



Cookstown

DISTRICT COUNCIL

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02 MAY 2006

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M G Kelso

GEH/gj

28 April 2006

Investing for Health Team (Tobacco Control)
Department of Health Social Services and Public Safety
Room C4.22
Castle Buildings
BELFAST BT4 3SQ

Dear Sirs

RE: THE DRAFT SMOKING (NORTHERN IRELAND) ORDER 2006
CONSULTATION QUESTIONNAIRE

Council considered a report on the above at their Statutory Meeting held on 28th February 2006, whereupon the attached response was agreed.

Yours faithfully

M G KELSO
Director of Environmental Health

**All correspondence
should be sent to:**

Clerk to Council/Chief Executive
Council Offices
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F O R W A R D



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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	No	<input checked="" type="checkbox"/>
Care Homes	No	<input checked="" type="checkbox"/>
Psychiatric Units	Yes	<input checked="" type="checkbox"/>
Prisons	No	<input checked="" type="checkbox"/>

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

The smoke-free legislation should be as comprehensive as possible, to ensure that all workers are afforded the same level of protection. It is acknowledged that this may create some practical difficulties. An important balance needs to be achieved in considering exemptions. In order that the balance is correct we feel it is important that the exemptions do not apply to premises as a whole but that the exemption is restricted to an area of premises that does not expose workers unduly to second hand smoke and that any exemption does not apply to employees or visitors to the premises. The Department may also consider exemptions as temporary for some premises to enable the premises to work towards becoming 'smoke free'.

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 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. We also believe that the offence of obstructing an authorised officer should attract a penalty equivalent to the one set for permitting someone to smoke in ‘smoke free’ premises

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 not appropriate. Fixed penalty notices have not been used in the Republic of Ireland where controls have been introduced successfully. The Health Bill in England has been amended to remove the fixed penalty offence for permitting someone to smoke in 'smoke free' premises. 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 use of fixed penalties may not prove to be a strong deterrent as a person may feel they will take a chance knowing that if they get caught they will only get a fixed penalty notice. It is imperative to ensure high levels of compliance that there is both a penalty that acts as a deterrent and sufficient enforcement activity to make people believe that offences will be detected. It is our experience of enforcing other legislation where fixed penalties are used that where a district council chooses to prosecute that the magistrates court apply a penalty equivalent to the fixed penalty level. 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. Environmental health departments of district councils are experienced in both dealing with business and the public in ensuring compliance with legislative requirements. This experience will ensure a sensible approach to enforcement that will not burden the courts. The use of fixed penalty notices would also 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 ✓

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. . Other council departments also have contact with many businesses and business organisations for example economic development, building control and waste management. 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 will also be given powers in relation to community planning and the promotion of well being, this legislation would sit well with those functions. 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. Environmental Health Officers in district councils have begun preparing to help sign posting smokers who wish to avail of smoking cessation services on the back of the introduction of 'smoke free' legislation. Councils also have a very strong role in providing civic leadership on this issue and many have been instrumental in setting the 'smoke free' agenda by making their own premises 'smoke free' well ahead of any legislation and by promoting smoke free awards. Elected members have many links with the business community that will enable district councils to work to build compliance at an early stage.

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.

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

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:

