



# **ASH Scotland’s response to the UK Department for Transport’s consultation on the Merchant Shipping (Prohibition of Smoking on Ships) Regulations**

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## **Introduction**

ASH Scotland is pleased to submit a response to the Department for Transport's consultation on the Merchant Shipping (Prohibition of Smoking on Ships) Regulations.

ASH Scotland is an independent Scottish charity working in partnership to protect people from the harm caused by tobacco. ASH Scotland was heavily involved in the campaign to make Scotland's enclosed public places smokefree and fully support efforts to make smokefree legislation as comprehensive as possible. ASH Scotland considers that enclosed work places and public places, whether on- or offshore, should be covered by smokefree laws.

Given the supra-national nature of the merchant shipping industry, we welcome these moves by the Department for Transport to regulate smoking on merchant vessels at a UK level.

While ASH Scotland is supportive of the main thrust of the regulations, there are a number of areas where we would like to make comments on specific areas of the proposals. These include:

- The scope of the proposed regulations, particularly with regard to the existing Prohibition of Smoking in Certain Premises (Scotland) Regulations 2006.
- The ability of a ship's master to designate smoking areas for employees under s. 6 (2).
- The successful enforcement of the proposed regulations.

Each of these areas is covered in more detail below.

## **The scope of the proposed regulations**

The Scottish Parliament approved the Smoking, Health and Social Care Act<sup>1</sup> in 2005; the law came into force in March 2006. Accompanying the primary legislation were regulations<sup>2</sup> that provided more detail on exactly which premises would – and would not – be covered by the smokefree law.

The Scottish Government acknowledged that the application of the regulations to shipping was complex, due to the reservations of the Scotland Act 1998 relating to the health and safety of vessels covered by the Merchant Shipping Act 1995. To that end, the Scottish regulations do not cover vessels including:

- Ferries plying between Scotland and other countries
- Cruise liners docking in Scottish ports
- Fishing boats
- Offshore supply vessels<sup>3</sup>

Other exemptions set out within Schedule 2 of the Prohibition of Smoking in Certain Premises (Scotland) Regulations included HM Submarines and ships of the Royal Fleet Auxiliary. These specific exemptions clearly imply that surface units of the Royal Navy would be captured by the Scottish regulations.

The proposed Merchant Shipping (Prohibition of Smoking on Ships) Regulations, however, specifically exclude all naval vessels, whether they operate above or below the surface.

ASH Scotland welcomes any regulations that address the reserved issues preventing comprehensive application of smokefree legislation to merchant shipping operating within Scottish waters. But we would call for there to be maximum clarity over the scope of the proposed regulations, and how they relate to the existing Scottish regulations. Specifically, we would be strongly opposed to any relaxation of the existing regulations: no vessels that are currently covered by Scottish smokefree laws should be exempt under the proposed UK-wide regulations.

### **Designated smoking areas for employees**

Section 6 (2) gives the master of a ship the power to designate one cabin, other than a cabin set apart exclusively for sleeping accommodation, as an area where smoking by an employee is permitted.

ASH Scotland recognises that for many people employed in the merchant fleet their vessel is their home for significant periods of time, and that the residential nature of the ship means that consideration should be given to designating suitable smoking accommodation that does not compromise the rights of non-smoking members of the crew or passengers.

We are concerned, however, that on some smaller vessels, it may be difficult to set aside an indoor smoking area without such compromises being made. The only suitable non-sleeping cabin on a fishing vessel, for instance, may be the main saloon where the whole crew is expected to eat and socialise. There is nothing in the proposed regulations that would prevent this space from being designated as a smoking space, providing that it was adequately ventilated. Such a designation would severely compromise the rights of non-smoking crew members to breathe clean air, contrary to the stated objectives of the legislation.

ASH Scotland considers that the regulations should be amended to prevent the main saloon or dining space being designated as a smoking area.

### **Enforcement**

The final area where ASH Scotland has specific comments relates to how, and by whom, the proposed regulations will be enforced.

Given the existing duties and powers of the Maritime and Coastguard Agency, including the authority to board and inspect vessels, it is understandable that

the MCA has been proposed as the enforcing body for the Smoking on Ships Regulations. But an equally strong case can be made for Port Health Authorities to have this role, given their remit in health protection and improvement. Furthermore, the experience of officials working in Environmental Health and Port Health in implementing existing smoke-free legislation would make it seem logical for these regulations to be enforced by Port Health Authorities.

But whichever body has the responsibility for enforcing the regulations – or in the event of such responsibilities being shared – ASH Scotland considers that additional dedicated resources, possibly including additional inspectors, will be required if the regulations are to be fully and effectively implemented. ASH Scotland would also like to see a clear education and communications campaign being implemented, to ensure that all relevant shipping operators are made fully aware of their responsibilities under the new regulations.

## **Conclusion**

ASH Scotland welcomes the draft Merchant Shipping (Prohibition of Smoking on Ships) Regulations, but would like to make the following comments:

- Many types of ship are already covered by the Prohibition of Smoking in Certain Premises (Scotland) Regulations, while others are not. Likewise, the proposed regulations covers some, but not all, vessels operating within Scottish internal and territorial waters. ASH Scotland considers that there must be total clarity on which vessels will be covered by the proposed regulations, and that no vessels that are covered by the existing law should be exempt under the proposed regulations.
- The ability of masters to designate a smoking area for employees could lead to a communal living or dining area being so designated. ASH Scotland considers that the regulations be amended to prevent such an outcome.
- While we acknowledge the reasoning behind the decision to make the Maritime and Coastguard Agency responsible for enforcing the regulations, ASH Scotland considers that Port Health Authorities, with their health remit, should also be considered as the enforcing body. But whichever body has responsibility for the regulations' implementation, ASH Scotland questions whether effective enforcement, particularly in the early stages after the law's introduction, can take place without additional resources being made available.

ASH Scotland is grateful for the opportunity to submit this response, and hopes that the views contained will be taken into full consideration.

## **Sources**

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<sup>1</sup> Office of Public Sector Information, 2005. *Smoking, Health and Social Care (Scotland) Act 2005*. Online. Available at:

[http://www.opsi.gov.uk/legislation/scotland/acts2005/asp\\_20050013\\_en\\_1](http://www.opsi.gov.uk/legislation/scotland/acts2005/asp_20050013_en_1) [Accessed 24th July 2009]

<sup>2</sup> Office of Public Sector Information, 2006. *Prohibition of Smoking in Certain Premises (Scotland) Regulations*. Online. Available at: [http://www.opsi.gov.uk/legislation/scotland/ssi2006/ssi\\_20060090\\_en.pdf](http://www.opsi.gov.uk/legislation/scotland/ssi2006/ssi_20060090_en.pdf) [Accessed 24th July 2009]

<sup>3</sup> Scottish Executive, 2006. Clearing the Air Scotland – Questions and Answers. Online. Available at: <http://www.clearingtheairscotland.com/faqs/qanda.html#vehicles> [Accessed 24<sup>th</sup> July 2009]