

# **CONSULTATIVE DOCUMENT**

## **THE DRAFT SMOKING (NORTHERN IRELAND) ORDER 2006**

### **QUESTIONNAIRE**

**March 2006**

## INTRODUCTION

### ***Purpose***

This Questionnaire seeks views on the **Draft Smoking (Northern Ireland) Order 2006** (the draft Order) which will introduce comprehensive controls to protect employees and the public from exposure to second-hand smoke.

Comments would be particularly welcomed on a number of key areas:

- the definition of smoking;
- the definition of smoke-free premises;
- the extent of any proposed exemptions;
- offences and level of penalties;
- requirement for fixed penalties; and
- the power to raise the age limit for sale of tobacco to young people.

The Department of Health, Social Services and Public Safety (the Department) carried out an Integrated Impact Assessment (IIA) screening exercise on the proposed legislation. The results, which include equality considerations and a partial Regulatory Impact Assessment, are set out in the IIA Overview.

### ***Background***

On 17 October 2005, Shaun Woodward, Minister for Health, Social Services & Public Safety, announced his intention to introduce legislation by April 2007 to protect employees and the public from exposure to second-hand smoke. He also indicated that he would seek views on specific issues such as exemptions and penalties. This followed a public consultation exercise carried out by the Department between December 2004 and March 2005, on options to strengthen existing controls on tobacco use. The consultation elicited over 70,000 responses with 91% of respondents expressing support for comprehensive controls. In framing the draft Order, account was taken of similar legislation and proposals in Scotland and England.

**Responses to this Questionnaire must be received by not later than 5.00pm on Friday 5 May 2006.**

***In order to facilitate analysis it is important that respondents use the Questionnaire.***

Responses to this consultation may be made online at:

[http://www.dhsspsni.gov.uk/index/consultations/current\\_consultations.htm](http://www.dhsspsni.gov.uk/index/consultations/current_consultations.htm)

# QUESTIONNAIRE

**Q1.** *Article 2 (a) and (b)* of the draft Order defines “smoking” as covering all lit tobacco or any other lit substance in a form which could be smoked, for example, herbal cigarettes. This is to avoid enforcement difficulties in cases where smokers claim their cigarettes do not contain tobacco.

**Do you agree with the definition of smoking as set out in the draft Order?**

**Yes**

**If you wish to comment, please do so here.**

It is important to protect the health of our population from all forms of smoking that can contribute to ill health or disease eg asthma

**Q2.** *Article 3* of the draft Order defines “smoke-free premises”.

**Do you agree with the definition of smoke-free premises as set out in the draft Order?**

**Yes**

**If you wish to comment, please do so here.**

The definition is encompassing of all relevant buildings and structures to ensure workers and the public will be protected.

**Q3.** *Article 4* of the draft Order provides for the Department to make regulations to specify premises or parts of premises not to be smoke-free. In accordance with the Minister's announcement, the intention is that these exemptions will be limited and *Article 4(3)* specifically precludes exemptions in respect of licensed premises. **The regulations will be the subject of a separate consultation later in the year.** However, the Department is taking this opportunity to seek views. There are premises which act as a person's home, either on a permanent or temporary basis, but which are also another person's workplace, for example, residential accommodation, hotel bedrooms, prisons and psychiatric facilities. Different approaches to this issue have been adopted by other jurisdictions. In the Republic of Ireland psychiatric hospitals are exempt. In Scotland designated rooms in psychiatric hospitals are exempt while in New York it is necessary to apply for a waiver.

Set out below are examples of premises that serve as a person's home, either on a temporary or permanent basis.

**Do you think that hotel bedrooms, designated rooms, or areas within the following premises should be exempt?**

<b>Hotel Bedrooms</b>	<b>Yes</b>	<input type="checkbox"/>	<b>No</b>	<input checked="" type="checkbox"/>	<b>Don't know</b>	<input type="checkbox"/>
<b>Care Homes</b>	<b>Yes</b>	<input checked="" type="checkbox"/>	<b>No</b>	<input type="checkbox"/>	<b>Don't know</b>	<input type="checkbox"/>
<b>Psychiatric Units</b>	<b>Yes</b>	<input checked="" type="checkbox"/>	<b>No</b>	<input type="checkbox"/>	<b>Don't know</b>	<input type="checkbox"/>
<b>Prisons</b>	<b>Yes</b>	<input type="checkbox"/>	<b>No</b>	<input type="checkbox"/>	<b>Unsure</b>	<input checked="" type="checkbox"/>

**Do you wish to suggest any other exemptions? If yes, please specify below.**

**COMMENT**

With reference to the above exemptions the Trust feels that these decisions are not clear cut and would support the establishment of fundamental principles under which any premises would be exempt. This would include clear criteria which a premise must meet in order to be exempt.

