

2<sup>nd</sup> May 2006

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

Dear Sir/Madam

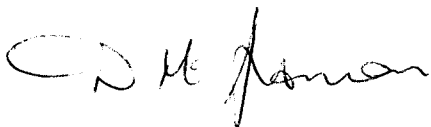
**Re: Consultation on the Draft Smoking (Northern Ireland) Order 2006**

Gallaher Group Plc is an international tobacco company, employing 12,000 people, with offices and manufacturing facilities in around 40 countries. Gallaher has had a presence in Northern Ireland since it was founded in 1857 and currently its operations in Lisnafillan, County Antrim, employ 854 people. As referred to in the 'Integrated Impact Assessment', Gallaher has a Group Research and Development function located in Lisnafillan, employing currently 87 scientists and associated administrative staff, all of whom are engaged in carrying out important aspects of scientific evaluations for Governments and internal research.

While our UK trade association, the Tobacco Manufacturers' Association, is responding in full to this consultation, we are also responding separately, specifically in relation to suggested exemptions in Question 3, requesting the necessary exemptions for our Research and Development function. We believe it is essential, for the reasons set out in our response, that this facility remains in Lisnafillan.

We trust that you will give our response due consideration and grant us the necessary exemption.

Yours faithfully  
for Gallaher Ltd



Daniel McLarnon  
Head of Group Research and Development



**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 5.00 pm on Friday, 5<sup>th</sup> 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](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

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

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?**

<b>Hotel Bedrooms</b>	<b>Yes</b>	<input type="checkbox"/>	<b>No</b>	<input type="checkbox"/>	<b>Don't know</b>	<input type="checkbox"/>
<b>Care Homes</b>	<b>Yes</b>	<input type="checkbox"/>	<b>No</b>	<input type="checkbox"/>	<b>Don't know</b>	<input type="checkbox"/>
<b>Psychiatric Units</b>	<b>Yes</b>	<input type="checkbox"/>	<b>No</b>	<input type="checkbox"/>	<b>Don't know</b>	<input type="checkbox"/>
<b>Prisons</b>	<b>Yes</b>	<input type="checkbox"/>	<b>No</b>	<input type="checkbox"/>	<b>Don't Know</b>	<input type="checkbox"/>

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

**Today around 156 scientists and associated administrative staff are employed in Gallaher's Research and Development Centres based in Austria and Northern Ireland, where 87 are employed.**

**All tobacco companies are required by National and European Laws and Regulations to carry out certain smoking tests on a regular basis and to furnish this information to the European Commission and respective Authorities. Gallaher carries out such testing to ensure that its products are compliant with all applicable laws and regulations and to fulfil its duty to properly assess and develop its products. Working in line with recommendations made by Governments and other agencies Gallaher has a history of continued research into ways to potentially further reduce the risks associated with smoking, and extensive in-house laboratory and human smoking trials have been a crucial element of these evaluations. To allow this to continue, it is essential that the Gallaher testing facility remains operational on the Lisnafillan site and that an exemption to allow this is included in the draft Order.**

**Cigarette smoke remains an extremely complex mixture and, while efforts continue to understand it, it was agreed at National level in the 1970s that cigarette manufacturers would seek to reduce the overall amount of smoke available to smokers (i.e. tar reduction). As a result, through a series of 'Voluntary Agreements' with the UK Government, standardised laboratory measurement methods were established to assist in assessing the yields of smoke emerging from cigarettes. This form of testing continues today and various tar reduction strategies have been established with a view to bringing about lower smoke yields.**

**The philosophy was subsequently firmly embedded in European Legislation from 1992 onwards. Tar ceilings, then at 15mgs per cigarette, have moved to today's 10 mg maximum as outlined in the most recent Manufacturing, Presentation and Sale Directive (2001/37/EC). It is a legal requirement of the Directive that European manufacturers carry out smoking yield measurements and other related tests so that such testing information can be furnished to both Member States and the Commission on an annual basis. Unless Gallaher's Lisnafillan laboratories are given the necessary exemptions from the legislation introducing the smoking in the workplace ban, they will be unable to carry out the necessary testing to ensure compliance with the applicable laws.**

**Along with providing the above information, Gallaher continually evaluates other methodologies that might assist in further understanding the risks connected with cigarette smoking. The laboratories in Lisnafillan are key to this understanding.**

**It is recognised that consumer acceptability is an important factor in the development of any potential lower risk products. It is therefore necessary to try to develop products with potentially lower risk profiles that are as acceptable to consumers as their competing counterparts. There will be no significant benefit in attempting to launch a potentially lower risk product if poor consumer acceptability were to lead to minimal uptake.**

**As a responsible tobacco company, Gallaher has for many years employed internal and external consumer panels to assess the acceptability of its products and to gain opinions on smoking preferences. Gallaher has also developed expert panels of expert smokers on the Lisnafillan site who are integral to the product development process and who can assist in the assessment of the acceptability of any potentially lower risk products.**

Also, while our Group Leaf function is based in England, there are requirements for leaf testing and analysis to be conducted within the Research and Development function. Tobacco in the field is very sensitive to the prevailing climatic conditions during its growth period, which varies considerably year on year, and the variability of these conditions results in variation of smoking attributes and characteristics. Smoke evaluation of representative samples is intrinsic in ensuring blend consistency and ultimately brand integrity.

