



**Chartered
Institute of
Environmental
Health**

The Draft Smoking (Northern Ireland) Order 2006

The CIEH Response

May 2006

The Chartered Institute of Environmental Health is leading environmental health into the future

In 2002 the Chartered Institute established a regional office in NI in order to facilitate direct liaison with the Northern Ireland Assembly, government departments, local authorities and non-governmental organisations within NI, promoting and representing CIEH policies in a NI context.

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1 The Chartered Institute of Environmental Health

- 1.1 Founded in 1883, the Chartered Institute of Environmental Health (CIEH) is a professional and educational body dedicated to the promotion of improvements in environmental and public health. The CIEH also provides information, evidence and policy advice to government departments and others on environmental and public health issues.
- 1.2 The Chartered Institute has over 10,500 members, most of whom work for local authorities in England, Wales and Northern Ireland. The CIEH has a strong role in setting standards for the education and professional development of its members including the accreditation of university courses, continuing professional development and achieving chartered member status.
- 1.3 Further important roles for the CIEH are campaigning for improvements in public and environmental health and facilitating debate on the global environmental issues threatening our health. Most of this work involves communicating the views of the profession to governments and other professional and international organisations including the European Union and the United Nations. The CIEH became the WHO/EURO Collaborating Centre for Environmental Health Management in 1993.
- 1.4 In 2002 the CIEH established a regional office in NI to engage directly with the Northern Ireland Assembly, government departments, local authorities and non-governmental organisations within NI; promoting and representing CIEH policies in a NI context.

2 Introduction

2.1 CIEH welcomes The Draft Smoking (Northern Ireland) Order 2006 and would like to make the following comments in response to the questionnaire.

3 Detailed Comments

Q1. 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.

CIEH welcomes the inclusion of herbal cigarettes in the definition. While the precise health risks of herbal preparations are uncertain, the presence of smoke causes discomfort and can provoke illness in susceptible individuals, such as those with asthma.

Q2. 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.

N/A

Q3. Do you think that hotel bedrooms, designated rooms, or areas within the following premises should be exempt?

Hotel Bedrooms	No. CIEH believes that hotel rooms present no convincing argument for exemption
Care Homes	In some cases
Psychiatric Units	In some cases
Prisons	Possibly

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

CIEH believes that, rather than giving examples of possible exemptions, there is a need to establish fundamental principles under which any premises should be exempt. We would suggest that criteria are established which a premise must meet in order to be exempt.

Recommended criteria include the length of time someone will be likely to stay in a premise (such as might apply to long-stay psychiatric units) as well as the mobility which people within the premise have to smoke outside (e.g. are they unable to move freely due to either medical limitations to external physical restraints). Criteria may also include humane issues (such as might apply to palliative care homes) and the extent to which staff are placed at risk (i.e. a premise could not be exempt if staff would be expected to work for significant periods of time in close proximity to second-hand smoke, such as may be the case in prisons)

Any premises which are exempt should be no-smoking premises with exempt status allowing only for a restricted area for smoking. In premises which are exempt, exemption should apply only to those living there and never to staff or visitors.

Regulations should also emphasise and remind that the key issue is eliminating risk for staff and others.

CIEH would further recommend that any provision for exemptions should be kept under constant review.

In considering whether or not prisons should be exempt, CIEH would suggest that the DHSSPS consider evidence from prisons elsewhere which have successfully gone smokefree.

Q4. 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.

With regard to the offences at Article 7 (no smoking signage) and article 8 (smoking in a smoke free place) CIEH believes that:

- 1: These should both be offences.
- 2: That these offences, if committed, should attract a lesser penalty than Article 9 and
- 3: That the proposed penalty (i.e. level 3) is acceptable

However, we believe that the responsibility for preventing smoking in smokefree places should be firmly with the owner of those premises. Not, as is currently proposed, "...any person who controls or is concerned in the management of smoke free premises". By making the owner responsible we believe that there is much greater likelihood that the full range of measures necessary to ensure the success of this intervention will be implemented prior to the legislation coming into force. This would include issues like staff awareness and training; smoking policies etc. If the responsibility is left as drafted, i.e. with a manager or person in charge, it effectively allows owners to simply transfer what ought to be their responsibilities to that person. Conversely, by amending the order to make the owner fully responsible for ensuring compliance with Article 9 we believe that there will ultimately be a much higher level of compliance without the need for significant enforcement effort which is, we would suggest, the desired outcome.

