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BALLYMONEY
BOROUGH COUNCIL

Our ref: BS/4189/06 (G)

2nd November 2006

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Dear Sir / Madam

Re: The Draft Smoke-Free (General Provisions) Regulations (NI) 2007
And
The Draft Smoke-Free (Exemptions, Vehicles, Penalties & Discontinued Amounts)
Regulations (NI) 2007

Consultation Questionnaire

Ballymoney Borough Council's Health and Environmental Service Committee considered the consultation questionnaire in the above regard at its meeting on 24th October 2006, and their views are set out in the attached questionnaire response. Also attached are additional comments to supplement the consultation response. These additional comments address important issues for which views were not sought within the consultation and which Ballymoney Borough Council feel must be raised and considered.

Please note that the attached response is the deliberations of the Health and Environmental Services Committee, which are yet to be approved by Ballymoney Borough Council at their meeting on 6th November 2006.

Yours faithfully

Lynne O'Brien
District Environmental Health Officer

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**THE DRAFT SMOKE-FREE (GENERAL PROVISIONS)
REGULATIONS (NORTHERN IRELAND) 2007
AND
THE DRAFT SMOKE-FREE (EXEMPTIONS, VEHICLES,
PENALTIES AND DISCOUNTED AMOUNTS)
REGULATIONS (NORTHERN IRELAND) 2007**

CONSULTATION QUESTIONNAIRE

SEPTEMBER 2006

INTRODUCTION

Purpose

This Questionnaire seeks views on:

1. the draft Smoke-free (General Provisions) Regulations (Northern Ireland) 2007;
and
2. the draft Smoke-free (Exemptions, Vehicles, Penalties and Discounted Amounts) Regulations (Northern Ireland) 2007.

It should be read in conjunction with the consultation document which includes the draft regulations.

Background

The draft Smoking (Northern Ireland) Order 2006 (the draft Order) is currently before Parliament. It is anticipated that it will complete its legislative process in November 2006. If approved, the Order will come into operation in April 2007, provide for enclosed public places and workplaces to be smoke-free and give the Department of Health, Social Services and Public Safety (the Department) the power to make regulations in a number of areas. The draft regulations that the Department proposes to make, have been drawn up on the assumption that the draft Order will be approved by Parliament.

Consultation

Responses to the consultation must be received by not later than 5.00pm on 3 November 2006.

In order to facilitate analysis it is important that respondents use this Questionnaire.

Responses to this consultation may be made online at:

http://www.dhsspsni.gov.uk/index/consultations/current_consultations.htm

QUESTIONNAIRE

DRAFT SMOKE-FREE (GENERAL PROVISIONS) REGULATIONS (NORTHERN IRELAND) 2007

Q1. Draft regulation 3 sets out proposed requirements for the content and display of no-smoking signs in premises. Each entrance to smoke-free premises will be required to display a no-smoking sign that meets the standard minimum requirements i.e. a flat rectangular sign with minimum dimensions of 148mm by 210 mm, display the international “no smoking” symbol and carry the words “No smoking. It is against the law to smoke in these premises” (Paragraphs 2.6 – 2.11 of the consultation document refer).

Do you agree with the proposals for the content and display of no-smoking signs in premises set out in regulation 3?

Yes No

If you wish to comment, please do so here.

Ballymoney Borough Council believes that the requirement for signage at entrances is crucial in securing compliance with smoke-free requirements. We therefore believe that it is essential that signs are correctly positioned and contain the right information. We are concerned that the wording in the explanatory guidance appears to be more stringent than in the draft regulation in a particularly important respect. We have observed that even where no smoking signs comply with the requirement to be displayed in entrances they may still not be visible to persons entering and therefore accidental smoking could occur.

Our recommendation is that the following wording be used:

“ In each entrance to a smoke-free premises there shall be displayed in a prominently visible position at all times to persons entering the premises at least one A5 sign made of durable materials that -”

This requirement should extend to any entrance that is not exclusively providing access to private residential accommodation or in use only as a fire exit.

In order to avoid signs at entrances becoming damaged and defaced they should be required to be of durable material or be suitably protected.

It is our view that signs should also contain details of to whom a complaint should be made should someone observe smoking in smoke free premises. This requirement exists in both Scotland and the Republic of Ireland. We feel that the following could be added to the regulation 3

“(c) displays the name of the person or holder of a particular post to whom a complaint may be made by any person who observes another person smoke in the smoke-free premises in question and state that a complaint may be so made.”