For all these reasons, it is vital that these testing laboratories remain on the premises.

In December, 2005 our trade association, the Tobacco Manufacturers' Association, was invited by the UK Department of Health to propose a form of words to be written into the regulations to permit exemptions to the smoking ban for research and development purposes: it responded with the following wording:

*“[The regulations shall not apply to] premises or areas of premises that are designated by the person in charge of such premises as being a place in which smoking is carried out for the purposes of:*

- a. ascertaining whether tobacco products meet tobacco product regulatory requirements;*
- b. researching and / or developing tobacco products; and*
- c. quality and acceptability testing of tobacco products.”*

Gallaher requests that such an exemption is granted for our research and development facility and that the above wording is included in the Northern Ireland regulations.

**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.**

**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.**

**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.**

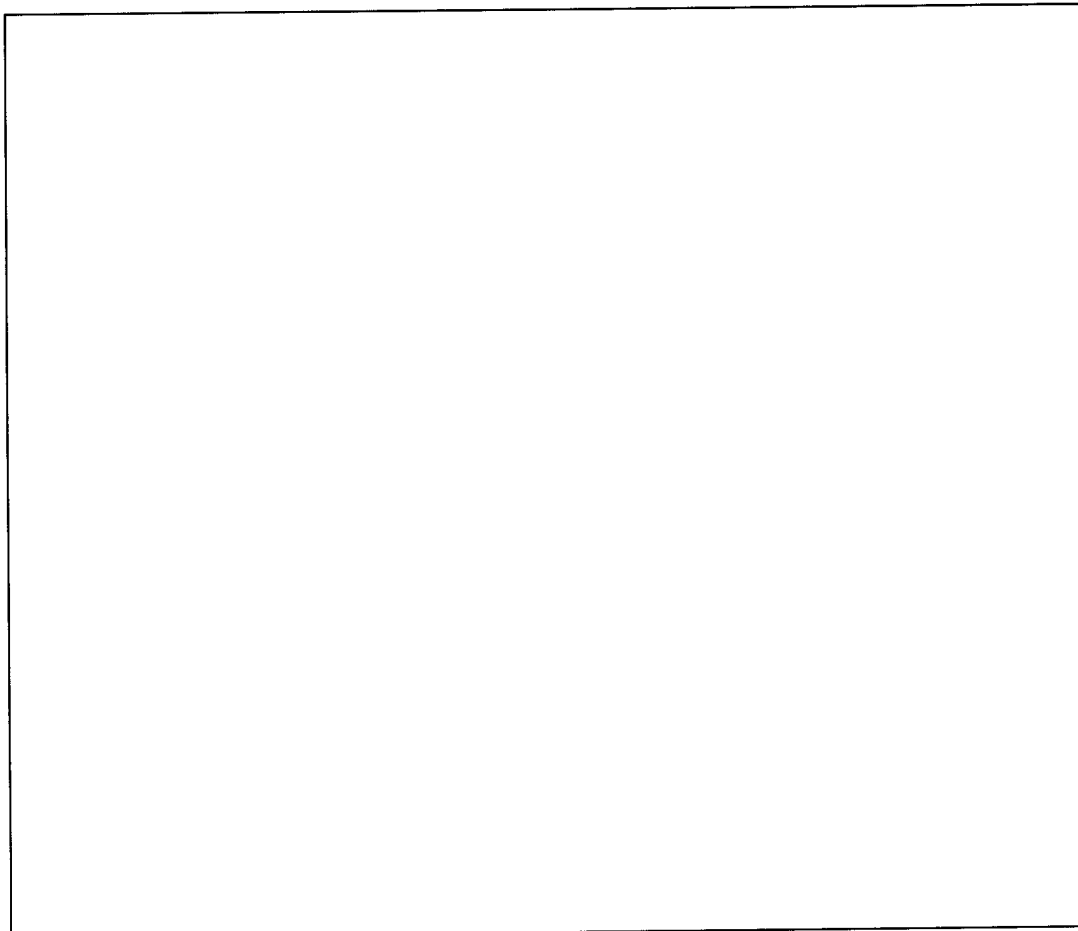
# **INTEGRATED IMPACT ASSESSMENT OVERVIEW**

