

**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.

Each entrance to a smoke-free premises should have at least one A5 sign displayed in a prominent position visible at all times to persons entering the premises

Signs should also contain details of to whom a complaint should be made should someone observe smoking in smoke free premises.

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.

Signage requirements for vehicles should replicate the requirements as described in Scotland . wording indicating to whom a complaint should be made is also important for vehicles as it reinforces the message to both the operator of the vehicle and the public that it is the responsibility of the operator to ensure that vehicles 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.

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

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.

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.

The Agency believes that there is no convincing argument for the inclusion of this exemption in the draft regulations.

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 the exemption should only be specifically 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.

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.

While the Agency appreciates there is an argument about the nature of long term residential accommodation and the right of residents to choose their 'home' circumstances this argument should not be stretched too far. Such residents would not be permitted to put others at risk of health damage in other ways. Measures must therefore be put 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 hotel bedrooms.

Patients in inpatient psychiatric settings should have access to all strategies that will help them combat the damage done by smoking including smoke-free units. There should be no need to distinguish 'long-term' accommodation. The evidence is that staff anticipate more smoking-related problems than actually occur. Current research¹ suggests that the introduction of smoking bans in psychiatric inpatient settings is possible but would need to be a clearly and carefully planned process involving all parties affected by the ban. Under the criteria suggested the issue would not be the duration of stay on the premises but whether or not they are free to go outside without posing a security risk.

It is important to remember the need to protect psychiatric patients who do not smoke. The HPA believes that exemptions on psychiatric settings could run the risk of failing to protect psychiatric patients who already experience many inequalities in health. This may contradict the Government's public health strategy *Investing for Health* which focuses on tackling inequalities.

It is our 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. Again any such exemption should not extend to visitors or staff.

¹ Lawn, S and R, Pols. "Smoking bans in psychiatric inpatient settings? A review of the research." Australian and New Zealand Journal of psychiatry 2005; 39:866-885.

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 is inappropriate. There is a need to ensure the protection of any person who has to work in any research facility from the effects of secondhand smoke.
Such facilities should seek ways to research the health damaging effects of tobacco without exposing any workers to those effects.

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.

It is not clear to what extent the regulation applies to a private car that is used at times for business purposes and funded by the employer. If such vehicles are covered by smoke-free requirements by virtue of the fact that they are used for work purposes they should then have to display no smoking signs and be smoke-free at all times.

Additional comments on Northern Ireland 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.

Specialist tobacconists

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

There is no need to bring forward legislation to exempt performers. Smoke-free legislation has been successfully introduced in Scotland without such an exemption.

Such an exemption may well lead to performers being required to smoke against their will and they may feel obliged to comply in order to secure work. The only way to protect performers is not to proceed with any proposed 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 best use of the available technology.

Crown Properties including prisons.

While Crown properties including prisons will not /may not be included within the legislation certain regulations could and should apply. All prisons and Defence establishments as *workplaces* should become smoke-free (especially so if for any civilian workforce) - this will still allow the Prison Service to formulate its own policies and regulations with regard to prisoners and smoking. Anyway all juvenile establishments should become completely smoke-free on the model of HMYOI Wetherby and HMYOI Ashfield.