Q2. Draft regulation 4 sets out proposed requirements for the content and display of no-smoking signs in smoke-free vehicles. 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 (Paragraphs 2.12 – 2.15 of the consultation document refer).

Do you agree with the proposals for the content and display of no-smoking signs in smoke-free vehicles?

Yes

No

If you wish to comment please do so here.

We agree with the proposal in relation to the need for a sign in each compartment of the vehicle including the drivers' compartment. However we believe that there is a need for signage requirements to be consistent across the UK particularly as vehicles will cross between jurisdictions. Ballymoney Borough Council therefore believes that the only sensible way to proceed is to harmonise the signage requirements for vehicles. As Scotland has already enacted requirements for smoke-free signs in vehicles we believe that England Wales and Northern Ireland should replicate those requirements. In order that the new legislation does not become a burden on transport operators then there is a need for pragmatic enforcement in relation to vehicles fitted with signage that would not meet new requirements. Such an approach would enable signage to be updated over a period of time. The inclusion of text on vehicle signs stating "No smoking. It is against the law to smoke in this vehicle" would be of assistance to those with responsibilities for ensuring that vehicles are smoke-free.

It is as important for vehicle signs to be prominent, visible and durable as it is for premises signs, we therefore believe that the same wording as proposed for signs above should be used.

DRAFT SMOKE-FREE (EXEMPTIONS, VEHICLES, PENALTIES AND DISCOUNTED AMOUNTS) REGULATIONS (NORTHERN IRELAND) 2007

Q3. Draft regulation 2 sets out a proposed exemption for a private dwelling. Those parts of the dwelling that are shared with other premises (including other private dwellings) such as communal lifts, indoor stairwells, communal corridors in a block of flats etc., which are open to the public or used as places of work will be smoke-free. It is proposed that any part of a private dwelling that is used solely as a place of work by more than one person will be smoke-free. The smoke-free requirement will not apply to work that is undertaken in any part of private dwellings for the provision of personal care for the person living there or to maintain the structure or fabric of the building etc (Paragraphs 3.3 – 3.6 of the consultation document refer).

Do you agree with the proposals in the draft regulations for private accommodation?

Yes No

If you wish to comment please do so here.

We note that it is not intended to require private residential space per se to be smoke-free unless they are open to the public or used as places of work and Ballymoney Borough Council accepts the principle that in all other circumstances it is for the person who lives in the premises to decide whether or not to permit smoking.

The requirement for communal areas and common parts of private accommodation to be smoke-free is welcomed.

The proposal to exclude certain types of work (i.e. work that is undertaken to provide personal care for a person living there, to assist with domestic work, to maintain the structure or fabric of the dwelling, or to provide service there), from smoke free requirements for private accommodation causes us concern as we believe that all workers deserve protection from secondhand smoke. However we do acknowledge that there is a need to achieve the correct balance between protection of workers from secondhand smoke and the rights of a person in their own home. If this exemption is to remain there is a need for employers and self employed persons who provide such services to make arrangements about smoking and to adopt model policies that ensure the protection of workers who have to carryout work in private accommodation.

Q4. Draft regulation 3 sets out proposed exemptions for designated bedrooms in a hotel, guest house, inn, hostel or members' club. It also specifies certain conditions which must be satisfied (Paragraphs 3.7 – 3.8 of the consultation document refer).

Do you agree with the proposed exemptions and conditions in draft regulation 3 for hotels, guest houses, hostels etc?

Yes

No

If you wish to comment please do so here.

We believe that there is no convincing argument for the inclusion of this exemption in the draft regulations and we feel that in certain instances it is possible that this exemption could be abused so that in effect a smoking room is being created in smoke-free premises.

Should the department proceed with proposals to enable designated bedrooms to be exempt from smoke-free requirements then we feel that the conditions set out in the draft regulation are appropriate. However we feel that the exemption should only be for the residents of the bedroom and not for guests or employees of the hotel, this would ensure that abuse of the purpose of the designation does not take place.