## **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?**

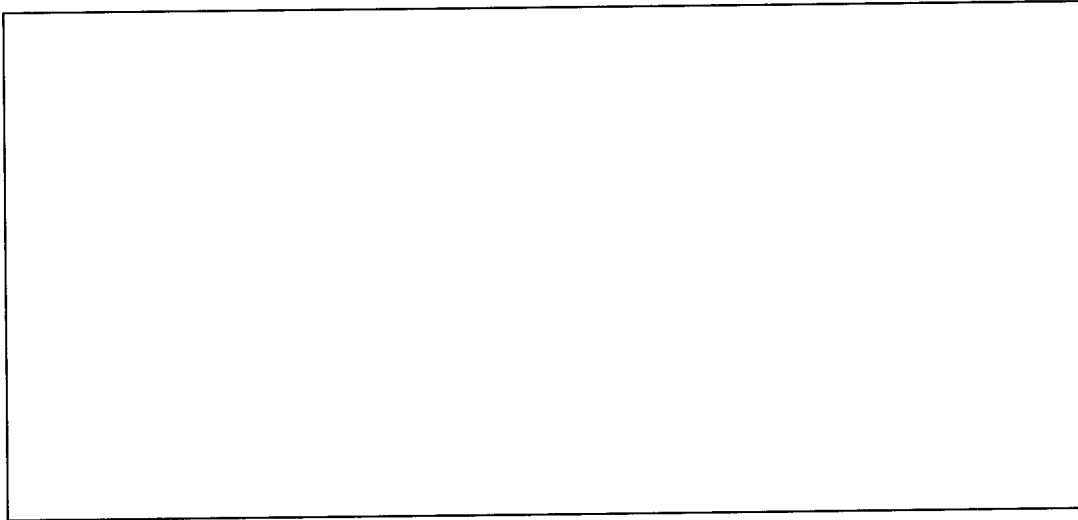
**Is there any other evidence which you consider should have been taken into account in these assessments?**

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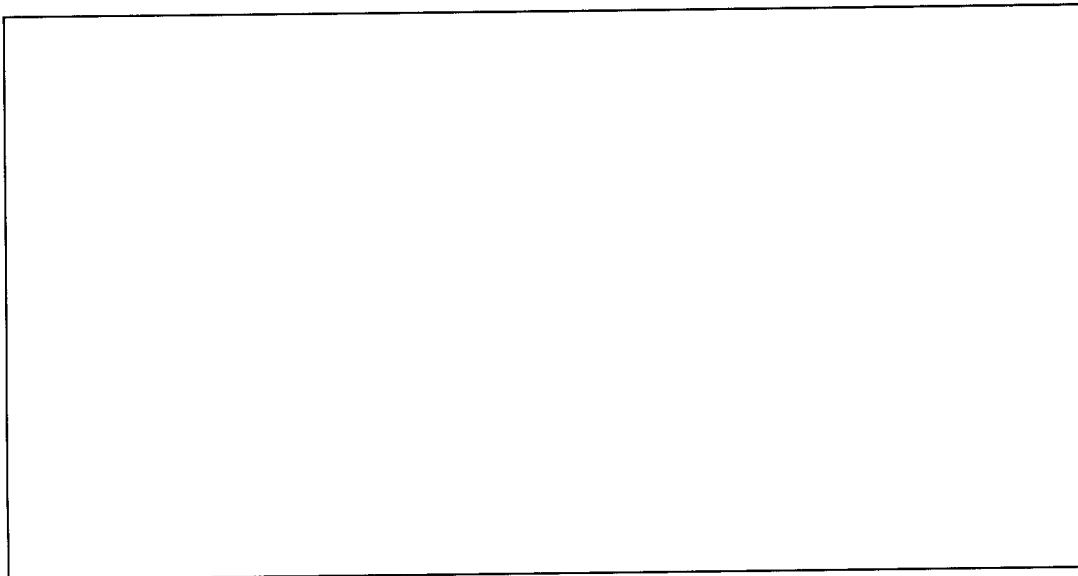
## **Equality**

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:

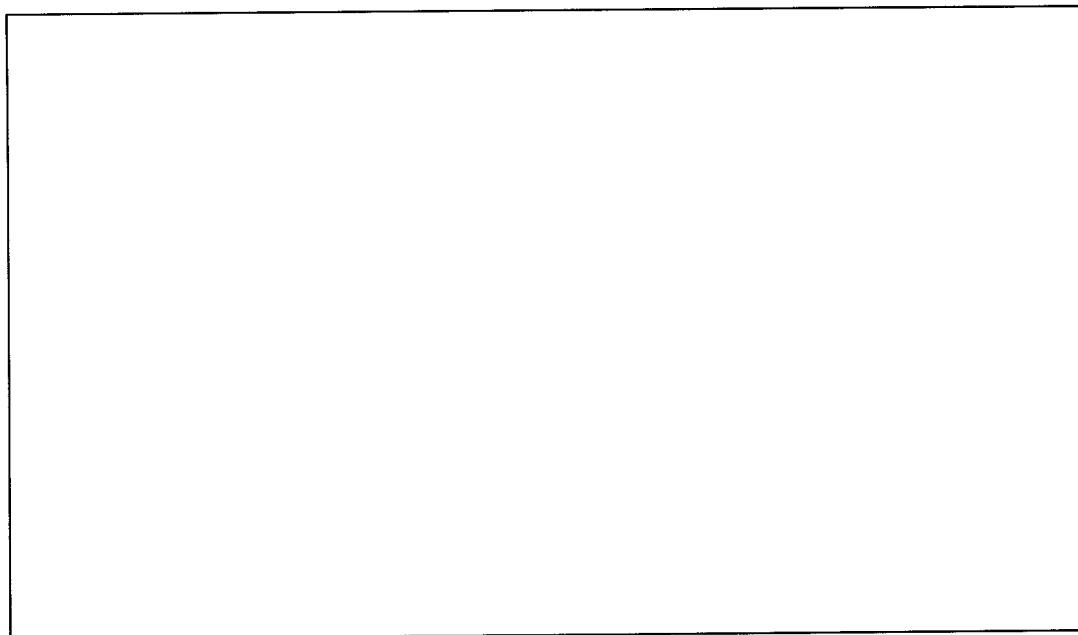
**Q9. Do you agree with the decision that the draft Order does not require a full equality assessment? (see Annex 1 and Annex 2 of the IIA Overview). If not, please explain why?**



