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Your Reference:

Our Reference: DMSD 21.01.06

Date: 10 November 06

Dear Jim Gibson

1. Please find enclosed, with apologies for the delay, the Ministry of Defence (MOD) response to your draft smoke-free regulations. As agreed, our response takes the form of proposed amendments to your smoke-free legislation. We thought it would be helpful for you also to receive a covering minute explaining the intent behind our proposed amendments, and also suggesting non-statutory steps to ensure that arrangements work smoothly in practice.
2. You will need to take your own view on whether our drafting works in the context of the legislation on which you and your lawyers will be expert. We trust, however, that you will be able to accommodate our intentions, as outlined below, which are consistent with arrangements already in place in Scotland, and which we intend to adopt in England and Wales by the end of 2006.
3. The intent behind proposed amendment A is to provide a standard definition of military premises to assist in the interpretation the other amendments MoD is proposing. We presently have no intention of making premises available to visiting forces or headquarters/organisations in Northern Ireland, but as such things are conceivable, it seems sensible to make such provision now.
4. Proposed amendment B would allow smoking in designated Service Single Living Accommodation (SLA) on military premises. We wish to give Local Commanders the flexibility to designate a number of single or multiple occupancy bedrooms in SLA where smoking will be permitted. The locations would be determined in conjunction with the Defence Fire and Rescue Service. No person who is unwilling would be required to occupy, use, work in or pass through a designated "smoking permitted" bedroom.
5. Proposed amendment C would permit smoking in HM Submarines and ships of the Royal Fleet Auxiliary (as neither are "vehicles" under the terms of the draft Order). In practice, this would be a time-limited exemption to allow us time to wean our people off smoking without damaging operational effectiveness, in circumstances where it is impracticable to smoke in the open for prolonged periods or at all. Both HM Submarines and the Royal Fleet Auxiliary will be smokefree by no later than December 09.

6. Proposed amendment D would exempt military vehicles from the signage provisions for operational reasons. In practice, smoking is already prohibited in camouflaged military combat vehicles. MOD mini buses, coach vehicles and other non-combat vehicles forming part of the so-called "white fleet" would display (on a non-statutory basis) no smoking signs where these can be seen by the occupants. The only exception to this would be where Local Commanders, for operational reasons, considered that this requirement in respect of white fleet vehicles used in the Northern Ireland should not apply.

7. Proposed amendment E disapplies (by means of amendment to the draft Order) the enforcement provisions of your legislation from the military. (The military will still however be statutorily required to comply with the legislation). We have legitimate security concerns about allowing access to military premises, places and vehicles without prior notice. We propose, therefore, that the enforcement provisions of your smokefree legislation should not apply to the military, but steps taken to ensure compliance by means of a non-statutory protocol between the MoD and district councils. By way of example, against the background that Health and Safety at Work Act 1974's enforcement provisions do not bind the Crown, we already have a protocol in place with the Health and Safety Executive that visits are to be arranged by prior arrangement but without undue delay. Inspection of sensitive areas, where this be absolutely necessary, is conducted under escort and again only with prior notification.

8. No provision is proposed to allow smoking in Military Messes and Clubs. Our Ministers have reflected further on this issue and have decided to ban smoking in all our enclosed areas worldwide except for designated bedrooms in Single Living Accommodation, and the time limited exemptions on submarines and ships of the Royal Fleet Auxiliary. They have noted that the more stringent ban now operating in Scotland has been delivered without significant reaction, and wish to take an approach to the smokefree legislation being introduced across the UK that reflects the Government's approach to promote good health, a common approach across the Union, and a common approach across the 3 Services.

Andrew Griffiths

MOD PROPOSED AMENDMENTS TO NI SMOKEFREE LEGISLATION

A. Definition of Military Premises

Smoke-free (Exemptions, Vehicles, Penalties and Discounted Amounts) Regulations (Northern Ireland) 2007

In Part 1 (Interpretation), in regulation 1(2), between "entrance and "no-smoking symbol" insert:

"military premises" means premises occupied by:

- (i) Her Majesty's Forces;
- (ii) visiting forces within the meaning of Part I of the Visiting Forces Act 1952; or
- (iii) any headquarters or organisation designated for the purposes of the International Headquarters and Defence Organisations Act 1964.

B. Smoking sleeping accommodation on military premises.

Smoke-free (Exemptions, Vehicles, Penalties and Discounted Amounts) Regulations (Northern Ireland) 2007

In Part 2 (Exemptions), after regulation 8 insert-

Military Sleeping Accommodation

- 9(1) A designated bedroom within military premises is not smoke-free.
- (2) In this regulation a "designated bedroom" means a room which-
- (a) is set apart exclusively for sleeping accommodation;
 - (b) has been designated by the person having the charge of the military premises in which the bedroom is situated as being a bedroom in which smoking is permitted;
 - (c) has a ceiling and, except for doors and windows, is completely enclosed on all sides by solid, floor-to-ceiling walls;
 - (d) does not have a ventilation system that ventilates into any other part of the military premises (except any other designated bedrooms);
 - (e) does not have any door that opens onto smoke-free military premises which is not mechanically closed immediately after use; and
 - (f) is clearly marked as a bedroom in which smoking is permitted.
- (3) In this regulation "bedroom" includes any single or multiple occupancy bedroom that the person in charge of the military premises may designate.

C. In relation to ships

Smoke-free (Exemptions, Vehicles, Penalties and Discounted Amounts) Regulations (Northern Ireland) 2007

In Part 3 (Vehicles), after the existing Regulation 9(4) insert -

- (5) *This regulation does not apply to HM submarines and ships of the Royal Fleet Auxiliary.*

D. Signage in Military vehicles

The Smoke-free (General Provisions) Regulations (Northern Ireland) 2007

After Regulation 4(3) insert -

- (4) *This regulation does not apply to military vehicles.*

.. "Enforcement" in respect of military premises

Smoking (NI) Order 2006 - Article 16 (Application to the Crown)

Amend article 16 (suggested changes in red) to read:

16. *-(1) Except as provided for by article 16(4), this Order binds the Crown to the full extent authorised or permitted by the constitutional laws of Northern Ireland.*

(2) No contravention by the Crown of this Order or any regulations under it makes the Crown criminally liable; but the High Court may, on the application of a district council for the district in which the contravention is alleged to have taken place, declare unlawful any act or omission of the Crown which would, but for this paragraph, have been an offence.

(3) Paragraph (2) does not extend to persons in the public service of the Crown.

(4) Schedule 2 shall have no effect in respect of:

(i) Her Majesty's Forces;

(ii) visiting forces within the meaning of Part I of the Visiting Forces Act 1952; or

(iii) any headquarters or organisation designated for the purposes of the International Headquarters and Defence Organisations Act 1964.