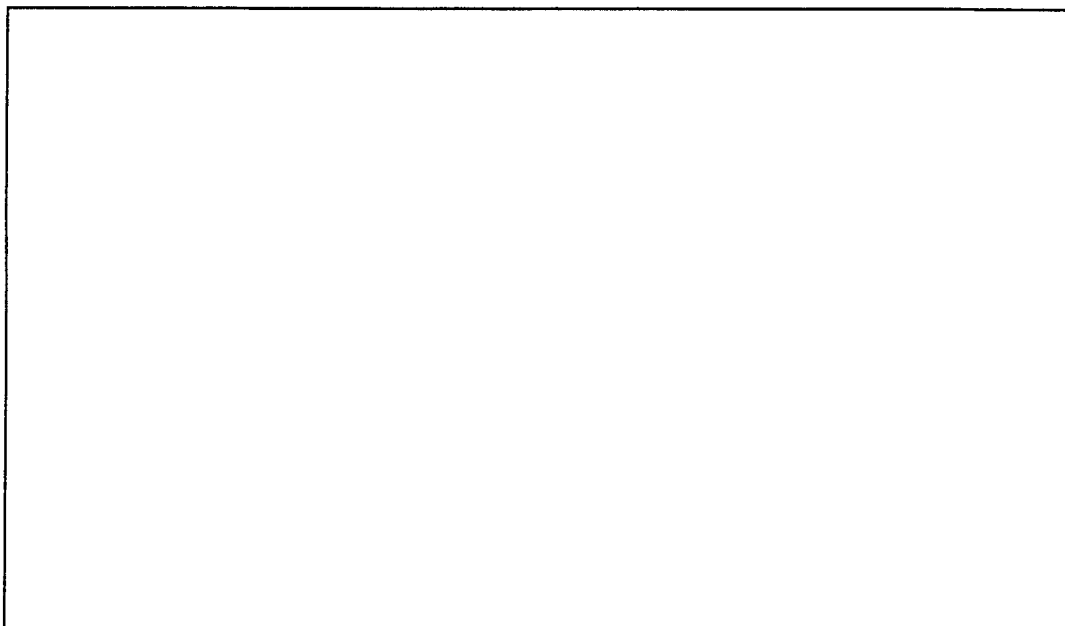
Q9. Do you agree with the decision that the draft Order does not require a full equality assessment? (see Annex 1 and Annex 2 of the IIA Overview). If not, please explain why?

Yes

Q10. Is there any other qualitative or quantitative information which you consider should have been taken into account in performing this exercise?

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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?



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

It is our opinion that all workers should be afforded equal protection by this legislation. In the event that the exemptions suggested are incorporated into the legislation workers in those exempted areas will not be afforded the same level of protection. The exemptions may also exacerbate health inequalities as some of the workers will be from lower socio economic groups.

Partial Regulatory Impact Assessment (RIA)

(see Annex 3 of IIA Overview)

Health

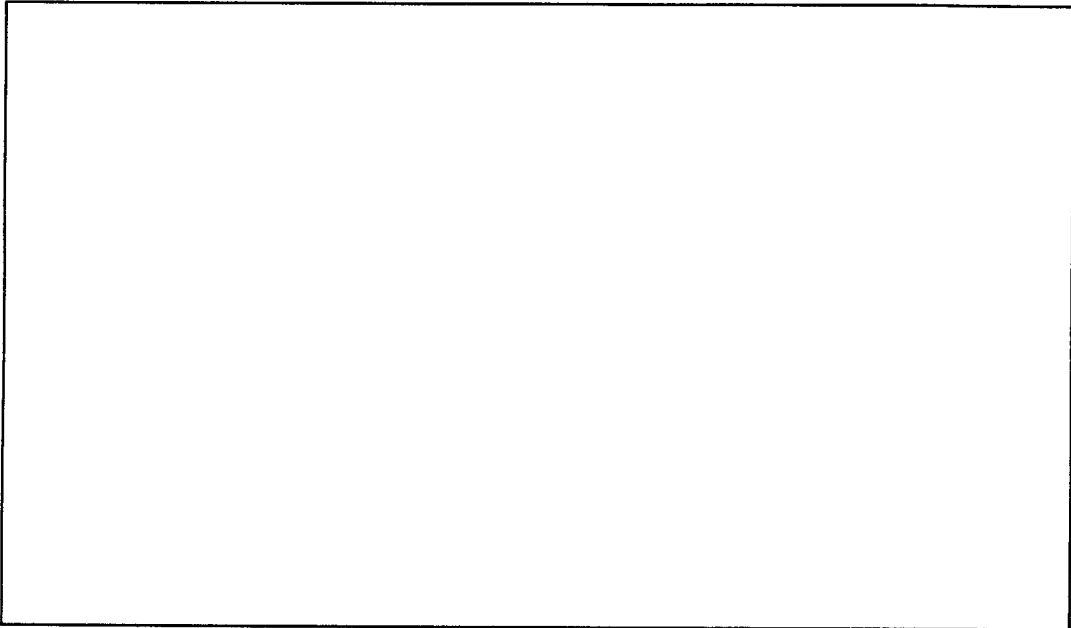
Q13. Do you have any views on the assessment of health impacts?

