

## **THE DRAFT SMOKING (NI) ORDER 2006 FREQUENTLY ASKED QUESTIONS**

**It should be borne in mind that the answers to the following questions reflect the content of the draft Smoking (Northern Ireland) Order 2006 which has recently been the subject of a public consultation exercise. Once the Health Minister has considered the issues arising from that exercise, the Order may be amended and, in any event, will have to be approved by the Westminster Parliament or, if appropriate, the Northern Ireland Assembly, before it becomes law.**

**1. When is the legislation coming into force?**

*The aim is to bring the legislation into force in April 2007. However, at this stage it is not possible to give a precise date.*

**2. Who will the legislation affect?**

*Everyone responsible for, and/or using, enclosed public places and workplaces.*

**3. Will any premises be exempt?**

*This will not be decided until the legislation is finalised. A public consultation exercise will take place on draft regulations which will include any proposed exemptions.*

**4. What steps will I need to take to comply with the law?**

*The intention is that owners, employers, managers etc will be responsible for the display of no-smoking signs and for taking reasonable measures to ensure that staff, customers, visitors etc are aware of the implications of the legislation and that they do not smoke in smoke-free premises. Guidance will be issued to employers and the general public before the legislation comes into force.*

**5. Do I have to provide facilities for staff who smoke?**

*No. There is nothing in the draft Order that requires you to provide facilities for smokers. The aim of the legislation is to make enclosed public places and workplaces completely smoke-free. The intention therefore is that, unless premises, or designated areas within premises, are exempt, smoking will not be permitted. It is also unlikely that an employer or manager of any premises exempted from the legislation will be compelled to provide a smoking area.*

**6. What would I include in a policy on smoking? Do you have a template?**

*Advice on how to prepare a policy on smoking is given in several guidance documents. These have been produced by a number of bodies, such as the Chartered Institute of Environmental Health, the Health Promotion Agency NI and the National Clean Air Award scheme / Roy Castle Foundation.*

**7. How much notice should I give my staff before implementing a non smoking policy?**

*It is recommended that you consult with staff before introducing a policy on smoking to make sure that everyone is well informed. Further advice is given in the guidance documents referred to above. See also answer to Q5.*

**8. Can I put tables and chairs outside?**

*You may put tables and chairs outside provided you own the land and the area is not enclosed or substantially enclosed. Placing tables and chairs on the public footpath outside premises is not legal. You are advised to contact the Department of Regional Development for further advice.*

*'Enclosed or substantially enclosed' means (see answer to Q12)*

**9. How far do people have to be outside so that secondary smoke is not affecting my staff?**

*Smoke may drift inside the premises through open windows or doors. In the interests of health and safety, consideration should be given to the location of external smoking areas and how staff and customers inside your premises may be protected from exposure to secondhand smoke.*

**10. Can I comply with the law by increasing ventilation within my premises?**

*No. It is intended that enclosed public places and workplaces will be completely smoke-free unless an exemption applies. In these circumstances, smoking will not be permitted and the use of ventilation systems will not enable employers to comply with the law.*

**11. Would smoking be permitted if one side of the room was completely open?**

*The meaning of "enclosed" and "substantially enclosed" will be defined in regulations. Guidance will be issued to employers and the general public before*

*the legislation comes into force.*

**12. Does the legislation cover staff who work outside the premises and protect them from exposure to secondhand smoke?**

*The legislation is likely to apply to premises that are enclosed or substantially enclosed and will not, in general, apply to persons working outside. The meaning of “enclosed” and “substantially enclosed” will be defined in regulations.*

**13. What are the offences under the legislation and who could be prosecuted if someone is smoking in the premises?**

*The legislation will introduce offences for failing to display no-smoking signs, smoking in a smoke-free place, failing to prevent smoking in a smoke-free place and obstructing an authorised officer. In such circumstances, offences could be committed by a person who occupies, controls or is concerned in the management of smoke-free premises, a person smoking in smoke-free premises, and a person who obstructs an authorised officer.*

**14. How will Councils ensure a consistent approach across NI?**

*The regional CEHOG Tobacco Task Group will provide a template for an enforcement policy that may be adopted by all Councils to help ensure a consistent approach across NI.*

**15. Do I need permission from any bodies if I want to provide an external shelter for people who smoke?**

*You are advised to contact your local planning and building control offices for advice regarding alterations or additions to your premises.*

**FROM: ROBIN MASEFIELD  
DIRECTOR**

**2 NOVEMBER 2006**

cc Distribution below

Paul Goggins

**NORTHERN IRELAND PRISON SERVICE PROPOSED RESPONSE TO DHSSPS  
CONSULTATION ON PROPOSED REGULATIONS TO BE MADE UNDER  
POWERS IN THE DRAFT SMOKING (NORTHERN IRELAND) ORDER 2006**

