

Our Ref:

Victor Brownlees,

Your Ref:

Clerk and Chief Executive

3 May 2006

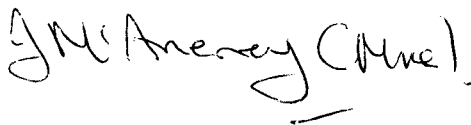
Investing for Health Team (Tobacco Control)
Department of Health Social Services and Public Safety
Room C411
Castle Buildings
BELFAST
B4 3SQ

Dear Sir/Madam

**THE SMOKING (NI) ORDER 2006
CONSULTATION**

I attach for your attention Armagh City and District Council's response to the above consultation.

Yours sincerely



ARMAGH CITY AND DISTRICT COUNCIL

***RESPONSE FROM
ARMAGH CITY AND DISTRICT
COUNCIL***

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

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 ✓

No

If you wish to comment, please do so here.

Armagh City and District Council believes that the definition of smoking should remain in order to prevent enforcement difficulties.

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 ✓

No

If you wish to comment, please do so here.

Armagh City and District Council believes that this definition depends on the understanding of what is considered to be the “public”. It is considered that members of a club, regardless of whether it is licensed or otherwise, are considered to be members of the public. The legislation would require to make this clear.

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?

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

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

Armagh City and District Council believes that the employee within the workplace should be provided with similar levels of protection. However, it is acknowledged that this may create impracticalities.

As evidenced by the recent murder of a nurse in England while on a smoke break outside a hospital building, Armagh City and District Council believes that consideration needs to be given to the personal safety of individuals and employees when they go outside the premises to smoke.

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.

Armagh City and District Council agrees in principle with the four offences. However, it wishes to point out that it has reservations concerning the meaning of Article 9(1) in relation to the owner of the business. The Council therefore believes that the offence should extend to cover the owner of the business regardless of that person being present or not. In relation to the phrase "cause a person smoking to stop smoking", Armagh City and District Council believes that the owner of the business must provide staff training, have a smoking policy and ensure implementation of such a policy as required. The owner of the business should therefore be held accountable for staff failing to cause a person smoking there to stop smoking.

Armagh City and District Council believes that the penalty at level three is inadequate and should therefore be increased to level five. This would ensure consistency with other legislation such as health and safety.

Armagh City and District Council believes that Articles 7(7), 8(4), 9(5) are unnecessary. It should be the defendant to establish the defence and not for the prosecution to disprove it if an issue is raised. In relation to defence available for breach of Article 9(1) set out in 9(4)(b), Armagh City and District Council believes that this would create enforcement difficulties in relation to prosecution of owners who are not present while the person is smoking, the defence relates to a lack of knowledge of this specific person smoking. The Council believes that the proprietor should be held responsible even if he is absent. It is therefore the Council's view that this is unnecessary given the defence available in 9(4)(a).

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.

Armagh City and District Council believes that fixed penalty notices are only appropriate for Article 7 offences.

Controls within the Republic of Ireland have been implemented successfully and without such a process. Other evidence indicates (British Columbia) that this type of notice is ineffective. Breach of such legislation is very serious and the use of fixed penalties does not contribute to compliance. Fixed penalty notices could also create enforcement difficulties.

Experience from the Republic of Ireland illustrates that reasonable enforcement will not result in large numbers of Court cases, to date there have been less than 40 prosecutions. Fixed penalty notices would also create different procedures in cross-border areas. It is also the Council's belief that persistent breaches of this legislation should be relevant for consideration by the Licensing Authority when applications for liquor licence renewals are made.

It would be important that the Department for Social Development and DHSSPS liaise to ensure that such a link is included in the new licensing arrangements.

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.

Armagh City and District Council believes that councils should be the enforcing authority as they are currently responsible for the enforcement of legislation in many premises in relation to food hygiene, health and safety at work, environmental protection, entertainment and petroleum licensing, consumer protection, public health and noise control. Councils also work in partnership with Investing for Health Partnerships, Health Promotion Commissioners, Smoking Cessation Co-ordinators, Health Promotion officers, Health Promotion Agency and others to ensure that the objectives within the Tobacco Action Plan are delivered.

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.

Armagh City and District Council believes that it would be appropriate for the Department to take this power and increase the age limit to 18 years.

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 comment.

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?

No comment.

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

No comment.

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 comment.

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

No comment.

Partial Regulatory Impact Assessment (RIA)
(see Annex 3 of IIA Overview)

Health

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

No comment.

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

No comment.

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

No comment.

Economic

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

No comment.

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 comment.

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

No comment.

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

No comment.

Public Expenditure and Public Service

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

No comment.

Rural Proofing

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

No comment.

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

No comment.

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

No comment.

Additional Comments

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

No comment.

Thank you for taking time to complete this Questionnaire.