

ITPAC

THE IMPORTED TOBACCO PRODUCTS ADVISORY COUNCIL

Submission to the Northern Ireland Department of Health, Social Services and Public Safety in response to the consultation on the Draft Smoking (Northern Ireland) Order 2006

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

1. INTRODUCTION

ITPAC represents the interests of 12 companies, which import tobacco products for distribution in the UK. The majority of these are small, private companies many of which are principally engaged in the distribution of specialist tobacco products such as cigars, pipe tobaccos and snuff.

ITPAC welcomes the opportunity afforded by the Northern Ireland DHSSPS's invitation for consultation on The Draft Smoking (Northern Ireland) Order 2006, and indeed contributed to the Consultation on the Province's 'A HEALTHIER FUTURE' paper in March 2005.

Having studied the Explanatory Memorandum, the Draft Order and the Integrated Impact Assessment in the Consultation pack, we would make the following comments on matters of principle in advance of responding to the specific points raised in the questionnaire:

The Health Risks of Environmental Tobacco Smoke

There have been many studies into the effects of ETS, and the research mainly focuses on statistical studies relating to non-smokers living with smokers in the home. We understand that there have been no scientific studies focused on smoking in 'public places'. Of the studies conducted, the findings have been inconsistent, and even where a positive association has been indicated, it has been of a very low order of relative risk and well below that normally regarded as being significant and indicating a causal link.

ITPAC believes that the scientific evidence, considered as a whole, does not demonstrate that ETS causes lung cancer, heart disease or other diseases in non-smokers. For this reason we believe that any legislation to ban smoking outright in all public places and workplaces with very limited exceptions is disproportionate.

2.

Freedom of Choice

Tobacco is a legal product and, as stated in the Integrated Impact Assessment, 26% of the people in Northern Ireland smoke. The intention of the authorities to reduce the incidence of smoking is understood, but it is possible with segregated smoking areas and proper ventilation to accommodate both smokers and non-smokers in a manner that respects the rights of those who do not wish to be exposed to the annoyance of tobacco smoke. ITPAC considers that restricting peoples' individual freedom of choice to smoke by prohibition or severe regulation is socially divisive and an infringement of individual rights. We believe that people, who choose to do so, should have the right to smoke themselves, or to permit others to do so if they are in a position to make that choice, providing they act in a responsible manner.

Additionally, from a trade perspective, we feel that a ban will significantly restrict the individual freedom of choice of employers/owners/operators to run their businesses according to their own best interests. It is our view that whether an establishment permits, prohibits or otherwise regulates smoking should rightly be a matter for those employers/owners/operators in concert with their employees to decide. Hospitality outlets (pubs, bars, restaurants, hotels) in particular are constrained by customer demand and commercial market forces. Where there is a requirement for an outlet to be smoke-free or for separate smoking areas, they will and do respond since, if customers have concerns about an outlet's smoking policy, they will express their individual freedom of choice with their feet and their wallets.

The Outcome of a Total Ban Policy

So far, with the exception of Ireland and Scotland, all EU countries introducing bans have included some acceptable provision for smokers in hospitality sector premises. It is too early to assess any patterns resulting from the Scotland ban, but it has become clear in the 2 years since the Ireland ban that, after an initial immediate downturn, the number of smokers and the level of tobacco consumption have not materially changed from pre-ban levels, merely that the patterns of behaviour by smokers have changed. The objective has thus so far failed in its objective of significantly reducing the incidence of smoking.

2. QUESTIONNAIRE RESPONSES

Question 1: Do you agree with the definition of smoking as set out in the draft Order?

Yes

Question 2: Do you agree with the definition of smoke-free premises as set out in the draft Order?

No. For the purposes of forward planning by a wide range of stakeholders the definitions of 'enclosed' and 'substantially enclosed' should be set out clearly in the Order. It is unreasonable to leave these

3.

definitions to the Regulations, given the likely investment decisions and associated timing implications which will be faced by many stakeholders.

