

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 x

No

If you wish to cOmment, please do so here.

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 x

No

If you wish to comment, please do so here.

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

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

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.

We broadly agree with both offences and penalties, but it appears unclear why failing to display non smoking signs carries a considerably lower penalty than failing to stop a person smoking in smoke free premises. In the view of Belfast Healthy Cities, no smoking signs are the main indicator that a building is smoke free, and should therefore be the primary mechanism for making users and visitors aware of this. In this line of argument, failing to display non smoking signs becomes equally significant as failing to stop someone smoking and should, in our view, carry a similar penalty.

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.

For clarification to the public, guidance as to the time period in which a penalty can be issued and how an authorised officer can be made aware of an offence would be helpful. It may, however, be more appropriate to provide this in materials to be published for the use of the public.

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.

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.

Raising the age limit sends a strong message about the risks associated with smoking as well as its social undesirability. It is positive that the legislation provides the DHSSPS with the power to do so without the need for further legislation, which significantly slows the process.

Raising the age limit may increase the need for enforcement, as the need to monitor illegal sales will increase along with the need to monitor (illegal) purchases through an intermediary. It can also be argued that a higher age limit will encourage the trade in smuggled and otherwise illicit tobacco products. However, it is likely that a higher age limit will act as a deterrent and barrier to accessing tobacco products while it provides a strong public health message. Therefore, Belfast Healthy Cities believes consideration should be given to increasing the age limit in the foreseeable future.

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?

Belfast Healthy Cities agrees with the conclusion not to assess the listed areas further.

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?

Belfast Healthy Cities agrees with the assessment on equality as given in Annex 1 and 2.

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 assessment is focused on physical health and averting death, as well as reducing costs to the NHS, and reaches the correct conclusion that restrictions on smoking in public places will reduce deaths. However, this is a very narrow definition of health and underplays the potential health and wellbeing benefits that smoking restrictions can bring. The assessment should take a wider view of health and also consider the potential impact on mental and social wellbeing. For instance, it is possible that a complete ban as announced will enable increased numbers of people to frequent restaurants and bars, which in turn may have a positive impact on mental wellbeing and social support networks. Groups affected positively are likely to include children and young people, families and people with conditions made worse by smoke (eg. asthma).

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

See above.

Whilst Belfast Healthy Cities supports the development of Integrated Impact Assessment tools, it can be noted that a full Health Impact Assessment would have made it possible to identify a much wider range of potential health impacts, positive as well as negative. It would also have given a wider range of stakeholders the opportunity to contribute to the assessment, thus making it more comprehensive.

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

See responses to questions 13 and 14.

Economic

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

No.

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?

Yes.

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

The analysis appears appropriate.

Public Expenditure and Public Service

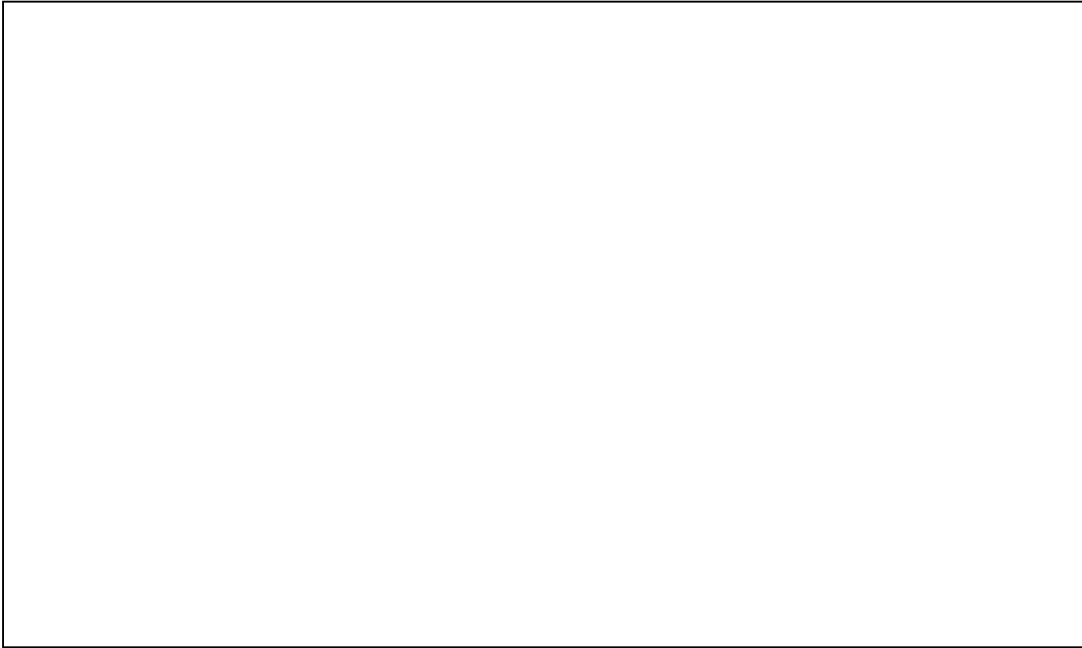
Q20. Do you agree with the Department's view that a separate Economic Appraisal is not required?

Do not have enough knowledge to do this.

