

**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.

We would emphasise that this includes both staff and private entrances and exits – not just public entrances and exits.

We also recommend that such signage is protected from tampering, damage, removal or concealment.

We also recommend that smoking is not permitted at such entrances and exits.

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.

As well as the symbol mentioned above we would recommended that some wording, for example; ‘No smoking. It is against the law for you to smoke in this vehicle’ is added.

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.

Ulster Cancer Foundation and ASH (NI) welcome this decision as it offers additional protection to individuals living in shared premises. However, we regard it as essential that relevant employers (including local Councils, DHSSPS, Northern Ireland Housing Executive, and the Private Sector) develop policies on how smoking during residential visits (or while employees carry out work in a private dwelling) will be addressed and implement them before smoke-free legislation comes into force. This may involve the development of new resources or training programmes. Care workers, cleaners, nannies, construction workers and others working in private homes have as much right as anyone else not to have their health affected by exposure to other people's smoke. Employers who do not adopt effective policies in this area risk legal action under health and safety legislation (and possibly human rights legislation) if their employees' health suffers as a result. Useful guidance on these issues has been issued by the Royal College of Nursing.

Vulnerable people should not have vital services withdrawn as a result of this new legislation – we believe that in virtually all cases arrangements to protect workers' health can and will be made by negotiation and agreement.

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.

If hotel bedrooms are to be exempt from smoke-free legislation then we would recommend a maximum number of rooms in any one premise should be designated as smoking rooms. On the basis of US legislation we recommend that no more than 20% of hotel rooms in any one establishment may be designated smoking rooms (www.legis.state.ga.us/legis/2005). This will ensure consistency for all accommodation for guests and club members, regardless of their size.

In addition to the above restrictions, room designations, i.e. smoking or non-smoking should not be easily or frequently changed. Non-smokers should not be put in a room which was a 'smoking room' the previous day which as a result may still smell of smoke and contain a level of secondhand smoke.

Holiday homes and mobile homes for hire should be designated as either smoke-free or not smoke-free. This designation should be included in advertising material and clearly displayed at the venue.

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.

The Ulster Cancer Foundation and ASH (NI) believe that ideally all indoor public places should fall under the smoke-free legislation and the overall direction of legislation and regulations should be towards comprehensive smoke-free provision. However, we acknowledge that in a few circumstances particular humanitarian issues should be addressed to accommodate certain individuals for whom the premise may be their place of dwelling.

The Government should commit to a clear strategy (with timescales) for achieving smoke-free status both in prisons and in mental health units. We welcome the Northern Ireland Prison Service's commitment to reflecting the spirit of the legislation through Prison rules. Prison officers, other prison staff, and inmates have as much right to protection from SHS as individuals in any other setting.

In the case of prisons, a target date should be set for smoke-free status, following the precedent which will be set in Young Offender Institutions which will not be exempt from the legislation. Some juvenile facilities are already smoke-free, and the evidence shows that this improves both health and security (for example there are fewer instances of bullying, which often take place over cigarettes). Many adult prisons in the United States at State and Federal level are already smoke-free with no serious discipline problems.

Scotland prison rules were changed in March 2006 so that prisoners may only smoke in certain areas of the prison, and a disciplinary offence of smoking in an area where it is not permitted has been created.

We also recommend that, as in Scotland, smoking should not be permitted in shared cells unless already designated as a smoking area. All prisons should have access to comprehensive smoking cessation support services. We suggest that the Department of Health, Social Services and Public Safety works in partnership with the Northern Ireland Prison Service to develop a comprehensive strategy for increasing smoke-free provision in prisons in Northern Ireland.

Making exemptions for mental health units may result in the exacerbation of already large health inequalities between those individuals living with mental health problems and the rest of the population. There is also a duty to protect the health of their staff in such institutions. Comprehensive guidance must therefore be developed and issued regarding effective implementation of the legislation in such settings.

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.

We accept the need for an exemption for research facilities – provided that this is tightly defined to prevent tobacco firms from designating rooms that would otherwise be smoke-free. However, exemptions should be tightly framed to allow only minimal exemptions. The regulations should specify that the intention is not to allow areas to be designated exempt in order to permit staff or visitors to smoke.

We can see no good reason for the exemption for specialist tobacconists, which would simply make it easier for the tobacco industry to push their lethal products (Paragraph 3.13). Customers should be expected to step outside in order to test products before purchasing them, or to purchase them on a sale or return basis.

