

The Draft Smoking (Northern Ireland) Order 2006: Consultation Document

Response from ASH Scotland

ASH Scotland welcomes the opportunity to comment on Draft Smoking (Northern Ireland) Order 2006. ASH Scotland would also welcome the opportunity to comment on the accompanying draft regulations when they become available.

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

ASH Scotland fully supports the definition of smoking as set out in the draft Order. The definition of smoking products developed under the Order should be as comprehensive as possible to meet the objective of protecting employees and the public from exposure to second-hand smoke in enclosed workplaces and public places in Northern Ireland.

With second-hand smoke, the main concerns are exposure to levels of carbon monoxide and respirable particulate matter. Although published, peer-reviewed evidence regarding the constituents of herbal cigarettes is sparse compared to that for smoked tobacco products, partly because far fewer people smoke non-nicotine cigarettes, the available evidence is that carbon monoxide, tar and particulate matter are present in non-nicotine cigarettes with at least similar levels to tobacco cigarettes.^{1 2 3}

In addition, it is very difficult to distinguish between tobacco and non-tobacco smoking products such as herbal cigarettes. From the enforcement and management control perspectives this grey area should be addressed in the primary legislation.

Based on the evidence and additional considerations outlined below, ASH Scotland campaigned for the draft Scottish smoke-free legislation to be amended to capture a broader definition, to include non-tobacco cigarettes and loose non-tobacco smoking materials, on the following basis:

1. Second-hand smoke from non-tobacco cigarettes poses a health hazard to those who are exposed.^{1 2 3}
2. The wider public health aims of smoke-free legislation – to denormalise smoking with a view to reducing uptake and to support smokers who are trying to quit – are best served by a wide definition of smoking materials
3. A narrow definition of smoking materials may undermine the health message that is the basis for the legislation
4. Omitting non-tobacco cigarettes from the legislation leaves a loophole that is likely to be exploited by opponents of the proposed legislation
5. Implementation will be easier with a level playing field
6. There have been no documented legal challenges based on the inclusion or exclusion of non tobacco cigarettes

The Scottish Executive agreed to extend the definition of smoking in the Scottish legislation to encapsulate herbal and non-tobacco smoking products. The definition of 'smoke' in the Smoking, Health and Social Care (Scotland) Act 2005⁴ is as follows:

““smoke” means smoke tobacco, any substance or mixture which includes it or any other substance or mixture; and a person is to be taken as smoking if the person is holding or otherwise in possession or control of lit tobacco, of any lit substance or *mixture* which includes tobacco or of any other lit substance or mixture which is in a form or in a receptacle in which it can be smoked.”

ASH Scotland's briefing outlining the rationale for including non-tobacco cigarettes and loose non-tobacco smoking materials to the definition of smoking is available online at <http://www.ashscotland.org.uk/ash/files/non-tobaccosmokingmaterials.doc>

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? NO

If you wish to comment, please do so here.

The proposal for certain premises to be smoke-free only when they are (a) open to the public or (b) used as a place of work could potentially leave loopholes for those opposing the smoke-free legislation to undermine it. ASH Scotland believes that encouraging partial action in place of comprehensive legislation would be a backward step, leaving members of the workforce inadequately protected from the harmful health effects of SHS. Any efforts to provide partial protection from SHS remain flawed, as there is no safe level of exposure to second-hand smoke.⁵

ASH Scotland's evidence-based briefing paper on second-hand smoke contains further details of the health hazards associated with exposure to second-hand smoke, and outlines the benefits of comprehensive smoke-free legislation. The briefing is available online at:

<http://www.ashscotland.org.uk/ash/files/ASH%20Scotland%20SHS%20briefing.doc>

ASH Scotland recommends that the definition of 'smoke-free premises' covers entire buildings rather than parts of buildings. Greater consistency in applying the legislation will result in a law that is easier to enforce. In addition, ASH Scotland recommends that if a building is defined as 'smoke-free' under the proposed legislation, then it should be legally required to be smoke-free at all times, rather than at specified times. Again, this will strengthen the legislation, and make it easier to enforce once implemented.

For example, in the Smoking, Health and Social Care (Scotland) Act 2005,⁴ the following types of premises are defined as being 'smoke-free';

'...premises which are wholly or substantially enclosed and

- (a) to which the public or a section of the public has access
- (b) which are being used wholly or mainly as a place of work
- (c) which are being used by and for the purposes of a club or other unincorporated association;
- (d) which are being used wholly or mainly for the provision of education or of health care services

Under (b) above, the reference to work includes work undertaken for no financial advantage. ASH Scotland welcomes that the proposed definition of 'work' in the NI draft order covers voluntary work as well.

