

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

**BRITISH MEDICAL ASSOCIATION (NI)
RESPONSE TO THE DEPARTMENTAL
QUESTIONNAIRE**

05 MAY 2006

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Q1. 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.

The BMA(NI) is content with the definition at this time.

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.

The BMA(NI) is content with the definition on smoke-free premises at this time.

Q3. 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.

There should to be no exemptions. However, the BMA(NI) and its members recognise that certain exemptions may be considered at a future date. The Government must remain mindful that any potential exemptions they may consider are also places of work and the protection of workers from second-hand smoke is paramount. Any exemption, if accepted as such, must pass a strict criteria that should be set out in clear guidelines from government or the Department of Health, Social Services and Public Safety (DHSSPS)

If any exemptions in the legislation, such as the examples above, are made by government, then there should also be a mechanism to review the exemption on a regular basis, so that at some point the exemption can be deleted.

Cessation services are very important and require adequate resourcing in order to continually reduce the addictive qualities of tobacco. The BMA(NI) recognises people have the right to smoke and they should not be forced to quit, so long as tobacco smoking remains legal. However, while they may continue to put their own lives at increased risk of COPD, cancer and respiratory disease, those who do not smoke must be protected from the risks inherent in passive smoking.

The BMA(NI) recognises the difficulties involved and are willing to work with government and the DHSSPS to resolve this issue for better health outcomes 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.

The BMA(NI) would like to see a minimum rather than a maximum fine and that there should be an obligation on the court to impose a substantial penalty on defendants who are found guilty of committing an offence under this legislation.

Section (iii) should be amended to

- (iii) a person who controls or is concerned in the management of smoke-free premises *or owns the business* and fails to prevent a person smoking in a smoke-free place commits an offence and is liable on summary conviction to a *minimum* fine not *less than* level 4 on the standard scale (£2,500);

Q5. 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 BMA(NI) does not agree there should be fixed penalties.

Any one committing an offence under this legislation should be liable to prosecution with a fixed fine.

The fine for individuals could be lower than the fine administered to business owners.

The BMA(NI) believe fixed penalties could be difficult to administer and may not adequately persuade offenders to stop committing an offence.

Q6. 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.

The enforcement issue and who will do it requires more detailed work, though environmental health officers should be at the forefront of enforcement at a local level.

However, the BMA(NI) does recognise that if the responsibility of enforcement is devolved to councils there must be adequate resourcing by the councils themselves and by central government.

The BMA(NI) also recognises that recent proposals regarding liquor licensing will allow councils to work with the PSNI to ensure licensed premises adhere to the legislation and persistent offenders should have their licenses revoked.

Q7. Do you agree that the Department should take this power?

Yes

No

Don't know

If you wish to comment, please do so here.

The age limit to legally buy tobacco should be raised to 18.

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 health impacts of active smoking and passive smoking are on record. The BMA has published numerous reports on smoking and passive smoking pointing out the danger of passive smoking.

The BMA(NI) produced a briefing note during the Department of Health Social Services and Public Safety consultation exercise between 21 December 2004 and 25 March 2005 on the document "*A Healthier Future – A Twenty Year Vision for Health and Wellbeing in Northern Ireland 2005-2025*". The BMA(NI) briefing note can be found at [Hhttp://www.bma.org.uk/ap.nsf/Content/NismokingbanH](http://www.bma.org.uk/ap.nsf/Content/NismokingbanH)

The BMA(NI) have called for the called for the banning of smoking in enclosed public places because of the well documented health risks of passive smoking. The ban will positively impact on the health of the people of Northern Ireland and will bring to a close the one death every week of someone who passively smoked, will reduce the risk of cancer, stroke and Ischaemic heart disease, and will provide a basis for people to move towards living a longer, healthier and more active life.

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

Many of the health impacts have already been mentioned and have been widely discussed over the previous number of years.

The BMA(NI) is happy that the potential health impacts have been addressed.

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

Not at this time

Economic

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

The BMA(NI) commends the IIA as a good piece of work.

The government might also consider a health impact assessment alongside many of the other impact assessments when consulting on changes in policy. This might provide a platform for joined-up government when considering the future health of the public

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?

Businesses and organisations will benefit from productivity increase due to the reduction of 'smoke breaks', but only if they provide good, clear policies on this to their employees.

It will increase, over time, a healthier and cleaner working environment with the potential for healthier employees who should have a reduced sickness absence record.

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

Signage should be produced and distributed centrally by the department with either a small fee or none for businesses.

Businesses and organisations should not have undue financial burden placed on them in the implementation of the legislation. Any infringements of the legislation should help to offset the cost.

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?

The BMA(NI) agrees.

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?

The BMA(NI) welcomes the draft Order and hopes it will be processed through the appropriate channels as soon as possible.

A complete ban such as provided by the draft legislation, with the amendments suggested by the BMA(NI), should help create a clear, easy to enforce piece of legislation that will protect and enhance a person's right to live a healthy life and to be present on premises, open to the public or workers, free from the risks of passive smoking.