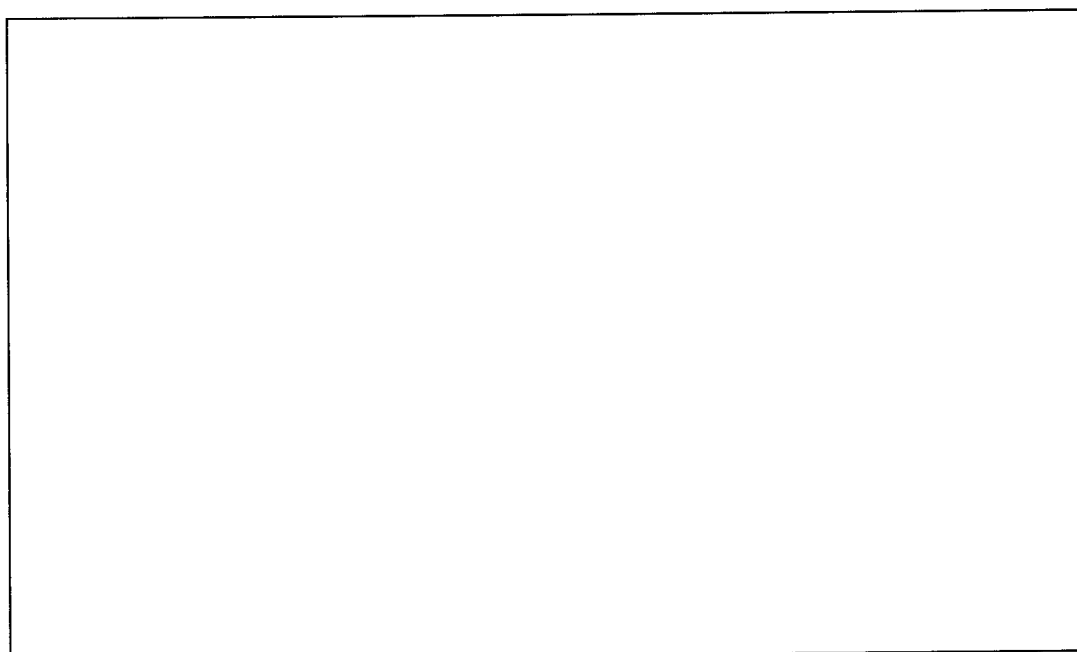
**Q10. Is there any other qualitative or quantitative information which you consider should have been taken into account in performing this exercise?**



**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?**



## **Partial Regulatory Impact Assessment (RIA)**

(see Annex 3 of IIA Overview)

### ***Health***

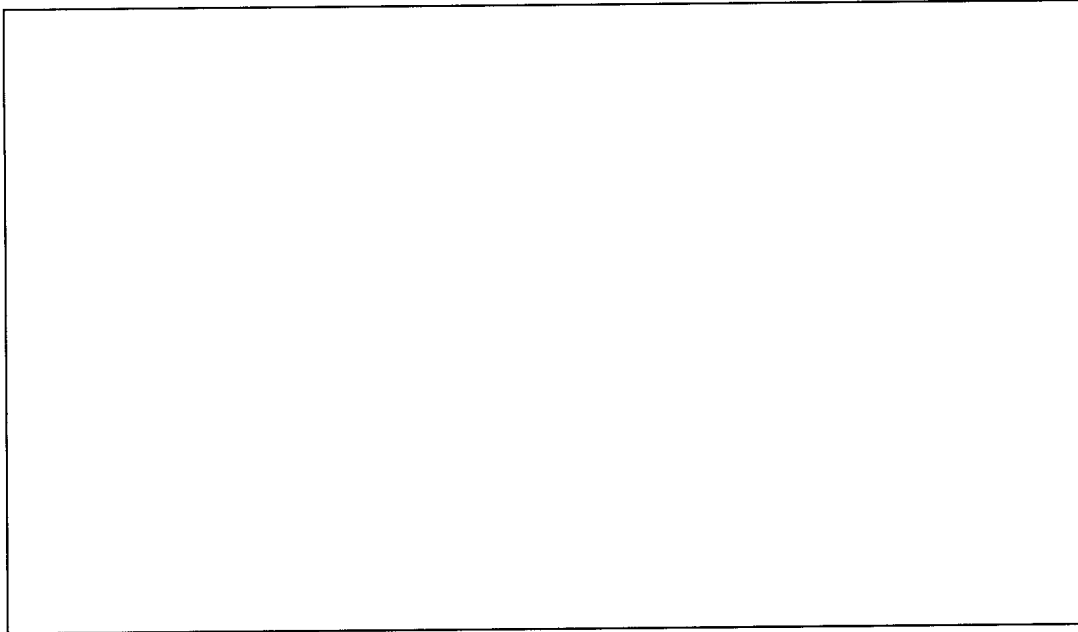
**Q13. Do you have any views on the assessment of health impacts?**

