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01 November 2006

Investing for Health Team (Tobacco Control)  
Department of Health, Social Services and Public Safety  
Room C4.22  
Castle Buildings  
Belfast  
BT4 3SQ

Dear Sir/Madam,

Please find attached ASH Scotland's response to the Department's current consultation on proposed regulations to be made under powers in the Draft Smoking (Northern Ireland) Order 2006. ASH Scotland welcomes the opportunity to comment on the draft regulations, and fully supports and endorses the proposal to increase smoke-free provision in public places in Northern Ireland.

We hope the enclosed information is helpful to you. Please contact [ashscotland@ashscotland.org.uk](mailto:ashscotland@ashscotland.org.uk) if you have any related queries,

Yours Sincerely,



Maureen Moore, OBE  
Chief Executive, ASH Scotland

**Department of Health, Social Services and Public Safety**

**Smoke-free premises and vehicles consultation on proposed regulations to be made under powers in the Draft Smoking (Northern Ireland) Order 2006**

**Response from ASH Scotland**

ASH Scotland congratulates the Department of Health, Social Services and Public Safety for its leadership in committing to introduce legislation to reduce the risks to health from exposure to second-hand smoke (SHS). ASH Scotland would like to comment on the draft smoke-free regulations, based on our experience in Scotland and the evidence on which our legislation and regulations are based.

***Private Accommodation (Regulation 2, 3.3 – 3.6)***

*Under these proposed regulations, any part of a private dwelling that is shared with other premises (including other private dwellings) will be required to be smoke-free if they are open to the public or used as places of work, for example by cleaners. This means, for example, that communal lifts, indoor stairwells or communal corridors in blocks of flats; shared kitchens or laundries in dormitory style accommodation; or common entrance foyers to apartment blocks will be required to be smoke-free to provide protection within these common spaces from SHS.*

We welcome the proposal to designate any part of a private dwelling that is shared with other premises as a smoke-free area. This would provide additional protection from SHS for individuals who live in shared premises. We believe further clarity would be helpful on how this proposal would be both monitored and enforced. In addition, the Department of Health, Social Services and Public Safety may wish to consider developing and issuing guidance to residents of these types of private accommodation, if this proposed exemption is adopted.

***Signage requirements for vehicles (Regulation 4, 2.12-2.15)***

*The operator of the smoke-free vehicle will be required to ensure that at least one no-smoking symbol is displayed in each compartment of his vehicle. The no smoking symbol consists of a graphic representation of a burning cigarette enclosed in a red circle with a red bar across it, at least 75mm in diameter*

As well as the symbol mentioned above we would recommend that some wording be added. For example, in Scotland, signage for vehicles includes the no smoking symbol, and is accompanied by the following wording: 'These are no smoking premises. It is an offence to smoke or knowingly to permit smoking in these premises.'

***Commitment to reducing SHS exposure in prisons (Regulation 5, 3.12)***

*Prisons will not be required to be smoke-free under the proposed regulations. However, the Northern Ireland Prison Service is committed to reflecting the spirit of the legislation through Prison Rules.*

We welcome the Northern Ireland Prison Service's commitment to reflecting the spirit of the legislation through Prison rules. Prison officers, other prison staff, and inmates have as much right to protection from SHS as individuals in any other setting.

The Scottish smoke-free legislation does not apply in prisons or young offenders' institutions as they are governed by the Prisons Scotland Act 1989. However, prison rules were changed on March 26<sup>th</sup> 2006 (the date of implementation of Scotland's smoking ban) to acknowledge changes to smoking provisions in other enclosed and substantially enclosed public places. From this date, prisoners may only smoke in certain areas of the prison, and a disciplinary offence of smoking in an area where it is not permitted has been created. This offence is dealt with under the existing internal prisons discipline system. Smoking indoors is limited to prisoners' cells. Where prisoners are required to share a cell, they may only smoke in it if the Governor designates it as a smoking area. The Scottish Prison Service is currently undertaking a new programme of cessation support to help those prisoners who smoke and wish to quit.

Based on the Scottish experience, we suggest that the Department of Health, Social Services and Public Safety works in partnership with the Northern Ireland Prison Service to develop a comprehensive strategy for increasing smoke-free provision in prisons in Northern Ireland.