- Issue:** NIPS proposes that the regulations in relation to prisons be amended to provide that the Governor will designate rooms (cells) for smoking under Prison Rules and that all other parts of prison establishments be covered by the provisions of the draft Smoking Order 2006.
- Timing:** The consultation period ends on 3 November, so an early response would be appreciated.
- Presentational Issues:** There has been limited interest in the provisions for prisons both here and England and Wales. Our proposal results in the same end-point ie. that smoking in prisons be restricted to a person's cell/room on the basis that this is regarded as their permanent or temporary home and demonstrates NIPS commitment to comply with the spirit of the draft Smoking Order.
- FOI:** Not discloseable - Advice to Ministers.
- Special Advisers:** Seeing in parallel.
- Recommendation:** That you:
- Agree that the regulations as drafted are amended to reflect that prisons be dealt with by prison rules and the draft Smoking Order;
  - Agree to new prison rules being made to restrict smoking to a person's cell/room; and
  - Note the progress NIPS has made in clarifying the issues raised in my submission of 23 June 2006.

## **Background**

I wrote to you in June setting out the direction NIPS wanted to take in relation to restricting smoking in prisons. I recommended, and you endorsed the position, that in line with other prison services, smoking would be restricted to a prisoner's cell (if he/she smoked) as this is where they lived either on a temporary or permanent basis.

2. Since then we have been working with officials in DHSSPS to establish the detail of the arrangements that need to be put in place. We were unable, given the time restraints for issuing the draft regulations for consultation, to reach an agreed position on the wording of the regulations relating to prisons.

3. For the purposes of the consultation, DHSSPS ran with a regulation in relation to prisons which effectively exempts prison (everything within prison boundaries) from the draft Order. Regulation 5 states that prisons will not be required to be smoke free but that the Prison Service is committed to reflecting the spirit of the legislation through Prison Rules.

4. NIPS now needs to respond to the consultation on the draft regulations setting out how it wishes to manage smoking restrictions in prison establishments.

## **NIPS Preferred Position**

5. I took the opportunity at the Prison Service Management Board meeting in September to reassess the options available to us so that we could fully appreciate the merits and drawbacks associated with each.

The options considered included:

- Option 1: Using prison rules (as the regulations currently provide)
- Option 2: Using the draft Smoking Order:

- Option 3: Using prison rules to restrict smoking for prisoners but that all other parts of the prison would come under the provisions of the draft Smoking Order.

6. My colleagues on the Board agreed that the NIPS would want to pursue Option 3. We feel that this option does provide a 'catch all' situation to provide maximum cover in prisons here. Governors will designate rooms (ie cells) for smoking under prison rules; we will make a new disciplinary offence; we retain some flexibility to amend the position but only if operational pressures require us to do so. At the same time we can demonstrate that, in so far as is possible in a prison context, non-smokers in our workforce will be provided for under the draft Smoking Order on a par with other workplaces.

### **DHSSPS Position**

7. Some DHSSPS officials would prefer to see NIPS provided for solely under the draft Smoking Order, more on the lines in England and Wales. The legal routes to similar ends in Scotland and Republic of Ireland are however different. We should adopt the best approach for our needs here.

8. Although NIPS and DHSSPS differ on their preferred approach the end point will still be the same. I feel strongly that NIPS needs to be able to manage this in such a way as to enhance our ability to enforce the new arrangements for both prisoners and staff. In discussions with other jurisdictions the biggest issue has been enforcement with staff and we expect to share that difficulty.

### **NIOLAB Legal Advice**

9. We have sought advice from colleagues in NIOLAB as to how the regulation in relation to prisons might be worded to cover our preferred option.

This is as follows:

"Areas of a prison, young offenders centre or remand centre designated by the governor of the relevant prison, young offenders centre or remand centre are not smoke-free.

In this regulation "prison" has the same meaning as in section 47 (1A) of the Prison Act (Northern Ireland) 1953, "young offenders centre" and "remand centre" have the same meanings as in section 2(a) and (b) respectively of the Treatment of Offenders Act (Northern Ireland) 1968."

10. This wording has not been shared in advance with DHSSPS officials. Those who have been copied in on this submission may want an opportunity to consult with their legal adviser on it.

### **Development of NIPS Smoking Policy**

11. We have been working through the list of issues highlighted in my June submission. This will form the basis of our new Smoking Policy which I expect to put to you shortly. A summary of our current thinking on these issues is attached at **Annex A**. We clearly need to establish the legislative vehicle before finalising this policy.

12. We plan to consult internally with key stakeholders on the NIPS policy and have already had discussions with Senior Governors and the Prison Officers' Association. We are also reflecting on whether we need to consult more widely given the consultation already undertaken by DHSSPS.

