



Your ref:
Our ref: JC/kab
Being dealt with by: Mrs Juliet Coulter, Tel: 028 2566 0392

Date: 24 April 2006

BALLYMENA BOROUGH COUNCIL

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Dear Sir/Madam

Re: Consultation on Draft Smoking (NI) Order 2006

I have pleasure in responding to the above consultation on behalf of Ballymena Borough Council.

The council believe that this is one of the most important pieces of public health legislation that has been introduced for a number of years. If successfully implemented, the legislation will have long-term effects on the health of the population of Northern Ireland by reducing people's exposure to second hand smoke and by reducing smoking prevalence as a result of de-normalising smoking.

It is therefore, imperative that the legislation is clear, simple and easy to enforce.

The legislation needs to be supported by clear guidance for business owners and managers and also by guidance for enforcement authorities to ensure consistent interpretation. We strongly believe that this legislation could provide the impetus for mobilising District Councils as a public health workforce who, along with other agencies, could make a real difference to the health of local people. To this end we feel very strongly that enforcement of this legislation lies with District Councils.

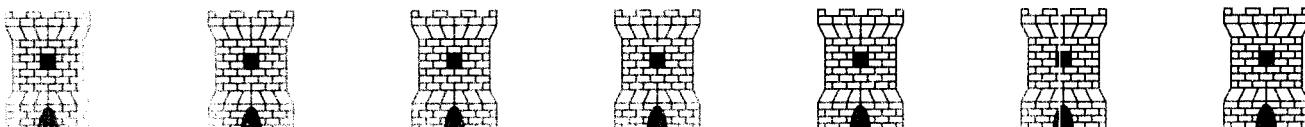
The use of fixed penalty notices is not felt to be appropriate (with the exception of Article 7 offences) as we believe it doesn't send out the correct message in relation to the serious harm that second hand smoke can cause.

We would urge the department to give due consideration to the issues raised by this consultation and look forward to an opportunity to make comment on the detail of future proposed regulations.

Yours faithfully

[Handwritten signature]
Mervyn Rankin
Town Clerk

Enc Consultation response questionnaire agreed



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 ✓

If you wish to comment, please do so here.

The broad 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 ✓

If you wish to comment, please do so here.

The definition of smoke-free premises hinges upon the understanding of what constitutes “the public”. We agree with the definition provided that members of a club whether licensed or not are members of the public or a section of the public, if this is not the case the definition needs to be more explicit.

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	✓
Care Homes	Yes	✓
Psychiatric Units	Yes	✓
Prisons	Yes	✓

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

We believe the smoke-free legislation should be as comprehensive as possible and that all workers should be afforded the same level of protection. We do acknowledge that this will create some practical difficulties and expect that others will have views on these matters.

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?

No ✓

If you wish to comment, please do so here.

We are broadly content with the four offences as set out in the Draft Order. However we have some reservations concerning the meaning of Article 9(1) in relation to the owner of the business. It is our opinion that the offence should extend to cover the owner of the business whether present or not. Furthermore it is essential that the phrase “cause a person smoking there to stop smoking” must include actions such as having a smoking policy in place, training staff and ensuring that the policy is implemented. It is our view that the owner of a business must be held responsible for the inaction of his staff if they fail to cause a person smoking there to stop smoking.

Penalties

In relation to the offence of failing to prevent smoking in smoke-free places (Article 9) we feel the level of the penalty should increase to level 5 so as to be consistent with other legislation for example health and safety.

Defences

Burden of proof. In respect of Articles 7(7), 8(4), 9(5) it is our view that these subsections of the articles are not necessary and it should be for the defendant to establish the defence and not for the prosecution to disprove it if an issue is raised.

In relation to the defence available for breach of Article 9(1) set out in 9(4)(b) we believe 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. We feel that this defence is not necessary 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?

No ✓

If you wish to comment, please do so here.

We believe that fixed penalty notices are only appropriate for Article 7 offences. Fixed penalty notices have not been used in the Republic of Ireland where controls have been introduced successfully. There is evidence from British Columbia that fixed penalty notices for this type of offence are not effective. (Ref: Tobacco Control 2003:12:264-268). We believe that breach of this legislation is a serious matter and the use of fixed penalties does not create the correct image in terms of being a deterrent and ensuring compliance. The issuing of fixed penalty notices may also create enforcement difficulties. Experience from the Republic of Ireland indicates that sensible enforcement will not result in large numbers of cases going to court, to date there have been 36 prosecutions. The use of fixed penalty notices would also create different regimes in cross-border areas. We believe that compliance with this legislation should be one of the conditions attached to all liquor licenses so that persistent breaches could lead to sanctions as outlined in the consultation document "Liquor Licensing The Way Forward". DHSS&PS should liaise with the DSD to ensure that this is included in the new licensing system as it would strengthen the proposed objective of "promotion of public health".

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 ✓

If not, please state your reasons below.

We believe that district councils should be the sole enforcing authority. District councils currently enforce legislation in large numbers of premises through functions in relation to health and safety at work, food hygiene, environmental protection entertainment and petroleum licensing, consumer protection, public health and noise control. District councils currently enforce other tobacco control functions and the addition of this responsibility would help to provide a focus for public health issues within district councils. District councils are currently working with other partners such as Investing for Health Partnerships, Health Promotion Commissioners, Smoking Cessation Co-ordinators, Health Promotion Officers, Health Promotion Agency, representatives of the business community and charities to ensure the objectives set in the Tobacco Action Plan are met.

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.

We believe that it is prudent for the department to take this power and perhaps through regulations consult on increasing the age limit to 18.