

# **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](http://www.dhsspsni.gov.uk/index/consultations/current_consultations.htm)

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

Northern Ireland Public Health Alliance Response  
May 2006

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### **Northern Ireland Public Health Alliance**

The Northern Ireland Public Health Alliance is a voluntary, independent membership organization. Membership is drawn from a variety of backgrounds including, housing, education, environmental health, health professionals, voluntary organizations, community initiatives, local authorities, other statutory sectors, consumer organizations, the private sector and individuals.

The mission of NIPHA is “Through our members, activities and co-operation with others, to be a unifying voice for the health and well-being of the citizens of Northern Ireland”.

Our values and principles include:

- Human rights, including equity and social justice
- Sustainable development
- Peace, respect and tolerance
- Responsibility and accountability for health
- Independence
- Empowerment

Under the NIPHA Charter we aim to:

- Act as a forum for debate
- Inform members of developments in public health
- Raise awareness of the determinants of the health of the public
- Promote the public health agenda
- Influence policy development

# 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.**

NIPHA agrees with the definition outlined and welcomes the inclusion of herbal cigarettes in the definition.

**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 checked="" 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 checked="" type="checkbox"/>
<b>Psychiatric Units</b>	<b>Yes</b>	<input type="checkbox"/>	<b>No</b>	<input type="checkbox"/>	<b>Don’t know</b>	<input checked="" type="checkbox"/>
<b>Prisons</b>	<b>Yes</b>	<input type="checkbox"/>	<b>No</b>	<input type="checkbox"/>	<b>Don’t Know</b>	<input checked="" type="checkbox"/>

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

NIPHA would propose that criteria are established, upon which exemptions can then be implemented. NIPHA recommends that criteria should consider:

- Length of time an individual would remain in a particular premise;
- Mobility of people to smoke outside of their place of residence which is also the workplace for others; and
- Length of time and proximity of which an employee would be subjected to second-hand smoke.

Premises with exemptions should be no-smoking, with restricted areas for smoking. Furthermore, where exemptions are in place they should apply only to those living in such premises and never to staff or visitors. We would propose that exemptions remain under review.

**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.**

In respect of Articles 7 and 8, NIPHA would propose that:

- Both these should be offences;
- If committed, these offences should warrant a lesser penalty than Article 9; and
- The proposed level 3 penalty is acceptable.

NIPHA believes that the proprietor of premises should be responsible for ensuring it is a smoke-free environment, unlike current proposals which suggest the person who manages the premises should take responsibility for preventing smoking. By placing the responsibility with the owner of the premises, it is more likely that the measures to prevent smoking will be implemented effectively. We believe that owners should be responsible for improving staff awareness, providing staff training and developing smoking policies within their premises.

With our proposed amendments, NIPHA believes that there will be a much higher level of compliance to Article 9 in achieving smoke-free workplaces. In terms of the proposed fine for an offence of Article 9, NIPHA would propose that this should be increased from level 4 to level 5, in line with other health and safety offences.

**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.**

NIPHA would not support the current proposals for fixed penalty notices for anything other than offences of Article 7. It is essential that breach of Articles 8 and 9 is reflected in the severity of the penalty to ensure that the correct message is sent out that breach of legislation will not be tolerated. We do not believe a fixed penalty to be an appropriate deterrent in ensuring compliance, nor does it permit practical enforcement.

**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.**

Given the current remit of District Councils in enforcing legislation in work premises through health protection functions, we would consider it appropriate that the same would take responsibility for enforcing smoke-free legislation.

**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  X

No

Don't know

**If you wish to comment, please do so here.**

NIPHA would support the proposal for DHSSPS to have power to raise the age limit for smoking from 16 to 18. Raising the age would also endorse the serious nature of smoking and the impact on health.

Increasing the age for smoking would also be in line with current legislation in the Republic of Ireland.

Raising the age at which cigarettes can be purchased will also make it more difficult those underage to purchase cigarettes.

## **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?**

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?**

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

(see Annex 3 of IIA Overview)

### ***Health***

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

NIPHA welcomes the health impact assessment of the proposed legislation.