1. Hotel rooms.

We would not support exemption for hotel rooms on the premise these are shared accommodation by both smokers and non smokers. There is no convincing argument for exemption.

2. Psychiatric Units.

Current research suggests there is no evidence to support smokefree legislation treating psychiatric patients differently from other patients. However consideration for exemption may be considered against the length of stay any individual may have as opposed to the nature of their illness. Consideration of the protection of non-smoking psychiatric patients within any facility would remain an issue.

As a Trust with a large mental health remit we consider it essential to consider the real and valid difficulties for psychiatric patients with severe illness requiring significant lengths of stay within designated units if no exemption applied. The issue for any agreed exemptions under the Draft Order will be to ensure consistent application across similar facilities in different areas and clear definition of Psychiatric Hospitals, settings and units. (as per document)

3. Care Homes

Some exemption criteria should be established to include length of stay, medical condition, mobility (to smoke outside), supervision needs (eg learning disability). Further considerations may also include humane issues (eg Palliative care) or where a facility becomes a resident's home e.g. elderly care.

Any exemptions in any facility should apply to the residents or patients only and never to staff or visitors and should be applied to eliminate risk for all.

**Q4.** Articles 7, 8, 9 and 12 of the draft Order sets out the following four offences and penalties:

- (i) a person failing to display the prescribed no-smoking signs in smoke-free premises commits an offence and is liable on summary conviction to a fine not exceeding level 3 on the standard scale (£1,000);
- (ii) a person who knowingly smokes in smoke-free premises commits an offence and is liable on summary conviction to a fine not exceeding level 3 on the standard scale (£1,000);
- (iii) a person who controls or is concerned in the management of smoke-free premises and fails to prevent a person smoking in a smoke-free place commits an offence and is liable on summary conviction to a fine not exceeding level 4 on the standard scale (£2,500); and
- (iv) a person who intentionally obstructs an authorised officer of a district council acting in exercise of his duties under the Order commits an offence and is liable on summary conviction to a fine not exceeding level 3 on the standard scale (£1,000).

**Do you agree with the offences and level of penalties set out in the draft Order?**

**Yes**

**No**

**If you wish to comment, please do so here.**

- (1) Some health facilities which are considered as a resident's or patients home may wish to keep a homely ambiance with no signage. Smoking restrictions are noted in all admission documentation and articulated to residents and relatives as appropriate.
- (2) It is agreed that the offence of smoking in a smokefree premise and the offence of not displaying signage should get a lesser penalty than the owner of the premises.
- (3) The level of penalties cited are the maximum level and there is no obligation on a court to impose the maximum level.

**Q5.** *Article 10* of the draft Order provides for an authorised officer of a district council to issue a fixed penalty notice where he believes an offence has been committed under Articles 7, 8 or 9. Schedule 1 makes further provision about fixed penalties. The levels of fixed penalties will be specified in regulations which will be the subject of consultation this year.

**Do you agree with the fixed penalty notice procedures as set out in the draft Order?**

Yes

No

Don't know

**If you wish to comment, please do so here.**

The inclusion of fixed penalties may support larger organisations or businesses to pay a simple £50.00 fine as an easy alternative to implementing the legislation.

Offences which lead to prosecution will result in a higher compliance rate as demonstrated in Republic of Ireland.

**Q6.** Tobacco control measures are currently enforced by Environmental Health Officers of district councils.

**Do you agree that smoke-free legislation should also be enforced by district councils?**

Yes

No

Don't know

**If not, please state your reasons below.**

This will allow links to be made with wider public health issues.