### **Presentational Issues**

13. The proposals are in line with those in other prison jurisdictions and although the process may differ the end point will be the same. NIPS is committed to working with its staff and prisoners to reduce smoking and we feel that the approach we advocate would give us the best means of achieving this.

14. An issue that may run on is whether smoking in prisons should be permitted at all. The POA would advocate that, as their colleagues do in the Republic of Ireland, prisons should be smoke free for both staff and prisoners. This would be the end point we would like to work towards, but it is not practicable at this stage.

### **Recommendations**

In conclusion I recommend that you:

- Agree that the regulations as drafted are amended to reflect that prisons be dealt with using both prison rules and the draft Smoking Order;
- Agree to new prison rules being made to restrict smoking to a person's cell/room and create a new disciplinary offence; and
- Note the progress NIPS has made in clarifying the issues raised in my submission of 23 June 2006.

(Signed)

**ROBIN MASEFIELD**  
**Ext: 25219**

cc PS/Secretary of State  
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## **PROGRESS - NIPS SMOKING POLICY**

The following summarises the progress made to date on issues raised in the submission of June 2006.

### **Extent of smoking restrictions**

In line with the provisions of the draft Order all staff working in prisons will not be permitted to smoke in enclosed workplaces but they will be permitted to smoke in designated outdoor areas during their official breaks. For prisoners, smoking is to be restricted to their own cell/room recognising that this may be regarded as either their permanent or temporary home.

In the interests of both the health and well being of both its staff and prisoners, NIPS is committed to reducing smoking and making prisons smoke free in the future for both staff and prisoners.

### **Cell sharing**

Where a smoker and a non-smoker are required to share a cell, NIPS proposes that the cell be designated as a non-smoking room. As far as possible smokers will be doubled with non-smokers but there are other significant factors that must be considered when two prisoners are to be doubled up. The NIPS Cell Sharing policy already provides for the sharing of smokers and non-smokers.

One critical factor in this approach at present is the high numbers of prisoners currently sharing cells at both Maghaberry and Hydebank Wood. There is a potential for smokers doubled with non-smokers to claim that they are being unfairly treated compared with two smokers sharing a cell. This will present a significant management and enforcement issue. We may have to consider providing rooms solely for the purpose of smoking where that can be accommodated.

Provision for adequate ventilation is to be 'designed in' to new accommodation in future.

### **Dormitory accommodation**

As provided for under the draft regulations, dormitory accommodation in prisons (at both Magilligan and Hydebank Wood where this applies) will be non-smoking. Currently in Magilligan there is a separate recreation/association room for smokers. The issue for us here is that the DHSSPS regulations stipulate that such a room should solely be used for smoking. The detail of this in a prison context needs further exploration.

### **Cell searching**

For the purposes of routine cell searches a cell will be ventilated before the search takes place. Masks will be made available for search staff to wear if they choose to

do so. We are currently testing how quickly levels of nicotine dissipate after a cell is ventilated.

NIPS recognises that staff will enter cells for a range of reasons in the course of their work and there needs to be a reasonable approach adopted in these cases. The guidance in this instance will be to ask the prisoners to stop smoking and ventilate his/her cell or for the interview to take place in a different room.

There will also clearly be situations such as life threatening situations where the preservation of life takes precedence.

### **Staff clubs, messes, work vehicles and visitors' centres**

Under the provisions of the draft Order these workplaces will all become smoke free. There has been some discussion about the provision of smoking shelters in these locations.

### **Contractors**

All contractors will be expected to comply with the NIPS Smoking Policy. This is already provided for in contracts. This applies irrespective of whether part of the site/complex has been 'handed over' to contractors. It will be the responsibility of the contractor to ensure that their staff comply with the NIPS smoking policy.

### **Staff accommodation within prison boundaries**

This only applies at Maghaberry, Magilligan and at the Prison Service College. Smoking would be permitted in rooms used for accommodation of staff living there on a temporary or permanent basis. All communal areas in accommodation units would be required to be smoke-free where the premises are shared by smokers and non-smokers.

### **Enforcement**

NIPS proposes to make a new disciplinary offence under prison rules of smoking in an area where it is not permitted. This will apply to prisoners.

Further work is in hand in relation to enforcement if a member of staff breaches the smoking policy.

It will be the Governor's responsibility to ensure that prison rules and the provisions of the Smoking Order be adhered to.

### **Health promotion**

NIPS is committed to reducing levels of smoking among the prisoner population and our staff. Smoking cessation classes and nicotine replacement therapy is currently available to prisoners. NIPS intends to run smoking cessation classes for staff and provide advice and information on giving up smoking.