The draft order should also clarify that 'smoke-free' applies to premises and not individuals. Article 3 of the draft order which defines 'smoke-free' premises should be reviewed to strengthen the wording and increase clarity regarding premises that would be considered smoke-free under the legislation.

The draft order states that Regulations may specify what "enclosed" and "substantially enclosed" mean (page 3, point 5). ASH Scotland welcomes that consideration will be given to including substantially enclosed premises within the proposed legislation, as a greater proportion of public places will then be required to be smoke-free. It is essential that the definitions are as comprehensive as possible in capturing premises and areas that are frequently used by members of the general public. Comprehensive definitions will go further in supporting the health improvement of the public via increased protection from hazardous health risks associated with second-hand smoke exposure.

The Smoking, Health and Social Care (Scotland) Act 2005⁴ requires both enclosed and substantially enclosed public places to be smoke-free. Within the Scottish legislation, premises are taken to be "substantially enclosed" if:

- (i) the opening in the premises has an area; or
- (ii) if there is more than one, both or all those openings have an aggregate area,

which is less than half of the area of the walls, including any other structures serving the purpose of walls, which constitute the perimeter of the premises;

(e) where an opening is in, or consists of the absence of, such walls or other structures or a part of them, their area shall be measured for the purposes of paragraph (d) as if it included the area of the opening; and

(f) "has access" means has access whether on payment or otherwise, and whether as of right or by virtue of express or implied permission."

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.

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

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

Proposed exemptions for hotel bedrooms

ASH Scotland recommends that in order to protect the health of employers and customers, any agreed upon definition should ensure that in practice, and from the outset, hotel bedrooms tend towards smoke-free, with designated bedrooms where smoking is permitted. ASH Scotland recommends that a maximum proportion of rooms in any one premises be agreed upon that may be designated as smoking rooms.

ASH Scotland also recommends that:

- All smoking rooms on the same floor must be contiguous
- All possible steps must be taken to ensure that smoke from these rooms does not infiltrate into areas where smoking is prohibited under the provisions of this legislation
- The status of rooms as smoking or non-smoking may not be changed, except to add additional non-smoking rooms, or enhance overall non-smoking provision

Proposed exemptions for adult care homes/psychiatric hospitals and units

ASH Scotland considers that ideally all types of premises regarded as an indoor public place would be captured by smoke-free legislation, in order to protect people from the health risks of second-hand smoke. However, we recognise that there are particular issues that need to be acknowledged in order to accommodate people who would be regarded as 'dwelling' in premises, such as adult care homes and psychiatric hospitals. Where exemptions are granted on humanitarian grounds, ASH Scotland recommends that the agreed upon definition of the premises and any associated conditions ensure that in practice, and from the outset, such premises emphasise smoke-free, with designated smoking areas, rather than emphasising smoking, with provision of designated smoke-free areas. Any agreed upon definition of the premises and associated conditions should also ensure that in practice the exemption benefits residents rather than staff and visitors.

In addition, guidance should be issued regarding effective development and implementation of tobacco policies in public service and care settings. ASH Scotland worked in conjunction with the Scottish Executive, NHS Health Scotland, COSLA and the Care Commission to develop 'Smoke-free Scotland: Guidance on Smoking policies for the NHS, Local Authorities and Care Service Providers'.⁶ This guidance is available online at:

<http://www.ashscotland.org.uk/ash/files/Smoke%20Free%20Scotland.pdf>

The guidance is aimed at those in the NHS, local authorities and other care service providers in Scotland concerned with the development and implementation of smoking policies for staff, visitors and those who use their services. Its purpose is two-fold:

- to enable them to comply with the smoke-free provisions of The Smoking, Health and Social Care (Scotland) Act 2005⁴ which came into force on 26 March 2006; including specific advice for those in control of premises exempted under the legislation;
- and to advise on the development of an approach to tobacco which will maximise the benefits of becoming smoke-free.

In any guidance outlining exemptions to the proposed law, it should be made clear that there is no legal obligation on the proprietors of those premises to which an exemption applies to provide smoking facilities if they do not wish to. In other words, the proprietor is entitled to make their premises smoke-free if they choose to do so.