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

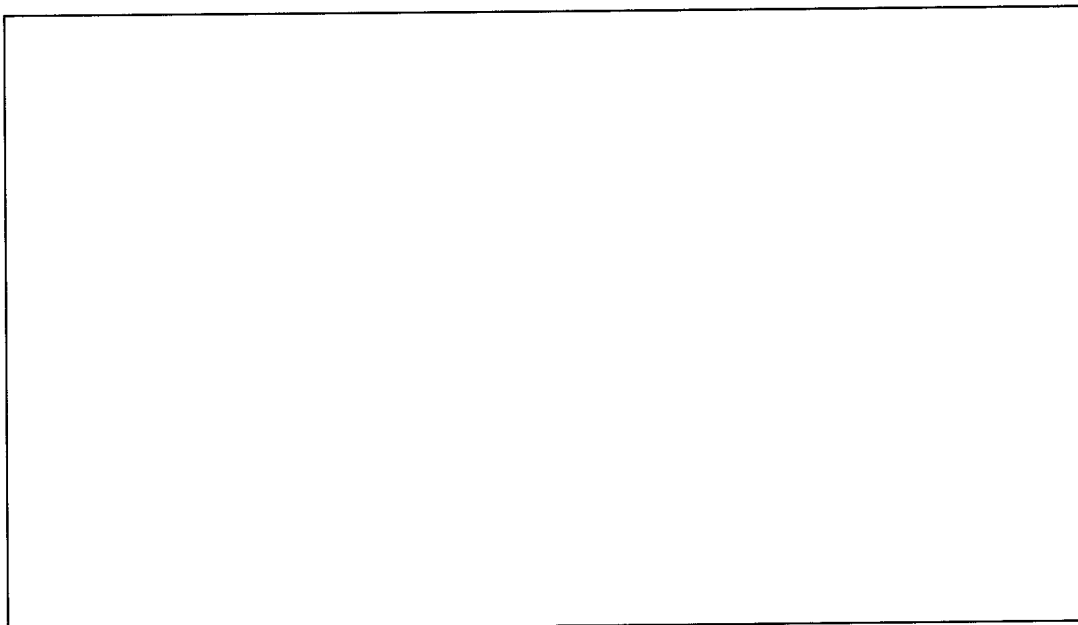
**Q15. Is there any other material evidence which you consider should have been taken into account in this assessment of health impacts?**

***Economic***

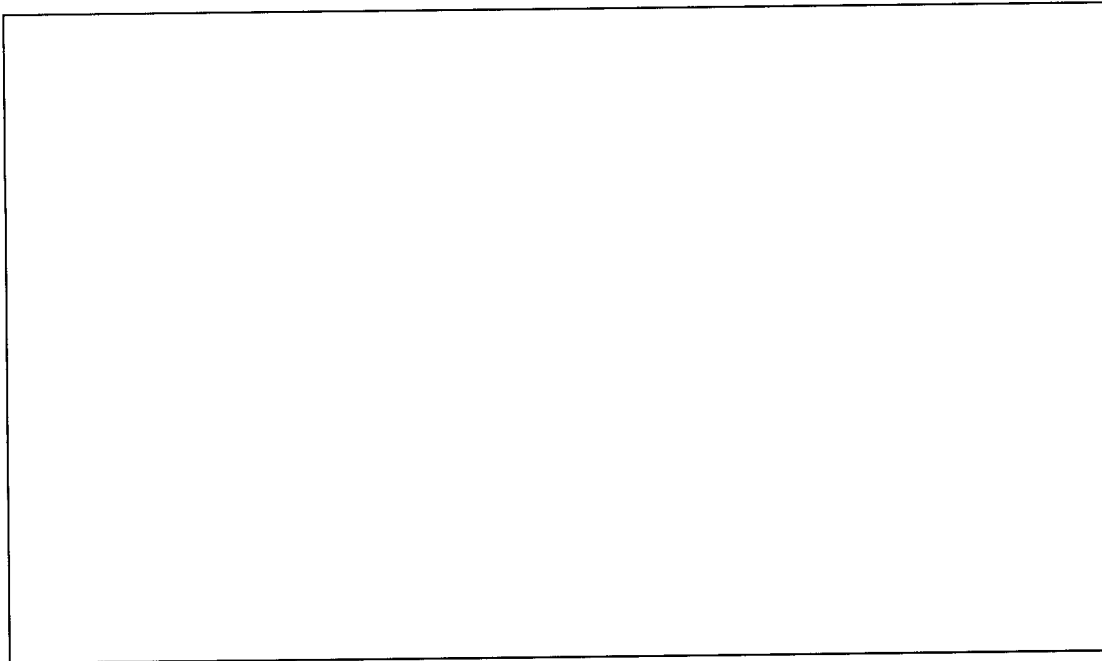
**Q16. Do you have any general comments on the overall approach that was taken in completing the RIA?**



