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Carrickfergus Borough

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30 October 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

CONSULTATION ON DRAFT SMOKING REGULATIONS

Please find enclosed Carrickfergus Borough Council's response to the consultation on the draft Smoke Free Regulations 2007. It was agreed at the Environmental Services Committee meeting held on the 16th October 2006, the minutes of which will be ratified at a full Council meeting to be held on the 6th November 2006.

If you have any further queries about this matter please don't hesitate to contact me.

Yours Faithfully

A handwritten signature in black ink that reads "Owen Fulton".

Owen Fulton

Lead Environmental Health Officer

Alan A C Cardwell
Town Clerk & Chief Executive
Carrickfergus Borough Council

Stephen J Johnston
Director of Building Services

John D McCormick
Director of Development Services

Alan Barkley
Director of Environmental Services

Ian Eagleson
Director of Support Services

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.

We believe 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 recommend 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. The Council therefore believe that the only sensible way to proceed is to harmonize 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 the 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 defined in the regulations. The definition should make clear that designated means designated in writing. 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 the Council stated that it believed 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.