Question 3: Do you think that hotel bedrooms, designated rooms, or areas within the following premises (hotel bedrooms, care homes, psychiatric units, prisons) should be exempt?

Yes

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

Yes, in the case of (i) Tobacco Importing Companies, and (ii) Specialist Tobacconists outlets.

(i) Tobacco Importing Companies:

There should be an exemption for Tobacco Importing Companies, for whom the ability to taste and test the tobacco products they import for quality and acceptability prior to distribution in the marketplace is an integral and essential part of their operations.

The exemption can be closely defined as to the reason for the activity (ie: sampling), the areas in which such activity can take place, and also the adults, including trade buyers, who should be allowed to participate in the process.

(ii) Specialist Tobacconists:

There should be an exemption for Specialist Tobacconists retail outlets, allowing adults to continue to taste and test tobacco products on their premises as part of their established business practice.

The exemption can be strictly limited to Specialist Tobacconists, which qualify under the official definition in the Tobacco Advertising and Promotion Act 2002 (TAPA), and the principle of monitoring this particular sector by the TSO network is already well established.

The exemption can be further defined by restricting the area within a shop where smoking can take place.

It is understood that there are only two such businesses in the Province which qualify under TAPA, so this exemption would have no substantial public health consequences, whilst it would protect the rights of these small businesses which would be disproportionately affected by the Order.

4.

Question 4: Articles 7, 8, 9 and 12 of the draft Order sets out the following order of offences and penalties.... Do you agree with the offences and level of penalties set out in the draft Order?

No comment.

Question 5: Do you agree with the fixed penalty notice procedures as set out in the draft Order?

No comment.

Question 6: Do you agree that smoke-free legislation should also be enforced by local district councils?

No comment

Question 7: Do you agree that the Department should take this power?

No comment.

Integrated Impact Assessment Overview

Question 8: 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
- (b) Rural
- (c) Environmental
- (d) Human Rights
- (e) Victims
- (f) Community Safety & Other Areas

No comment.

Question 9: Do you agree with the decision that the draft Order does not require a full equality assessment? If not please explain why.

No comment.

Question 10: Is there any other qualitative or quantitative information which you consider should have been taken into account in performing this exercise?

No comment.

5.

Question 11: 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 impact?

No comment.

Question 12: Are you aware of any other equality implications likely to arise from the draft Order?

No comment.

Question 13: Do you have any views on the assessment of health impacts?

No comment, other than that we are sceptical as to their degree of reliability as a base from which to form serious judgements.

Question 14: Are there any other potential health impacts that you consider should have been addressed?

No comment.

Question 15: Is there any other material evidence which you consider should have been taken into account in this assessment of health impacts?

No comment.

Question 16: Do you have any general comments on the overall approach that was taken in completing the RIA?

See response to Question 13.

Question 17: Do you consider that there are other issues which need to be taken into account in the assessment of the impact on business?

See 'Freedom of Choice' in Section 1 above.

Question 18: Do you agree with the analysis of the sectors and business/organisations which might be particularly affected by the introduction of this policy?

No comment.

Question 19: What are your views on the identification and assessment of the costs and benefits?

No comment.

6.

Question 20: Do you agree with the Department's view that a separate Economic Appraisal is not required?

No comment.

Question 21: Do you agree that the draft Order will not have a disproportionate adverse impact on rural business?

No. It will have a clear effect on rural business, in particular the hospitality trade in general and pubs in particular.

Question 22: Are there any rural impacts that you consider should have been addressed?

No further comment.

Question 23: Is there any other material evidence which you consider should have been taken into account in this assessment of rural impacts?

No further comment.

Question 24: Do you have any other comments or suggestions on the draft Order and/or the Integrated Impact Assessment Overview?

No.

W. H. Carver
Secretary-General
ITPAC

4th May 2006