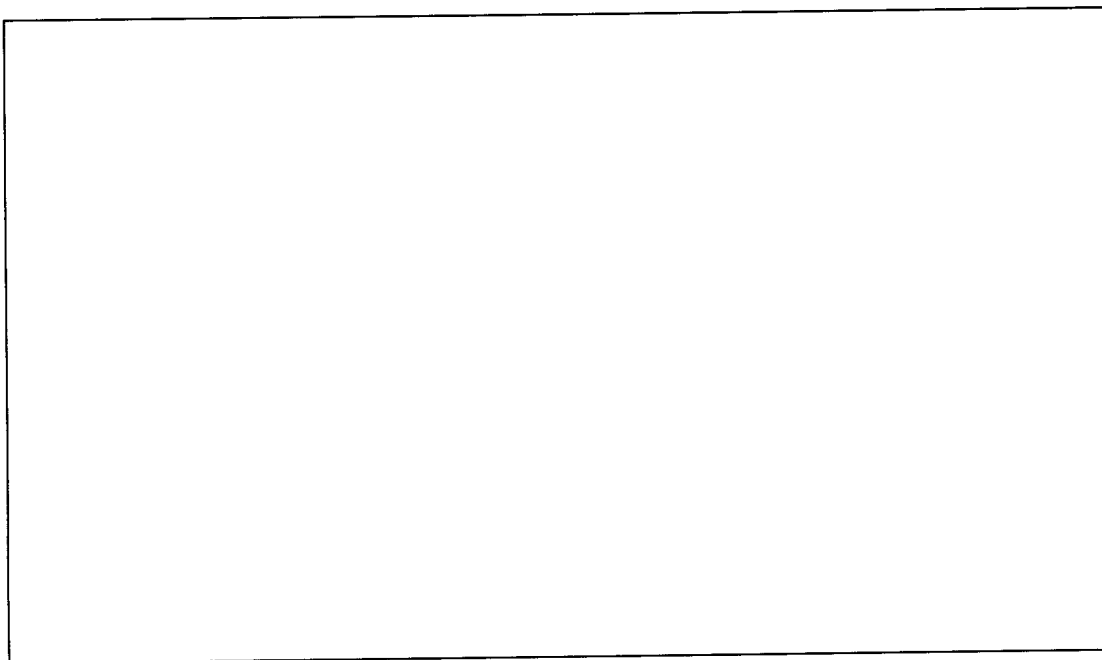
**Q17. Do you consider that there are other issues which need to be taken into account in the assessment of the impact on business?**