Finally, with regard to proposed exemptions in mental health settings, it is worth noting that the Scottish Executive is committed to reducing the health inequalities experienced by this group and patients, and is working with ASH Scotland and other stakeholders to implement a programme of targeted cessation, which may allow the exemption of designated rooms to be reviewed in due course. In general, ASH Scotland recommends that a timeline should be agreed in advance for reviewing exemptions and regulations post-implementation.

Proposed exemptions for prisons

ASH Scotland considers that prison officers and other prison staff have as much right to protection from second-hand smoke as employees in any other setting. Prisons should be moving towards being smoke-free.

The Scottish smoke-free legislation does not apply in prisons or young offenders' institutions as they are governed by the Prisons Scotland Act 1989. However, prison rules were changed on March 26th 2006 (the date of implementation of the smoking ban) to ensure that prisons are subject to the same smoke-free regulation as other sectors of society. More specifically:

- Prisoners may only smoke in certain areas of the prison, and a new disciplinary offence of smoking in an area where it is not permitted has been created. This offence will be dealt with under the existing internal prisons discipline system.
- Smoking indoors will be limited to prisoners' cells. Where a prisoner is accommodated in a single occupancy cell, he or she will be permitted to smoke there (though convicted prisoners will only be allowed to possess tobacco as a privilege, and this may be withdrawn by the Governor in certain circumstances). Where prisoners are required to share a cell, they may only smoke in it if the Governor designates it as a smoking area. There is provision in the rule for a direction to be made by the Scottish Ministers which will set out the procedures by which Governors will consider whether to designate a cell as a smoking area. One factor will be the wishes of the prisoners concerned. All prisoners will be asked whether they wish to have smoking or non-smoking accommodation, and where cells need to be shared efforts will be made to put smokers together.

- Smoking outdoors will be restricted to areas specified by the Scottish Ministers in a direction to be made under rule 31(c).

The Scottish Prison Service is currently undertaking a new programme of cessation support to help those prisoners who smoke and wish to quit. We recommend that the Northern Ireland Government works in partnership with the Northern Ireland prison service to develop a comprehensive strategy for increasing smoke-free provision in prisons in Northern Ireland.

Designated smoking rooms 'v' exemptions for entire premises

Exemptions for designated rooms in premises such as adult care homes and psychiatric hospitals, as opposed to exemptions for entire premises, increases protection for staff and residents from second-hand smoke. ASH Scotland recommends that where an exemption is granted, the agreed upon definition of the premises and any associated conditions ensure that in practice and from the outset such premises emphasise smoke-free with designated smoking areas, rather than emphasising smoking with provision of designated smoke-free areas.

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

General comments related to exemptions:

ASH Scotland believes that exemptions should only be introduced in exceptional cases, and in such instances employers and service providers should provide all reasonable means for employers and other service users to avoid exposure to second-hand smoke. Any possible exemption should only be granted on humanitarian grounds, and not for commercial purposes. Exemptions should also be minimal in order to assist with overall compliance and enforcement and to reinforce the message that second-hand smoke kills. Exemptions should be justified in terms of the acceptability of exposing members of the workforce to a preventable Class A carcinogen.^{7 8}

If exemptions are permitted on humanitarian grounds, ASH Scotland recommends that the term 'home' be defined as 'a person's primary residence' and that this be made clear in the legislation. This definition would make it clear that exemptions were not intended to apply to staff or visitors.

We recommend that a general statement be included in the Regulations, similar to that used in the Republic of Ireland legislation⁹ to the effect that:

'An exemption does not constitute a right to smoke and employers are still bound by a duty of care to take every possible step to protect their employees'.

We recommend that all precautions are taken to limit the migration of smoke from a smoking room to the rest of the non-smoking environment, in line with best practice.

Exempt premises should be strongly encouraged to develop, implement and review a best-practice based smoking policy in order to protect staff and non-smokers from the health hazards associated with SHS, in line with guidance.

We recommend that the regulations state that an employee has the right to request that they are not exposed to SHS in their working environment, and they should be accorded this right as part of an employer's duty of care.

We recommend that there should be an agreed review process for exempt establishments, with a view increasing smoke-free provision in the future.