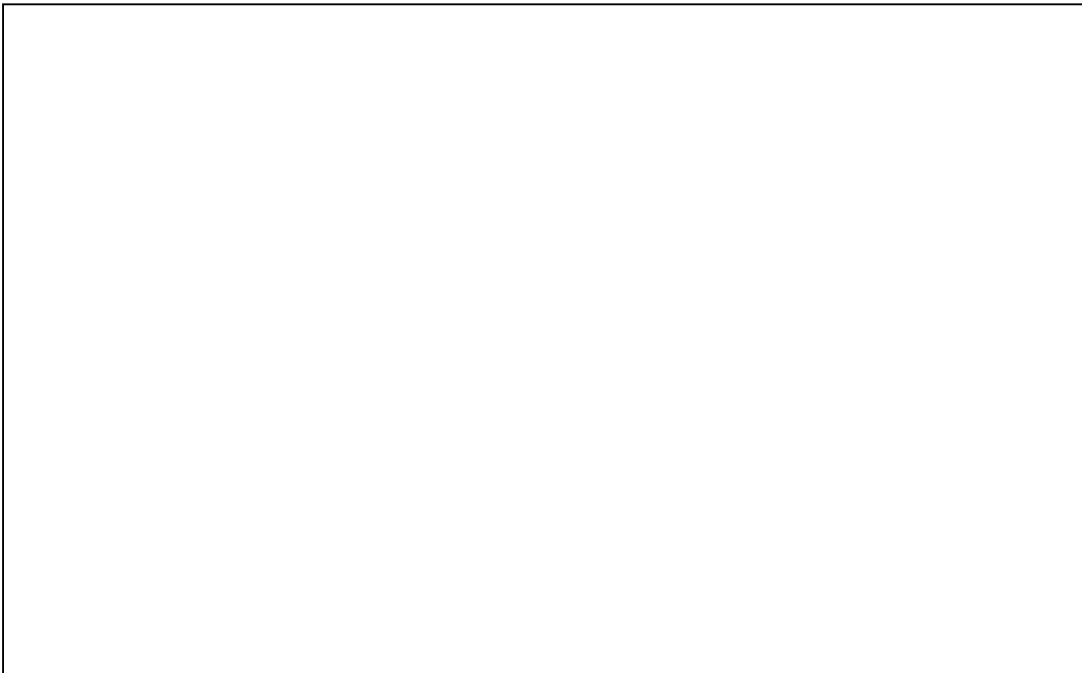
Rural Proofing

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

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

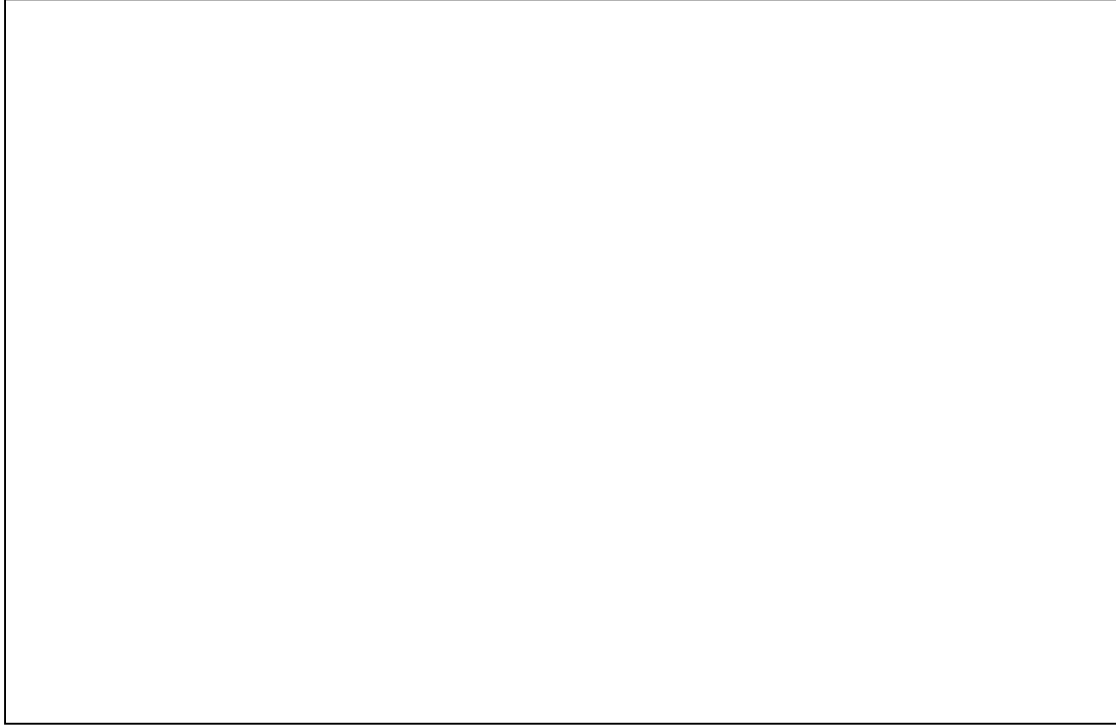


Q23. Is there any other material evidence which you consider should have been taken into account in this assessment of rural impacts?



Additional Comments

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

A large, empty rectangular box with a thin black border, intended for the respondent to provide additional comments or suggestions.

Thank you for taking time to complete this Questionnaire.