There is need for clarity in relation to the process of designation and feel that it may be helpful if "designated" was more clearly defined in the regulations. There is also a need for clarity in relation to changing bedroom designations, particularly when a bedroom has been designated as a smoking bedroom. Complaints can be anticipated from non-smoking residents of hotels etc if they are allocated a non designated room and yet there is evidence of smoking in the room in the past. While there is no need for bedroom designation to be permanent we feel there is a need for some mechanism to regulate the designation process, this may be best achieved through guidance.

Q5. Draft regulation 4 sets out proposed exemptions for designated rooms in residential care homes and nursing homes, hospices and those mental health units that provide long-term residential accommodation (long-term is defined as accommodation which, in the normal course of events, is provided for patients to occupy for not less than 6 months). It also specifies certain conditions which must be satisfied (Paragraphs 3.9 – 3.11 refer).

Do you agree with the proposed exemptions and conditions in draft regulation 4 for care homes & nursing homes, hospices and mental health units?

Yes

No

If you wish to comment please do so here.

In our response to the consultation on the Smoking (NI) Order 2006 we stated that all workers deserved the same level of protection from secondhand smoke but acknowledged the difficulties that may be caused in certain premises. We feel that the department must put measures in place that ensure the protection of workers from secondhand smoke even where exemptions from smoke-free requirements are permitted. We feel that the exemption from smoke-free requirements can only be justified for residents of such premises and should not extend to visitors or staff similar to what we have stated above in relation to hotel bedrooms.

It is our view that where an exemption is available then for the owner of the premises to take advantage of the exemption from smoke-free requirements a set of detailed requirements should be established. These should ensure that persons who have to work in premises where a room is exempt from smoke-free requirements are given the maximum protection available from secondhand smoke while not placing an unrealistic burden on the owner of the premises. The requirements could be set out in a code of good practice or guidance to accompany the regulations.

Q6. Draft regulation 8 sets out a proposed exemption for a designated room in a research or testing facility. This includes research or tests in relation to smoking and smoking cessation (Paragraphs 3.15 – 3.16 refer).

Do you agree with the proposed exemption in draft regulation 8 in relation to research and testing facilities?

Yes No

If you wish to comment please do so here

The proposed exemption for research and testing facilities appears appropriate. There is however a need to ensure the protection of any person who has to work in the facility from the effects of secondhand smoke. We believe that the department should issue guidance that sets out the standards that should be applied in protecting employees who have to work in such facilities.

Q7. Draft regulation 9 sets out proposals for certain vehicles to be smoke-free (Paragraphs 3.27 – 3.32 refer).

Do you agree with the proposals for smoke-free vehicles?

Yes No

If you wish to comment please do so here.

The proposals for smoke-free vehicles appear appropriate however it is not clear to what extent the regulation applies to a persons private car that they use for business purposes and receive expenses for the running of the vehicle from their employer. If such vehicles are covered by smoke-free requirements by virtue of the fact that they are used for work by more than one person do they then have to display no smoking signs and do they have to be smoke-free at all times? This issue needs to be clarified to ensure there is no confusion.

Additional comments on draft smoke-free regulations.

Exemptions for workplaces

Having said that virtually all workplaces will become smoke-free, we are concerned that there are proposed exemptions to which the generally acceptable argument for exemption as private residential space does not apply. Specialist tobacconists and places of performance and recording of live entertainment are essentially workplaces and the proposed exemptions cannot be supported on any grounds that include a consideration of protection of workers and members of the public.

Smoking shelters

One of our major concerns is in relation to the arrangements for the provision and use of structures that are not substantially enclosed (as defined) where they are erected for the specific purpose of providing a shelter for smokers. Whilst the definition of substantially enclosed is acceptable as far as it goes and accords with definitions in other UK countries, it is not only the construction but also the location of these shelters that will cause considerable concern for local authorities, trade representatives, businesses and individuals.

Problems may occur where the location of a shelter, or its close proximity to existing buildings, is such that effective natural ventilation is restricted eg enclosed by high walls of courtyards and lighting wells.

To assist building owners and managers in meeting these requirements, and to promote a consistent approach, we recommend that a Code of Practice or guidance is drawn up in consultation with trade representatives and key stakeholders, to provide model constructions and acceptable construction materials (eg non-flammable and readily cleansable). The Code should deal specifically with the distance that smoking shelters would need to be positioned away from adjacent walls and other structures in order to facilitate effective natural ventilation.