We recommend that all assistance be given to employers where exemptions are granted, in order to assist them prepare staff and service users for change prior to smoke-free legislation being introduced. We recommend that specific guidance be tailored for different audiences regarding (a) the health hazards associated with SHS exposure (b) issues related to smoking cessation, and (c) details of services that are able to assist staff and service users with cessation advice and treatment where applicable. We also recommend that employers receive guidance on effective development and communication of smoke-free policies in advance of legislation implementation, and that attention is drawn to existing national guidelines. In addition to the 'Smoke-free Scotland' guidance for the NHS, Local Authorities and Care Service Providers⁶ already outlined, the Scottish Executive published guidance for bar and waiting staff; guidance for employers and managers; a smoke-free policy template for businesses, and guidance on signage. Information leaflets were posted to all households in Scotland in advance of implementation of the smoke-free law, and TV adverts were launched four months prior to implementation, outlining the health hazards associated with exposure to second-hand smoke. Further details and examples of the guidance documents and templates are available from the Scottish Executive's 'Clearing the Air' website, at: <http://www.clearingtheairscotland.com/>

In Scotland, the following exemptions are in place:

- Residential accommodation
- Designated rooms in adult care homes (note that day care centres are NOT exempt from the legislation)
- Adult hospices
- Designated rooms in psychiatric hospitals and psychiatric units
- Designated hotel bedrooms
- Detention or interview rooms which are designated rooms
- Designated rooms in offender accommodation service premises [bail hostels]
- Offshore installations
- Private vehicles

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

If you wish to comment, please do so here.

ASH Scotland would welcome further clarity on the associated penalties where there is non-compliance for paying, including an outline of minimum fixed penalty fines. For example, in the Smoking, Health and Social Care (Scotland) Act 2005⁴, penalty grades are set out as follows:

Section 1 of the Act makes it an offence for a person who manages or has responsibility of non-smoking premises to knowingly permit another person to smoke there.

The fixed penalty fine for an offence under this section is **£200**, refusal or failure to pay could result in prosecution and a fine of **up to £2,500**. Licensees who fail to comply with the law could ultimately lose their license since this will be taken into account in licensing decisions.

Section 2 – Offence of smoking in no-smoking premises

Section 2 makes it an offence for a person to smoke in no-smoking premises.

Individuals could be issued with a fixed penalty fine of **£50** for an offence under this section, and failure to provide name or address to the enforcement officer could result in a fixed penalty fine of **£100**. Failure to pay or repeated offences could lead to prosecution or a fine of **up to £1,000**.

Section 3 – Display of warning notices in and on no-smoking premises

Section 3 makes it an offence not to display warning notices inside and outside no-smoking premises.

Similarly to offences under Section 1 the fixed penalty fine for an offence under this section is **£200**, and refusal or failure to pay could result in prosecution and a fine of

up to £2,500. Licensees who fail to comply with the law could ultimately lose their license since this will be taken into account in licensing decisions.

This guidance has been beneficial to enforcement officers in Scotland in ensuring they have a process of 'follow-up' for those individuals who do not comply with the legislation and the penalties imposed.

It should be noted that within the Smoking, Health and Social Care (Scotland) Act 2005⁴ there is a clause which states that those who continually breach the legislation and fail to pay penalties, may have their licence revoked. The NI order may wish to consider including a similar clause.

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

If you wish to comment, please do so here.

In Scotland, our fixed penalties have caused no problems to date, and very few have been issued. As with Southern Ireland, the smoke-free legislation has largely been self-policing.

One additional statement which is included in The Smoking, Health and Social Care (Scotland) Act 2005⁴, may also be worth consideration for the NI draft scope:

Under Schedule 1 (5), it states that:

'the council may extend the period for paying the fixed penalty in any particular case if it considers it appropriate to do so'.

This enables Councils to have greater control over how payments are received, and may be helpful if a case arises where an individual has difficulties in paying a fixed penalty quickly, or in one lump sum.

ASH Scotland considers that councils must be allocated additional resources in order to recruit and train staff appropriately in advance of legislation. In addition, we recommend that any surplus income related to the administration and enforcement of fixed penalties should be allocated to tobacco-related work, including cessation provision, in order to support ongoing monitoring and enforcement of the smoke-free legislation.

As announced in March 2005, by 2008 the Scottish Executive will have more than doubled the money available to health boards for smoking cessation work, with an emphasis on setting up community-based smoking cessation clinics. Consideration must be given to the potential impacts on smoking cessation services of increased demand for services in the run up to and post implementation of the proposed smoke-free legislation in Northern 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? DON'T KNOW

If not, please state your reasons below.