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

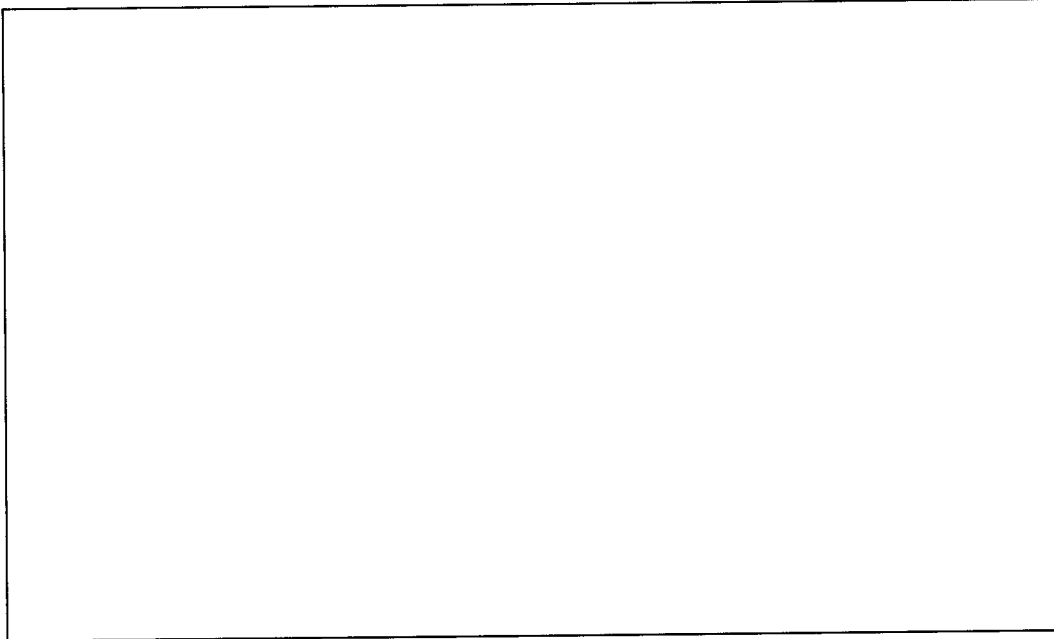


**Q19. What are your views on the identification and assessment of the costs and benefits?**



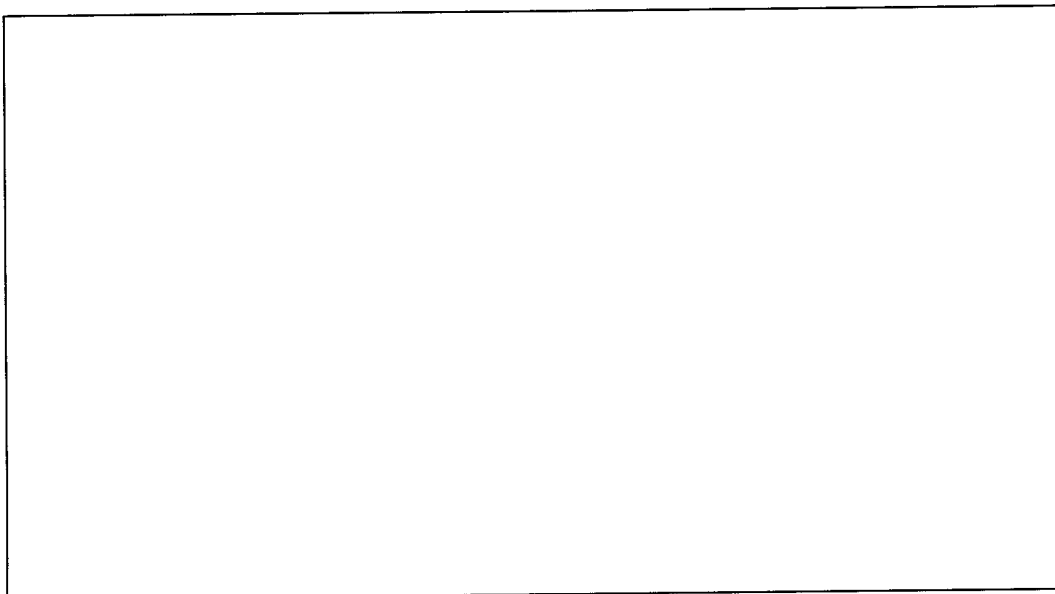
***Public Expenditure and Public Service***

