

Health & Environmental Services Department  
Environmental Health



Our ref.:

Being dealt with by:

Andrew Hassard

Your ref.:

Ext.

3281

Date:

1 November 2006

Investing for Health Team (Tobacco Control)  
Room C 4.22  
Castle Buildings  
Belfast  
BT4 3SQ

Dear Sir / Madam

**RE: 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**

I am pleased to respond on behalf of Belfast City Council to the public consultation on these proposed regulations. The completed consultation questionnaire is included with this letter. I have also enclosed a document outlining a number of comments in relation to the proposed regulations which I trust you will take into account.

Belfast City Council is very pleased with the introduction of regulations to control smoking in enclosed public places and workplaces. It is committed to working to ensure that the new legislation is fully implemented throughout the City. A key factor in relation to this is the development of a close working partnership with businesses which will be affected by the legislation. During consultations conducted with this sector it is clear that businesses are concerned to ensure that different government departments who have a role in relation to the legislation work together to ensure as smooth an implementation as possible. In relation to this I would ask that the DHSSPS as the lead government Department in relation to this legislation establishes a joint working group comprising officials from the Department for Regional Development, the Planning Service, the Department for Social Development and Belfast City Council. Such a group would be invaluable in dealing with cross cutting issues which will no doubt arise in the lead up to the legislation and after it is introduced. It would also be an excellent opportunity for practical joined up government. If you wish to discuss this further, please do not hesitate to contact me.

Yours faithfully

ANDREW HASSARD

Head of Environmental Health

*Andrew Hassard* M.Sc., F.C.I.E.H.

HEAD OF ENVIRONMENTAL HEALTH

BELFAST CITY COUNCIL  
THE CECIL WARD BUILDING • 4-10 LINENHALL STREET • BELFAST BT2 8BP  
TELEPHONE: (028) 9027 0428 • TEXTPHONE: (028) 9027 0405 • FAX: (028) 9027 0422

**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**

## **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.**

Belfast City Council believes that the requirement for signage at entrances is crucial in securing compliance with smoke-free requirements. It therefore believes that it is essential that signs are correctly positioned and contain the right information. It is concerned that the wording in the explanatory guidance appears to be more stringent than in the draft regulation in a particularly important respect. It appears 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 users of the premises may not be aware that the building is smoke-free.

The Council recommends 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 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.”

The Council believes that the addition of the above wording is important as it reinforces the message to both the owner of the premises and the public that it is the responsibility of the management of the premises to ensure that premises are smoke-free.

**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 it is open to the public or used as places of work and Belfast City 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.**

**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.**

Belfast City Council believes that all workers deserve the same level of protection from secondhand smoke but acknowledges that this may cause difficulties in certain premises. It feels 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 has stated above in relation to hotel bedrooms.

It is the Council's view that where an exemption is available then conditions should be applied. 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. Belfast City Council would be keen to participate in the development of any such guidance.

**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 person's private car when it is being used for business purposes and the owner receives 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.

**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**

Additional comments from Belfast City Council to accompany the Consultation Questionnaire.

### Smoking Shelters

Belfast City Council feels that there is a major concern 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.

Members of the Council's Smoke Free Implementation Group have visited the Republic of Ireland and Scotland and have seen at first hand the difficulties that have arisen with the erection of such structures, as well as the adaptation of existing main structures, for the same purpose.

Particular problems occur where the location of a shelter, or its close proximity to existing buildings, is such that effective natural ventilation is restricted for example by being 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, the Council recommends 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 people's concerns about, and sensitivity to, second hand 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 open air situations. This may occur in seated areas in stadia

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.

District councils also anticipate increased work associated with a rise in the number of noise complaints and problems of cigarette litter being discarded in the street.

#### Specialist tobacconists

Belfast City Council is opposed to the granting of an exemption for specialist tobacconists. It feels 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.

#### 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.