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

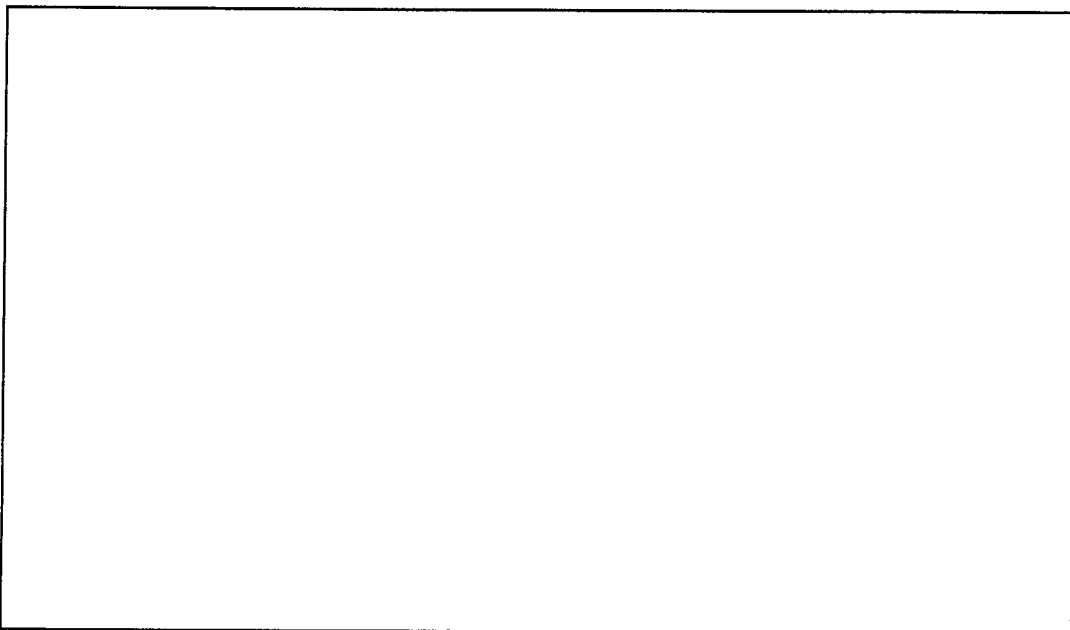
Q15. Is there any other material evidence which you consider should have been taken into account in this assessment of health impacts?

Economic

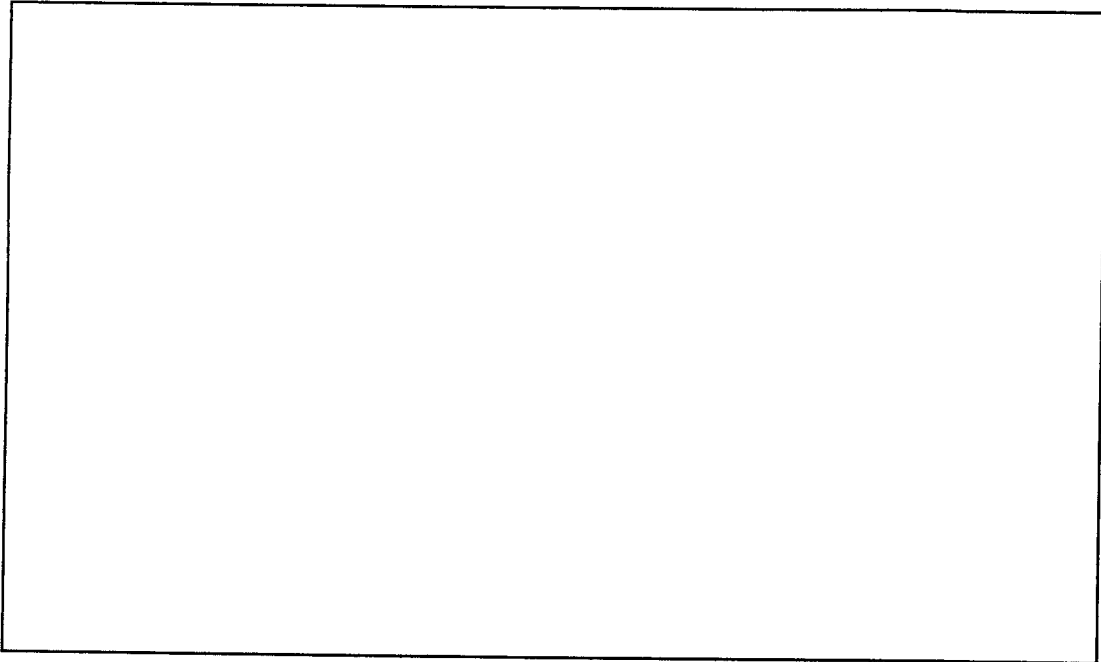
Q16. Do you have any general comments on the overall approach that was taken in completing the RIA?