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

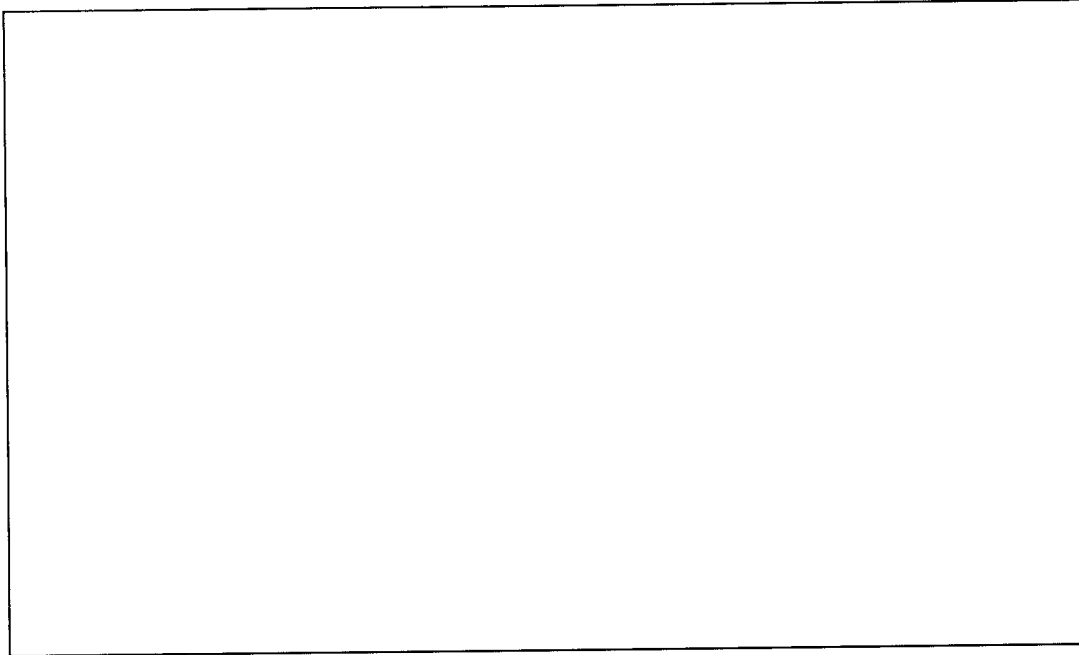


**Rural Proofing**

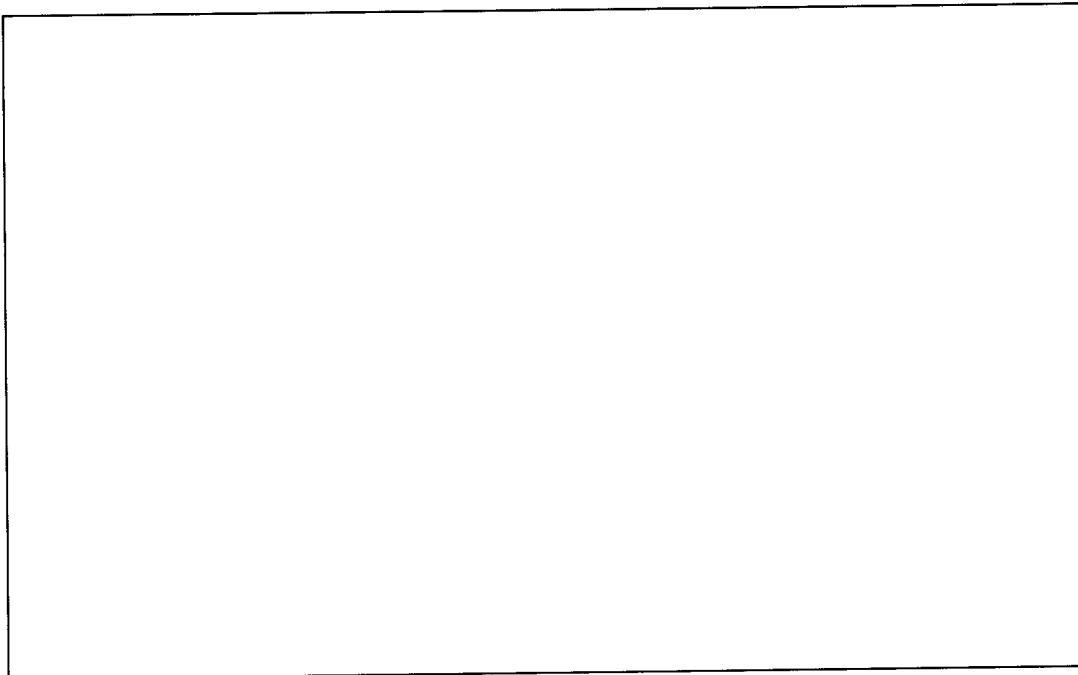
**Q21. Do you agree that the draft Order will not have a disproportionate adverse impact on rural business?**



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

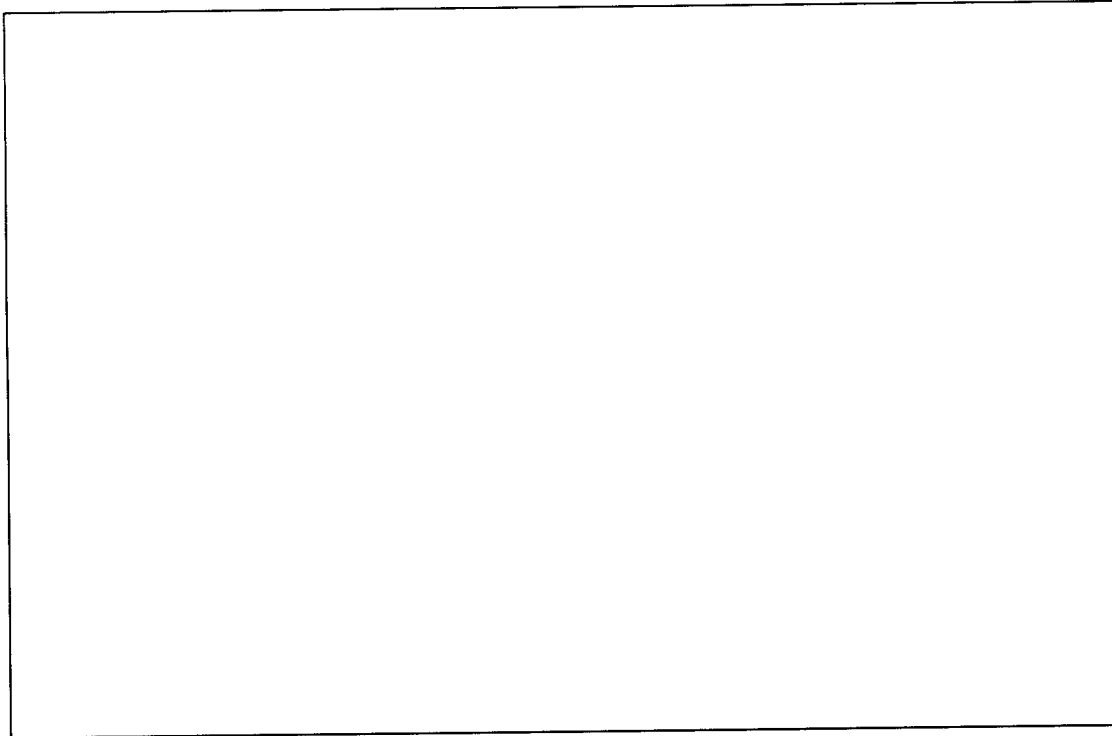
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**Q23. Is there any other material evidence which you consider should have been taken into account in this assessment of rural impacts?**

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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.**