***Proposed exemption for specialist tobacconist shops (Regulation 6, 3.13)***

*The shop premises of a specialist tobacconist will not be required to be smoke-free under the proposed regulations, only for the purposes of sampling smoking products that are not cigarettes or rolling tobacco.*

The issue of ending smoking in enclosed public places in Northern Ireland is a health issue. The medical and scientific evidence regarding the health hazards associated with exposure to SHS apply both to non-smokers and smokers. In Northern Ireland, potential customers of specialist tobacconists could easily step outside in order to test products before purchasing them, or could purchase them on a sale or return basis, and in doing so would greatly reduce the known risks associated with exposing individuals to SHS.

On this basis, cigar bars and specialist cigar retailers should NOT be exempt under the proposed regulations. Exemptions should be granted on humanitarian grounds, and not on commercial grounds.

***Research and testing facilities (Regulation 8, 3.15)***

*A designated room in a research or testing facility is not smoke-free under the proposed regulations while it is being used for any research or tests related to specific issues outlined within.*

ASH Scotland accepts the need for a degree of exemption for research and testing facilities. However, exemptions should be tightly framed to allow only minimal exemptions. The regulations should specify that the intention is *not* to allow areas to be designated exempt in order to permit staff or visitors to smoke

***Designated rooms in accommodation for guests and other residential accommodation (Regulation 8, 3.23)***

*The regulations provide for designated rooms in guest accommodation in premises such as hotels, guest houses, inns, hostels and members' clubs.*

Comprehensive legislation is the most effective way to reduce the health risks caused by tobacco and exposure to SHS, as there is no safe level of exposure to SHS.<sup>i</sup> The international evidence is clear that comprehensive legislation works most effectively in other countries. In order to effectively reduce the health risks caused by tobacco and exposure to SHS, legislation must be standardised across areas and establishments<sup>ii iii</sup>. We recommend that a maximum proportion of rooms in any one premise may be designated as smoking rooms. On the basis of US legislation and guidelines<sup>iv</sup>, we recommend that no more than 20% of hotel bedrooms in any one premise may be designated smoking rooms. This would ensure consistency for all accommodation for guests and club members, regardless of their size.

Exemptions should only be granted on humanitarian grounds, and not for commercial purposes. It is much easier for the public to understand a 'one rule applies to all' smoke-free provision. A level playing field is considered fairer and easier to implement.

***Performers (Regulation 9, 3.38)***

*The proposed regulations make no reference to performers. However it is the Department's intention to bring forward regulations at a later date. These will set out that where the artistic integrity of a performance makes it appropriate for a person who is taking part in that performance to smoke, the part of the premises in which that person performs is not smoke-free only during the performance.*

Smoke-free legislation should be implemented on health grounds, and should apply to premises rather than individuals. If a building is defined as 'smoke-free' under the proposed legislation, then it should be legally required to be smoke-free at all times. Legislation that applies to premises rather than individuals is easier to understand, and easier to enforce once implemented. Allowing performers to smoke if the 'artistic integrity' of the performance makes it appropriate for them to do so will undermine what could otherwise be

an effective piece of legislation. Realistic alternatives such as fake cigarettes are widely available, and could easily be used to portray smoking on stage. Performers also have an exemplar role to young people. To support the prevention of smoking up-take and cessation attempts for young people, smoke-free legislation should apply to performers. Research has shown that the media plays a large role in influencing youth culture, and the portrayal of smoking in the media should be of concern. Young people perceive smoking in the media to be normal and acceptable and positive images of smoking in the media have the potential to down-play the serious health consequences of smoking by portraying it in a way that young people interpret as a normal part of everyday life<sup>v vii</sup>. On this basis, performers should NOT exempt from the smoke-free legislation.

Comprehensive smoke-free legislation protects individuals from harmful exposure to a known class 'A' carcinogen. Permitting performers to smoke in theatres or TV studios implies that artistic integrity is more important than the health of staff, performers, and the audience. We recommend that the Department of Health, Social Services and Public Safety classes *all* substantially and fully enclosed performance venues as smoke-free premises.