Q17. Do you consider that there are other issues which need to be taken into account in the assessment of the impact on business?



Q18. Do you agree with the analysis of the sectors and business/organisations which might be particularly affected by the introduction of this policy?



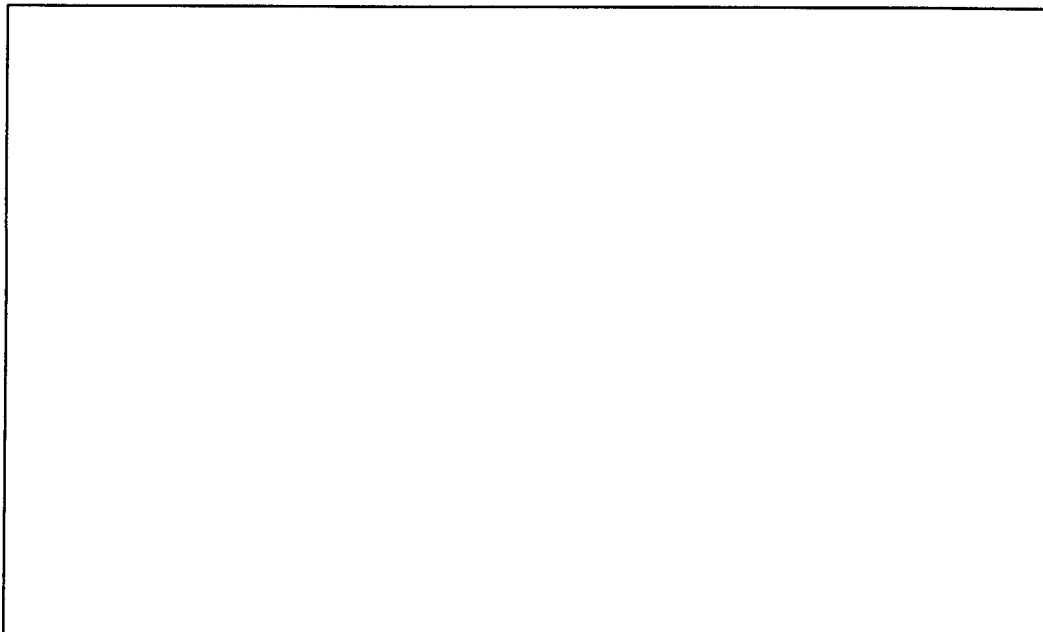
Q19. What are your views on the identification and assessment of the costs and benefits?

There is a presumption that the costs of signage would be borne by business but we feel it may help compliance if there was central production and distribution of signage for all 'smoke free' premises.

The experience of counterparts in Scotland who have recently introduced the legislative ban will be invaluable in re-assigning the financial burden placed Local Authorities to take this programme forward. The proposed funding arrangements may have to be amended accordingly.