Reflux smoke

It can be anticipated that an effect of this legislation and the associated promotional publicity will increase peoples' concerns about, and sensitivity to, secondhand smoke. Experience in the Republic of Ireland in particular indicates that people's expectations for smoke-free environments will increase. Concerns have already been raised by elected members about the effect of smokers congregating in doorways etc. Many people will therefore be dissatisfied with arrangements that expose them to second hand smoke in unavoidable open air situations, such as seated areas in stadia, and where it arises from outside of buildings they are occupying, whether it arises from 'smoking shelters', open areas or the highway, and enters their workplaces and homes. It our view that the Department need to address these issues through appropriate guidance to business. It may be possible to link this issue to that of shelters etc discussed above.

It is our view that a review of the implementation of smoke-free legislation needs to take place at the earliest opportunity and if issues such as shelters and reflux smoke create difficulties for district councils then consideration should be given to providing a range of additional powers to enforcement officers to remedy these.

Defences

Concerns were raised about the nature and breadth of the defences available during our response to the consultation on the Draft Smoking (NI) Order 2006. We had hoped that the Department would have taken our concerns on board and included detail in smoke-free regulations about the steps that a person would need to take to be able to avail of statutory defences. It is our view that those in control of premises or vehicles need to be able to establish due diligence if they are to avail of the statutory defences, this would in or view include steps such as having a smoking policy, erecting appropriate signage, training staff, setting out procedures for dealing with persons who smoke in smoke-free premises, recording incidents of smoking, and having appropriate disciplinary procedures for employees who do not follow the companies smoking policy. It is important that those in control of premises or

vehicles understand that the duty created to prevent smoking in smoke-free places is a positive one which would require them to take steps to prevent smoking where there is evidence of smoking, for example by increasing signage in certain areas by improving surveillance by staff, the use of detectors or alarms or use of CCTV where it is available.

It is our view that where a person holding a licence to sell intoxicating liquor persistently fails to take all reasonable steps to secure compliance with this legislation and as a result members of their staff and the public are exposed to health risks, then the question of whether this is a fit and proper person to hold such a licence should be a matter which the licensing authority can take into consideration in granting or renewing the licence and in approving any further applications.

New Burdens Doctrine

The Departments statement in the consultation document that resources to meet the additional costs of enforcement will be made available is welcomed.

It is the view of the environmental health service that to assure high levels of compliance then enforcement of the legislation needs to be properly resourced. A high level of voluntary compliance has been readily achieved in other countries, and it is hoped that this will also be the case in Northern Ireland. However there will still be a considerable amount of work that will need to be undertaken to ensure the continued success of the legislation. The work involved in enforcement includes informing and advising all employers, identifying and visiting the high risk premises including outside normal office hours, warning, cautioning and ultimately taking legal action in respect of infringements, which could in exceptional circumstances include mounting covert surveillance with other agencies.

This represents a substantial additional workload and the New Burdens Doctrine provides that this cannot be funded by reducing existing local authority services. There are obviously economies that can be made by using existing staff and incorporating some activities into existing planned and programmed work. However,

the existing workforce will need to be trained and kept up to date and supplemented by new posts.

An increased workload associated with a rise in the number of noise complaints and problems of cigarette litter being discarded in the street is also anticipated.

Specialist tobacconists

Ballymoney Borough Council is strongly opposed to the granting of an exemption for specialist tobacconists. We feel that there is no case for the exemption of such premises and the small numbers of premises involved is not an important factor. It is our view that all employees deserve the same level of protection whether they work in a public house, an office, a supermarket or a retail shop. We have not heard any arguments that convince us that smoking on such premises is any more essential to their business than is smoking in licensed premises and members clubs.

Performers

Ballymoney Borough Council do not believe that there is any need to bring forward legislation to exempt performers. Smoke-free legislation has been successfully introduced in Scotland without such an exemption.

Specified conditions for premises with designated rooms for smoking

Wherever a proposed exemption will permit smoking in an enclosed area that is not a person's private residential space (i.e. in a designated room) there should be additional requirements to protect workers from exposure to secondhand smoke, by effectively isolating the room in which smoking is to take place from any workroom or public space. These requirements should be based upon best practice and make use of the available technology. To that end the Department could along with interested parties produce a Code of Practice. Compliance with the Code of Practice could then

be taken into account in deciding whether an employer had properly exercised their duty of care in relation to protection of the health of their employees.
