a view to ensuring consistency of approach across the Health Board area.
- 3.14 A report on enforcement activity relating to this new legislation will be brought to a future meeting of this Board to update members on progress.
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Implications of the Report

1. **Financial** – No funding has been received for the enforcement of this legislation therefore any enforcement will be undertaken on a data/intelligence led basis and be met from existing funding sources.
2. **HR & Organisational Development - None**
3. **Community/Council Planning –**
 - *Our Renfrewshire is well – by preventing staff, patients and visitors to hospital buildings from smoking within the designated perimeter will help reduce tobacco use and prevent/reduce exposure to second-hand smoke at heavily trafficked areas/entrances to hospital buildings*
4. **Legal - None**

5. **Property/Assets - None**

6. **Information Technology - None**

7. **Equality & Human Rights**

- (a) The Recommendations contained within this report have been assessed in relation to their impact on equalities and human rights. No negative impacts on equality groups or potential for infringement of individuals' human rights have been identified arising from the recommendations contained in the report. If required following implementation, the actual impact of the recommendations and the mitigating actions will be reviewed and monitored, and the results of the assessment will be published on the Council's website.

8. **Health & Safety - None**

9. **Procurement - N/A**

10. **Risk - None**

11. **Privacy Impact - N/A**

12. **COSLA Policy Position - N/A**

13. **Climate Risk – N/A**

List of Background Papers

None

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