ASH Scotland is unable to judge whether smoke-free legislation should be enforced by district councils in Northern Ireland, as we are not familiar with the possible alternative enforcement strategies that could be used. An outline of the Scottish enforcement procedures follows below, and initial reports suggest that this arrangement is working well.

The Smoking, Health and Social Care (Scotland) Act 2005⁴ provides for four main offences: permitting others to smoke in non smoking premises; smoking in no smoking premises; failing to display warning notices in no smoking premises; and failing without reasonable cause, to give one's name, and address on request to an enforcement officer. It also provides for an authorised local authority officer to enforce the legislation and issue fixed penalty notices. These enforcement officers encompass all local authority officers who may be engaged in enforcement work associated with the smoking controls including Environmental Health Officers, Technical Officers and Licensing Officers. Further details of the enforcement protocols in Scotland are available from the Scottish Executive's 'Clearing the Air' website, at: <http://www.clearingtheairsotland.com/faqs/enforcement.html>

Enforcement officers assess whether premises comply with the legislation and do so by determining whether owners, occupiers, managers, or persons in control of premises have taken all reasonable precautions to avoid people smoking. They work closely with businesses, building compliance with legislation through education advice and presentation. Inspection is either proactive; to confirm compliance; or reactive in response to a complaint. The initial focus of inspections is on premises:

- Which are open to substantive numbers of people.
- Where there is an absence of pre-existing self imposed smoking controls.
- Where enforcement officers do not usually visit as part of their routine inspections under other legislation.

Enforcement action is taken forward only when the seriousness of the situation warrants it and the approach to enforcement is non-confrontational, focused on raising awareness and understanding to ensure compliance. Any enforcement action undertaken must be fair, proportional and consistent. Enforcement action should be considered against individuals smoking in no-smoking premises where the owner, occupier, manager or any other person in charge can demonstrate that they have taken all reasonable precautions against these individuals smoking on their premises.

Enforcement officers are required to carry out an assessment to determine whether or not owners, occupiers, managers or any person in control of no-smoking premises have taken "all reasonable precautions" to avoid people smoking. These precautions will include a combination of compliance with **specific legal requirements** and activities which would be considered good practice by organisations in demonstrating that they are taking all reasonable precautions (in italics).

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

If you wish to comment, please do so here.

ASH Scotland considers that taking the opportunity to build into the draft order powers to raise the minimum legal age for tobacco sales is a positive move. In addition, ASH Scotland welcomes that any proposal to raise the current age limit would be the subject of further consultation.

There is solid evidence to demonstrate that comprehensive enforcement strategies and a package of wider tobacco control measures are required alongside minimum age laws in order to increase the likelihood of effectiveness.¹⁰ International evidence demonstrates that comprehensive approaches that include prevention, protection and cessation interventions can produce measurable reductions in smoking rates among young people and adults.^{11 11 12 13 14} When adequately enforced, sales to minors laws can lead to a significant decline in the proportion of retailers that sell tobacco to underage persons.¹⁵ Legislation on tobacco purchasing age also sends a clear message to children and adults about the hazards of tobacco use.

ASH Scotland has recently compiled an evidence-based position paper on the issue of raising the minimum legal age for tobacco sales in Scotland, which is available online at:

<http://www.ashscotland.org.uk/ash/files/ASHScotlandrevisedpositionpaperminimumage16-18.doc>

An earlier paper, which includes a more comprehensive background review of the literature, is available from ASH Scotland on request: enquiries@ashscotland.org.uk

INTEGRATED IMPACT ASSESSMENT OVERVIEW

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 – 23);**
- (c) Environmental;**
- (d) Human Rights;**
- (e) Victims;**
- (f) Community Safety & Other Areas?**

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

ASH Scotland has found that human rights challenges seem to be standard – if only as media arguments. These carry very little weight given the wealth of international medical and scientific evidence on the health impacts associated with exposure to second-hand smoke. ASH Scotland considers that permitting exposure to second-hand smoke in public places is potentially a disability issue for people with conditions such as asthma.

