

Promoting a Smoke-free Environment

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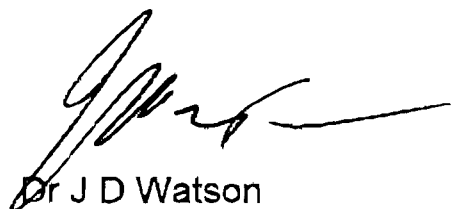
Dear Sir/Madam

DRAFT SMOKING (N.I.) ORDER 2006

Please find attached my response to the Draft Smoking (N.I.) Order 2006.

I look forward to further developments in this important area.

Yours sincerely



Dr J D Watson
Director of Public Health

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

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.

I also feel that entrances/doorways to buildings should also be controlled smoke free areas.

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

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

International evidence suggests that smoke free psychiatric hospitals and prisons are achievable.

Clear definitions of "exemption" and "a person's home" would be important. Staff and non smoking patients must be protected, any exemption should apply to clearly identified rooms only, not whole units or hospitals.

Furthermore, exemptions, if allowed at all should only be for those in long term residential care, not day care or short term stay.

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 smokefree 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.

I feel the focus needs to be on owner of premises being legally responsible, suggest that Articles 7 (7), 8 (4), 9 (5) should be delated and the level of fine for iii above should be increased to level 5.

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.

I would suggest that fixed penalties should be removed all together. Fixed penalties detracts from the key message and may contribute to non compliance.

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.

The Department should not only take the power but should also take action within the regulations to include raising the age to 18 years. Evidence would suggest that this measure combined with education may impact on smoking rates among young people. It would also send a powerful message that smoking is a major cause of death and illness. To have a lower age for purchasing tobacco than alcohol sends the wrong message to young people.

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?

I support the Departments view that no further assessment is needed for these areas.

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?

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 may be additional benefits to lower paid workers due to higher smoking prevalence rates amongst this group.

Partial Regulatory Impact Assessment (RIA)

(see Annex 3 of IIA Overview)

Health

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

I would support the work on this.

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?

Findings to date from Cross Border Study of bar workers.

Economic

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

I would support this approach.

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?

Yes

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

We would support what has been identified to date.

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

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

Thank you for taking time to complete this Questionnaire.