**Q7.** At present *Articles 3 and 4* of the Health & Personal Social Services (Northern Ireland) Order 1978 make it an offence to sell tobacco products to young people under 16. In the Republic of Ireland, the Health (Miscellaneous Provisions) Act 2001 increased the age limit from 16 to 18 and in Scotland the Smoking, Health & Social Care (Scotland) Act 2005 provides the power to raise the age limit there. The draft Order provides the power (*Article 14*) for the Department to raise the age limit from 16. Any proposal to raise the age limit would be the subject of further consultation.

**Do you agree that the Department should take this power?**

Yes

No

Don't know

**If you wish to comment, please do so here.**

As a border linked Trust we would welcome any alignment to legislation to reduce potential inconsistencies in approaches to tobacco sales.

Test purchasing has demonstrated the difficulties retailers have in identifying 16 year olds. Raising the age to 18 may ease this problem and ensure it is more difficult for under 16's to purchase cigarettes.

The level of smoking amongst young people remains a concern across the province and whilst raising the age limit may not address the problem in isolation, when combined with other measures including ongoing smoking cessation programmes and education, it may make a difference.

## **INTEGRATED IMPACT ASSESSMENT OVERVIEW**

### **General**

**Q8. Do you have any views on the conclusions reached by the Department to screen out from further assessment the implications of the draft Order in respect of:**

- (a) Social Impact Assessment (New TSN, Homelessness etc);**
- (b) Rural (see Q21 –Q23);**
- (c) Environmental;**
- (d) Human Rights;**
- (e) Victims;**
- (f) Community Safety & Other Areas?**

**Is there any other evidence which you consider should have been taken into account in these assessments?**

NO

## Equality

Comments are welcome on any aspect of the draft equality conclusions contained in Annex 2 of the Integrated Impact Assessment Overview (IIA). The Department would particularly welcome comments on the following:

**Q9. Do you agree with the decision that the draft Order does not require a full equality assessment? (see Annex 1 and Annex 2 of the IIA Overview). If not, please explain why?**

**YES**

**Q10. Is there any other qualitative or quantitative information which you consider should have been taken into account in performing this exercise?**

**NO**

**Q11. Are you aware of any evidence – qualitative or quantitative that the draft Order may have an adverse impact on equality of opportunity or on good relations? If so, please provide details. Can you suggest any ways of avoiding or minimising such adverse impact?**

NO

**Q12. Are you aware of any other equality implications likely to arise from the draft Order?**

NO

## **Partial Regulatory Impact Assessment (RIA)**

(see Annex 3 of IIA Overview)

### ***Health***

**Q13. Do you have any views on the assessment of health impacts?**

The Trust supports the work done on the health impact assessment of the proposed legislation.

**Q14. Are there any other potential health impacts that you consider should have been addressed?**

The benefits of smokefree workplaces to workers who are pregnant have not been acknowledged.

**Q15. Is there any other material evidence which you consider should have been taken into account in this assessment of health impacts?**

no

***Economic***

**Q16. Do you have any general comments on the overall approach that was taken in completing the RIA?**

The IIA is very comprehensive.

**Q17. Do you consider that there are other issues which need to be taken into account in the assessment of the impact on business?**

NO

**Q18. Do you agree with the analysis of the sectors and business/organisations which might be particularly affected by the introduction of this policy?**

The productivity gain from less smoking breaks, reduction in sickness absence and reduce fire hazards and cleaning costs are all relevant benefits for local business.

**Q19. What are your views on the identification and assessment of the costs and benefits?**

The communications programme, compliance phone line and provision of additional NRT are all essential for success of implementation.  
The costs to the health sector for signage has not been identified and will be significant.

***Public Expenditure and Public Service***

**Q20. Do you agree with the Department's view that a separate Economic Appraisal is not required?**

YES

**Rural Proofing**

**Q21. Do you agree that the draft Order will not have a disproportionate adverse impact on rural business?**

NO RURAL IMPACT.

**Q22. Are there any rural impacts that you consider should have been addressed?**

NO

**Q23. Is there any other material evidence which you consider should have been taken into account in this assessment of rural impacts?**

NO

## **Additional Comments**

**Q24. Do you have any other comments or suggestions on the draft Order and/or the Integrated Impact Assessment Overview?**

We would hope that pubs and clubs which do not serve food are included in the legislation.

**Thank you for taking time to complete this Questionnaire.**