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 RIA 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 objective, peer reviewed study ever conducted has found a significant negative economic impact associated with smoke-free legislation.¹⁶ Recent research has compared the quality and funding sources of 97 studies concluding either a negative effect, no effect, or positive effect of smoke-free legislation on the hospitality industry. The best designed most rigorous studies consistently report no impact or a positive impact of smoke-free restaurant and bar laws on sales and employment. It is noteworthy that all the studies concluding a negative impact have been funded by the tobacco industry.¹⁶ Further details of the standard arguments used by the tobacco industry and sectors of the hospitality industry are available in ASH Scotland's report 'The Unwelcome Guest: How Scotland invited the Tobacco Industry to Smoke Outside', which is available online at: <http://www.ashscotland.org.uk/ash/files/The%20Unwelcome%20Guest.pdf>

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

There has been an overwhelmingly positive reception throughout Scotland to the smoke-free legislation. People have accepted it and welcomed it. In the overall context negative reports have been very few. Scotland's city authorities have reported an increase in the amount of litter created by smokers throwing cigarette butts on the street outside pubs.¹⁷ This is something for consideration in the run up to implementation of the proposed smoke-free legislation in Northern Ireland.

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

One potential consequence of smoke-free legislation is increased de-normalisation of smoking in society, thus contributing to a culture change where smoking is considered less acceptable.

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

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

Recent media reports in Scotland suggest a fourfold increase in the number of calls to the NHS Smokeline during the first 3 days after the smoke-free legislation came into force here. Smokeline would normally receive 100 calls per day, however this reportedly increased to 450 calls per day during the first 3 days after the legislation was introduced.¹⁸ There have also been reports of an increase in sales of NRT in Scotland since smoke-free legislation was implemented. Boots has reportedly revealed that sales on NRT have doubled since the legislation came into force, and in Glasgow, the sales were up reportedly up 100% on the previous year.¹⁹

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

There is on-going research in Scotland to evaluate the impacts of the smoke-free legislation, findings of which will be published from Summer 2007.²⁰ There are also reports from Norway and Sweden which demonstrate that an improvement among hospitality workers health since smoke-free legislation was introduced.^{21 22} Further information is available at: enquiries@ashscotland.org.uk

Economic

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

ASH Scotland supports the overall approach taken, which was very similar to that approach taken in Scotland.

Q17. Do you consider that there are any 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?

ASH Scotland supports the work that has been carried out. The ASH Scotland website includes additional information on workplace savings and workplace productivity related to the introduction of smoke-free legislation, which may be of interest:

http://www.ashscotland.org.uk/ash/ash_display.jsp?pContentID=4438&p_applic=CC&p_service=Content.show&

Q19. What are your views on the identification and assessment of the costs and benefits? ASH Scotland has no specific views on this section

Public Expenditure and Public Service

Q20. Do you agree with the Department's views 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? Yes

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 in to 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 commend the Department of Health, Social Services and Public Safety's conclusion that smoke-free legislation (Option 3) is the best option in order to deliver significant improvements in public health. ASH Scotland believes that the implementation of smoke-free legislation in Northern Ireland could result in a significant improvement in public health across Northern Ireland. Smoke-free legislation should contribute to an effective reduction in smoking rates in the overall population and amongst Northern Ireland's most disadvantaged communities, if cessation services are in place, adequately resourced and accessible. It should also assist in increasing awareness of the health risks associated with active and passive smoking, and assist in denormalising smoking in Northern Ireland.

A voluntary approach (Option 1) could never achieve these outcomes. Even where designated smoking areas are provided, they often continue to expose people in the vicinity to second-hand smoke. Voluntary measures are not based on evidence on how to protect health, either for staff in the leisure industry, or for the public who use these facilities. The Voluntary Charter failed to deliver significant protection to hospitality workers or members of the general public in Scotland.²³ Voluntary agreements have proved ineffective in other areas of tobacco control policy, and are not relied upon to control any other carcinogen in the workplace. Improved ventilation was a key component of the voluntary approach. Ventilation does not eliminate the carcinogens present in second-hand smoke²⁴, and cannot therefore be considered

an adequate solution to the health risks associated with second-hand smoke. ASH Scotland's evidence-based briefing paper on ventilation is available online at:

<http://www.ashscotland.org.uk/ash/downloads/Ventilation.doc>

Exemptions for the licensed hospitality sector (Option 2) would not work either. Hospitality workers and other members of the public would not be adequately protected from the harmful health effects of second-hand smoke.²⁵ Scientific evidence has demonstrated that there is no ventilation system that fully removes harmful gases that are present in second-hand smoke.²⁴ Any efforts to provide partial protection from second-hand smoke remain flawed, as there is no safe level of exposure to second-hand smoke.²⁵

Smoke-free legislation is the only way in which to provide comprehensive protection to public health from second-hand smoke, and we fully support the Department of Health, Social Services and Public Safety's decision to take statutory action in order to increase smoke-free public places in Northern Ireland.

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