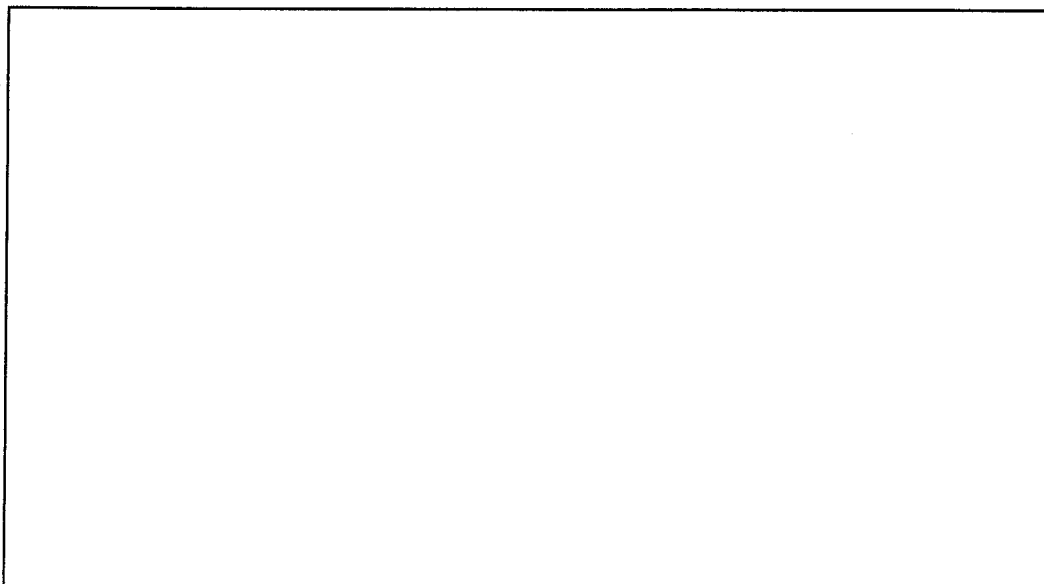
Public Expenditure and Public Service

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

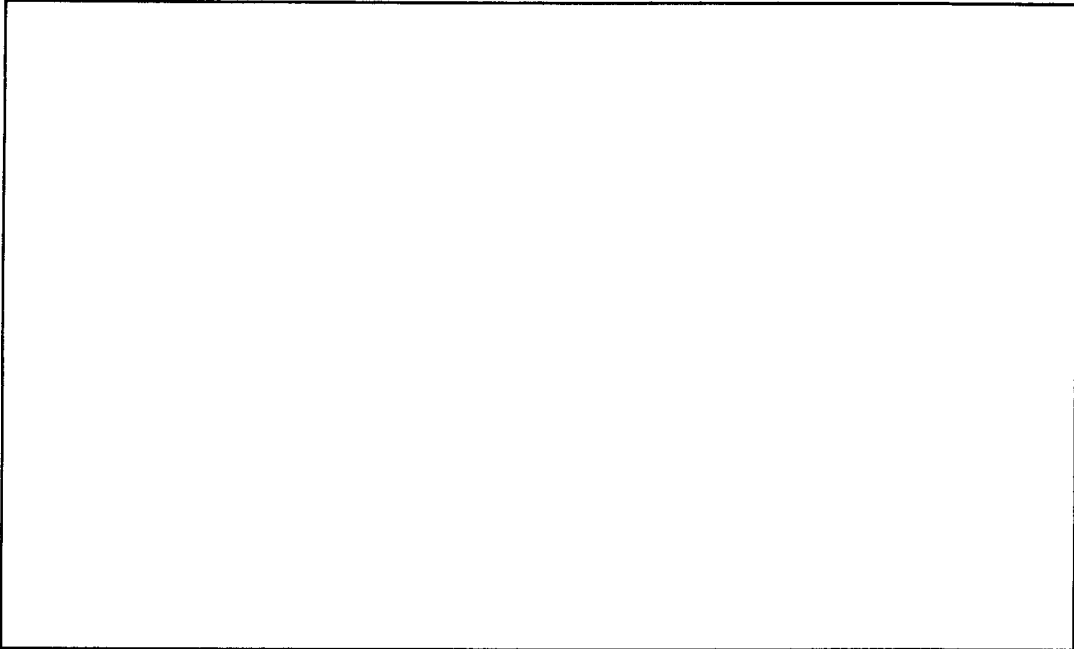


Rural Proofing

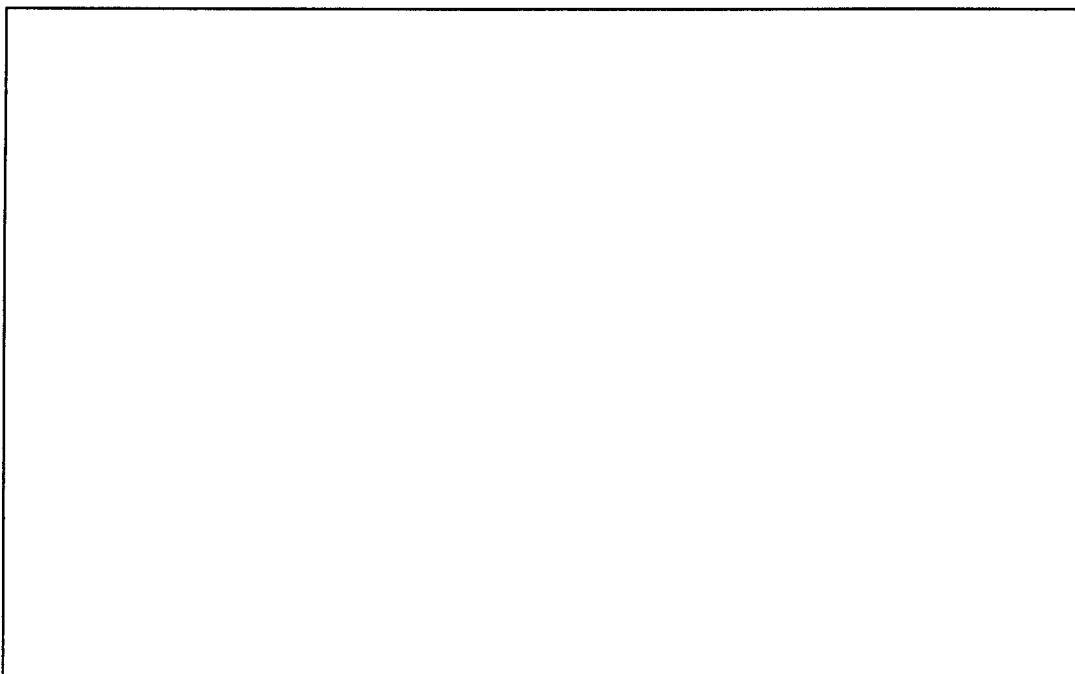
Q21. Do you agree that the draft Order will not have a disproportionate adverse impact on rural business?



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

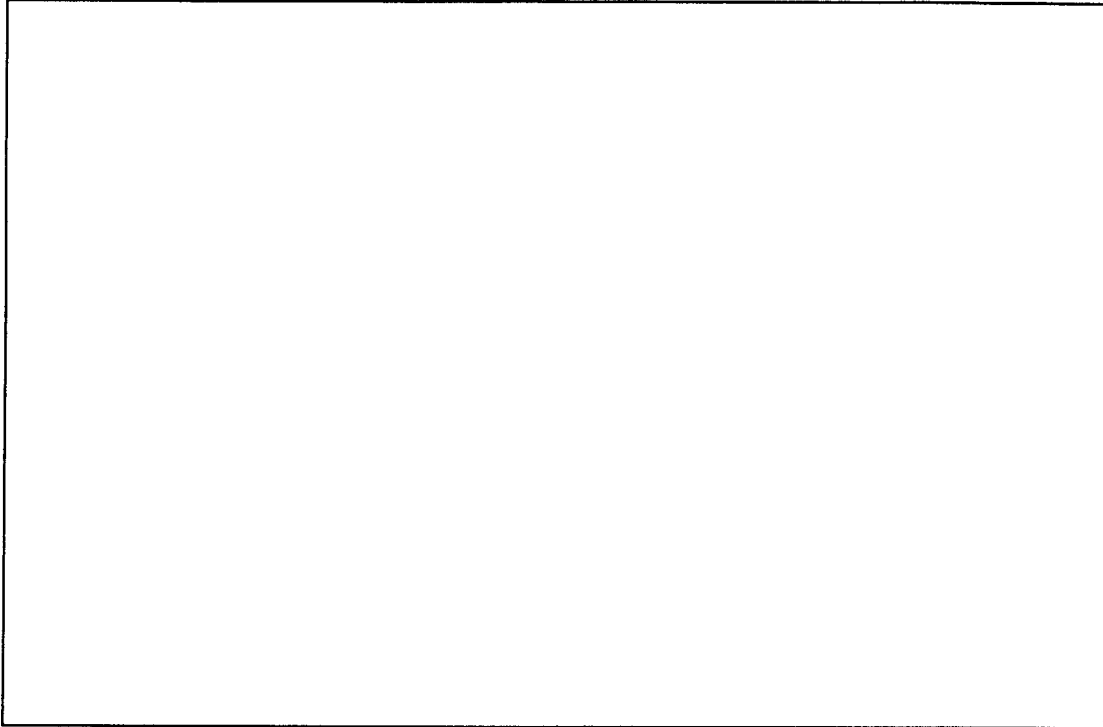
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Q23. Is there any other material evidence which you consider should have been taken into account in this assessment of rural impacts?

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Additional Comments

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

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Thank you for taking time to complete this Questionnaire.