In relation to the proposed fine for this particular offence, CIEH believes that this should be increased from the proposed level 4 to level 5. This would bring the level of potential fine in line with other health and safety offences.

Q5. 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.

CIEH does not believe that fixed penalty notices are appropriate for anything other than Article 7 offences. We believe that it is imperative that the penalties for breach of this legislation send out the correct message, i.e. that it is a serious matter and will not be tolerated. The use of fixed penalties does not create the correct image in terms of being a suitable deterrent and therefore assisting in ensuring compliance without the need to resort to enforcement action. The issuing of fixed penalty notices may also in itself create practical enforcement difficulties.

Fixed penalty notices have not been used in the Republic of Ireland where evidence indicates very little non compliance following the introduction of the legislation. (To date there have been 36 prosecutions in total).

Furthermore, there is evidence elsewhere, i.e. from British Columbia, that fixed penalty notices for this type of offence have not been effective¹.

The use of fixed penalty notices in Northern Ireland would also in practice create different regimes in cross-border areas.

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

District councils currently enforce legislation in large numbers of premises through other health protection functions (e.g. health and safety at work; food control; environmental protection; entertainment and petroleum licensing; consumer protection and public health). The addition of this responsibility would help to provide a focus for public health issues within district councils.

They are already 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.

If not, please state your reasons below.

N/A

¹Tobacco Control 2003:12:264-268.

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.

CIEH believes that changing the age to 18 appropriately emphasises the serious risk which tobacco smoking poses to health. It would also be consistent with minimum age limits in other policy areas such as alcohol legislation and butane gas and this would facilitate a more integrated approach to enforcement.

It would also align NI legislation with Republic of Ireland legislation and therefore reduce the potential for inconsistencies in approaches to tobacco sales amongst border counties.

In a paper on the proposal to raise the age to 18 in Scotland, ASH Scotland emphasised as a stand alone measure this may not make a difference. There are also concerns that it may make smoking appear more adult and therefore more desirable as a mechanism for rebelling. This change in legislation would therefore need to be part of a wider package of measures including, for example, the forthcoming smokefree legislation, smoking prevention and cessation activities aimed at young people, enforcement and education.

Although underage smokers are sometimes able to purchase cigarettes, rising the legal age to 18 should make it harder for those under 16 to pass themselves off as the legal age.

Enforcement is a real issue which still needs to be considered, including child protection issues around test purchasing.

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?

Equality

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?

- There will be benefits to lower paid workers
- Equality section doesn't refer to Partial Regulatory Impact Assessment and it needs to acknowledge this (workforce of tobacco employer)

Partial Regulatory Impact Assessment (RIA)

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

CIEH supports the work done on the health impact assessment of the proposed legislation.

We also suggest that the estimated reduction in smoking prevalence which the assessment proposes (2%) may be an under estimation. It may be worth referring to the Wanless Report, which estimated a reduction of 4%.

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

Some other positive impacts might be included, for example, the educational benefits of smokefree schools and the benefits of smokefree workplaces to workers who are pregnant.

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

CIEH recommends including some of the more recent research which hasn't been considered, most notably "How Smoke-free Laws improve air quality: A global study of Irish pubs"²

Economic

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

We support the response. IIA is a good piece of work

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?

We support what has been done but main benefit may be from reduction in smoking breaks (based on Scottish research)

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

DHSSPS has assumed signage costs will be met by businesses but CIEH believes that it may help compliance if there was central production and distribution of all signage

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?

No rural impact

² Harvard School of Public Health, March 16 2006

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?

No

Correspondence on this report or issues arising from it should be sent to the address at the front of the document and marked for the attention of Gary McFarlane, Director of CIEH Northern Ireland.