The situation which has developed in Chicago is an example of how this could be exploited as a loophole. The day the City Council approved a smoking ban, Marshall McGearty Tobacco Lounge opened. The lounge where smokers can drink coffee and use computers is touted by its owner as the only one of its kind in the country and according to the City Council's law department is perfectly legal. This is because the store opened as a 'retail tobacco store'. The tobacco lounge also happens to be owned by R.J. Reynolds Tobacco Co.

Under the Chicago regulations a retail tobacco store can sell cigarettes and customers can smoke them as long as 65% of sales come from tobacco and tobacco-related accessories such as ash trays. Technically, the lounge satisfies the ordinance. The lounge even holds tobacco tastings.

Stephanie Salkow, a senior marketing director at R.J Reynolds says "The whole idea of the Marshall McGearty lounge is to give smokers a premium brand and introduce them to the rarest tobacco, to elevate the smoking experience."

Source: Advanced Financial Network 29 October 2006 Link to article: <http://tinyurl.com/ynxfx9>

If an exemption will permit smoking in an enclosed area, then there should be additional requirements to protect workers from exposure to secondhand smoke, including as far as possible isolating the room in which smoking is to take place from any workroom or public space. These requirements should be based on best practice, make use of best available technology, and could be set out in an agreed Code of Practice.

The consultation document proposes to allow an exemption for smoking in the course of an artistic performance (3.38). This exemption is opposed by the Ulster Cancer Foundation and ASH (NI). Smoke-free legislation should be implemented to protect everyone's health and should apply to premises rather than individuals. If a building is defined as being smoke-free then it should be legally required to be smoke-free at ALL times. This will make the legislation much easier to understand and therefore enforce.

Smoking during performances (Paragraph 3.38) would also mean that the audience, performers and stage-hands will be exposed to the many carcinogens in tobacco smoke. We know that the tobacco industry uses the entertainment industry to place its products. The excuse given is that it is to portray reality yet recent research shows that while smoking prevalence is around one third of what it was in the 1950's there is as much smoking in Hollywood films now as there was in the 1950's. This loophole would be exploited to present smoking as glamorous, widely prevalent and socially acceptable. This exemption would have the major disadvantage of encouraging young people to take up the habit of smoking. This exemption was not included in the Scottish legislation and to date this has worked very well; even throughout the Edinburgh festival.

Allowing performers to smoke if the 'artistic integrity' of the performance makes it appropriate for them to do so will undermine what could otherwise be an effective piece of legislation. Realistic alternatives such as fake cigarettes are widely available, and could easily be used to portray smoking on stage.

Comprehensive smoke-free legislation protects individuals from harmful exposure to a known class 'A' carcinogen. Permitting performers to smoke in theatres or TV studios implies that artistic integrity is more important than the health of staff, performers, and the audience. We recommend that the Department of Health, Social Services and Public Safety classes all substantially and fully enclosed performance venues as smoke-free premises.

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.

These provisions are sensible – although we would wish to see rented vehicles treated similarly to hotel rooms, i.e. the owner/operator would designate and sign vehicles as either smoke-free or not. This designation should then be set out in all advertising material etc.

We would be wary of paragraph 3.30 as it may add to inequalities and anomalies within the workplace in certain members of staff (perhaps senior staff) permitted to smoke in their cars while others who share vehicles not. This could lead to confusion and resentment and would be more difficult to enforce than a clear smoke-free policy.

Additional comments

1. Publicity, awareness raising and enforcement in advance of implementation

While evidence from other countries does show that smoke free regulations are generally welcomed and well observed, this should not be taken for granted. A comprehensive publicity, awareness raising and enforcement programme is vital in winning hearts and minds ahead of implementation, and in communicating the health messages and reasons for introducing legislation. We would recommend publicity and awareness raising initiatives should focus on the substance, SHS, rather than on smokers; and they should give a clear health message. Compliance and enforcement efforts must be maintained in the years following implementation.

2. Future reviews of smoke-free legislation

The Department of Health, Social Services and Public Safety should commit to review and evaluate the proposed smoke-free legislation once implemented. In particular, research should assess the impact of the smoke-free legislation in eight key outcome areas:

- 1. Knowledge and attitudes*
- 2. SHS exposure*
- 3. Compliance*
- 4. Cultural change*
- 5. Smoking prevalence*
- 6. Tobacco-related morbidity and mortality*
- 7. Economic impacts*
- 8. Health Inequalities*

Committing to review and evaluate the smoke-free legislation will be extremely valuable to assist in refining and improving on the effectiveness of the legislation once implemented. It will also contribute significantly to an enhanced International understanding of the impacts of smoke-free legislation.

We believe that DHSSPS should consult and communicate its plans for such publicity, compliance and enforcement and research to all key players including the voluntary sector on a regular basis.