### **Additional comments**

#### ***1. Publicity and awareness raising in advance of implementation***

While evidence from other countries does show that smoke free regulations are generally welcomed and well observed, this should not be taken for granted. In Scotland, a comprehensive publicity and awareness raising programme was vital in winning hearts and minds ahead of implementation, and in communicating the health messages and reasons for introducing legislation. From Scotland's experience we would recommend publicity and awareness raising initiatives should focus on the substance, SHS, rather than on smokers; and they should give a clear health message.

#### ***2. Future reviews of smoke-free legislation***

ASH Scotland considers that the Department of Health, Social Services and Public Safety should commit to review and evaluate the proposed smoke-free legislation once implemented. The Scottish Executive, NHS Health Scotland and the Information Services Division (ISD) Scotland have developed a comprehensive evaluation strategy to assess the expected short-term, intermediate and long term consequences of Scotland's smoking ban. Findings will be published from Summer 2007<sup>viii</sup>. In particular, research will assess the impact of the smoke-free legislation in eight key outcome areas:

1. Knowledge and attitudes
2. SHS exposure
3. Compliance
4. Cultural change
5. Smoking prevalence
6. Tobacco-related morbidity and mortality
7. Economic impacts
8. Health Inequalities

Committing to review and evaluate the smoke-free legislation will be extremely valuable to assist in refining and improving on the effectiveness of the legislation once implemented. It will also contribute significantly to an enhanced International understanding of the impacts of smoke-free legislation.

The Scottish Executive introduced comprehensive smoke-free legislation, with reference to published, peer reviewed evidence and international experience. Smoke-free legislation is the only way in which to provide comprehensive protection to public health from SHS, and we fully support the Department of Health, Social Services and Public Safety's decision to increase smoke-free public places in Northern Ireland.

## References

- <sup>i</sup> Repace, J. (2000). Can ventilation control second-hand smoke in the hospitality industry? Online at: <http://dhs.ca.gov/tobacco/documents/FedOHSHASHS.pdf> (Accessed 20/04/04)
- <sup>ii</sup> Levine, A.T. *Private clubs definition proposed in DHSS regulations* [online] DelawareValley.org, 17 December, 2002. Available from: <http://www.delawarevalley.org/fullstory.shtml?Display=FullStory&StoryNum=820> [accessed 5 October 2006]
- <sup>iii</sup> Ministry of Health. *Smokefree law in New Zealand* [online] Available from: <http://www/moh.govt.nz> [accessed 5 October 2006]
- <sup>iv</sup> Georgia General Assembly Smoke Free Indoor Air Act of 2005. [online] Available from: [http://www.legis.state.ga.us/legis/2005\\_06/fulltext/sb90.htm](http://www.legis.state.ga.us/legis/2005_06/fulltext/sb90.htm) [accessed 9 May 2005]
- <sup>v</sup> While, D., et al. Cigarette advertising and onset of smoking in children: Questionnaire survey. *British Medical Journal* 313(7045): pp.398-399, 1996. Abstract available from: [http://www.ncbi.nlm.nih.gov/entrez/query.fcgi?db=pubmed&cmd=Retrieve&dopt=AbstractPlus&list\\_uids=8761227](http://www.ncbi.nlm.nih.gov/entrez/query.fcgi?db=pubmed&cmd=Retrieve&dopt=AbstractPlus&list_uids=8761227) [accessed 5 October 2006]
- <sup>vi</sup> Hastings, G., MacFadyen, L. and Stead, M. Tobacco marketing: shackling the pied piper. *British Medical Journal* 315(7106): pp.439-440, 1997.
- <sup>vii</sup> Watson, N A. et al. Filthy or fashionable? Young people's perceptions of smoking in the media. *Health Education Research* 18(5): pp.554-567, 2003. Abstract available from: [http://www.ncbi.nlm.nih.gov/entrez/query.fcgi?db=pubmed&cmd=Retrieve&dopt=AbstractPlus&list\\_uids=14572016](http://www.ncbi.nlm.nih.gov/entrez/query.fcgi?db=pubmed&cmd=Retrieve&dopt=AbstractPlus&list_uids=14572016) [accessed 5 October 2006]
- <sup>viii</sup> Haw, S. et al. Legislation on smoking in enclosed public places in Scotland: how will we evaluate the impact? *Journal of Public Health* 28(1): pp.24-30, 2006.