

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

2 May 2006

Dear Investing for Health Team

### **Consultation on Draft Smoking (Northern Ireland) Order 2006**

As Chairman of the Health and Safety Executive for Northern Ireland (HSENI) I am responding to the above consultation on behalf the HSENI. This letter seeks to respond to the majority of the key areas identified in your questionnaire. In addition, given HSENI's role, the letter also considers in some detail the issue of how the Order might be enforced. I have identified in the text of the letter the particular questions we are attempting to answer following the numbering of the questionnaire.

HSENI, in its capacity as the regional authority for health and safety at work in Northern Ireland, fully supports the Health Minister's decision to introduce legislation which will protect employees and the public from second-hand smoke. This step will, we believe, play a major role in protecting the health of the Northern Ireland workforce. In short HSENI agrees with the definition of smoking and smoke-free premises as set out in the draft Order. **Questions 1 and 2.**

HSENI would be of the view that, unless there are compelling reasons, no exemptions should be granted. In all of this, the protection of the health of workers exposed to second hand smoke must always be the priority.

However, after consultation, if it is deemed appropriate to grant limited exemptions from the smoking ban e.g. in prisons in order to maintain good order/security; in psychiatric units to complement therapy and in hospices for compassionate reasons then all of these must be with the proviso that appropriate smoking control regimes are introduced and enforced.

#### **Question 3.**

- **Health and Safety Executive  
Northern Ireland**



HSENI does not see any merit in a fixed penalty notice procedure. Such an approach was not adopted in the Republic of Ireland and is viewed by many as simply an easy way to buy a way out of the ban. Reliance should be placed on proactive prosecutions particularly in the early days of the ban's introduction. In short HSENI agree with the offences and level of penalties but not fixed penalty notices procedures. **Questions 4 and 5**

HSENI has some difficulty making the leap from the tobacco control role Environmental Health Officers of District Councils presently have in enforcing the sale of tobacco products by shopkeepers to children, to enforcing a smoking ban in all designated premises.

HSENI is already tackling health issues and health inequalities in a workplace setting through its workplace health strategy *Working for Health?* This strategy which calls for a holistic approach to dealing with work related health issues including smoking is being taken forward by HSENI in the wide range of premises for which it has responsibility under the Health and Safety at Work Order (see Annex).

The District Council EHO approach to enforcement is also at odds with the Government policy on reducing administrative burdens on business by effective inspection and enforcement (H.M. Treasury Hampton Review 2005) Hampton calls for fewer regulators interfacing with business. Therefore why introduce another regulator viz the District Councils into those workplaces where HSENI already has a statutory role and a track record in dealing with health issues?

HSENI is cautioning against a District Council only approach to enforcement would suggest one similar to that adopted in the Republic of Ireland where our sister organisation, the Health and Safety Authority, and Environmental Health Officers (EHOs) both have a role to play.

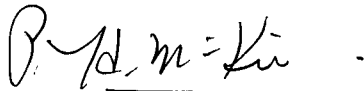
In Northern Ireland this would mean EHOs enforcing in those premises where they already enforce the provisions of the health and safety at work legislation notably the hospitality sector as well as in shops and offices leaving HSENI to enforce in the wide range of work sectors for which it has jurisdiction for health and safety at work legislation.

The attractiveness of this model lies not only in the parity of approach with the Republic of Ireland, but also in the fact that HSENI, which has led the drive to treat the workplace as a priority setting to tackle health issues and health inequalities, can build on the inroads it has already taken to deal with work based health issues including smoking. There is also benefit in this approach when it comes to some of the exemptions that might arise such as prisons and nursing homes which currently fall to HSENI under health and safety at work legislation. In these cases the management of permitted smoking will need to be carefully and sensitively addressed.

As the proposed legislation stands, inefficiencies and administrative burdens are foreseeable should District Councils enforce the smoking legislation in premises that are traditionally enforced by HSENI. We believe that keeping the regulation of the smoking ban in line with the arrangements that currently pertain to the occupational health and safety enforcement regime will be more cost-effective. **Question 6.**

HSENI would ask the Department and the Minister to give serious consideration to the above proposals, particularly those relating to enforcement. Uniquely in UK terms we have the opportunity to build on and exploit the success of the ban in the Republic of Ireland. That said much will depend on the similarity of the approach adopted rather than in any differences.

Yours faithfully



**Professor Peter McKie**  
**Chairman**  
**Health and Safety Executive for Northern Ireland**

## Annex

Work Sectors employing in the region of 450,000 workers which fall within HSENI's jurisdiction

- Construction
- Quarrying
- Mineral Extraction
- General Manufacturing
- Farming
- Forestry
- Health and Social Services including Nursing Homes and Psychiatric Units
- Ministry of Defence
- Police Service
- Fire and Rescue Service
- Ambulance Services
- Education – Primary, Secondary and Tertiary
- Railways
- Road Transport
- Hazardous Substances – Storage, Transport and Use
- Airports
- Docks and Harbours
- Prisons
- Public Utilities – Water, Gas and Electricity
- Central and Local Government
- Peripatetic Staff