**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?**

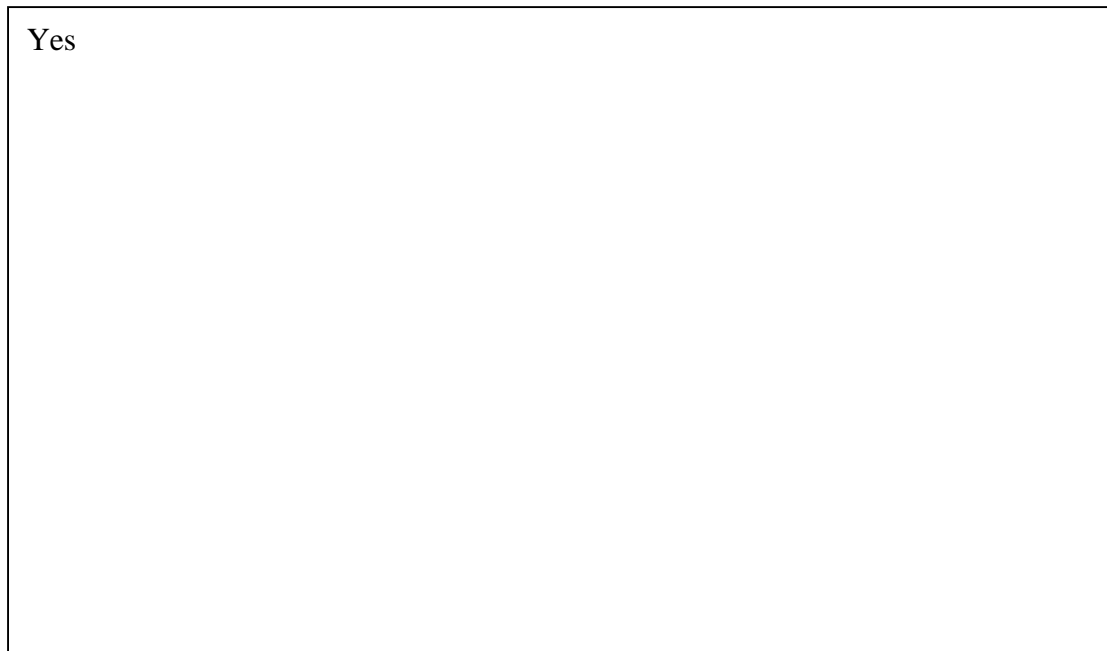
NIPHA welcomes the RIA.

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

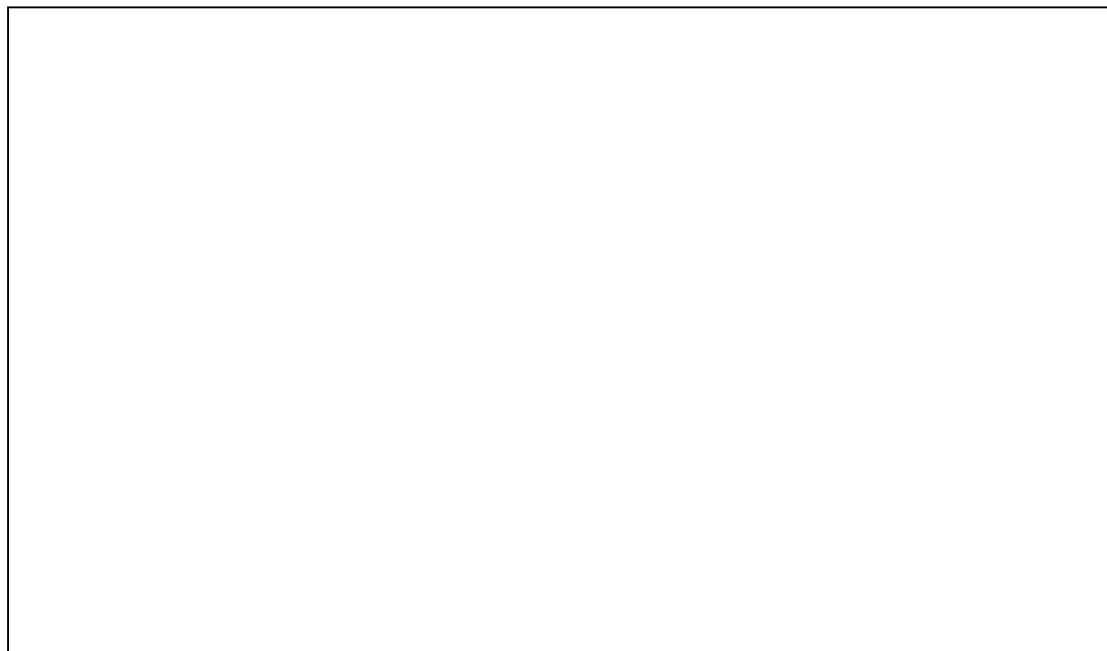
No

**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



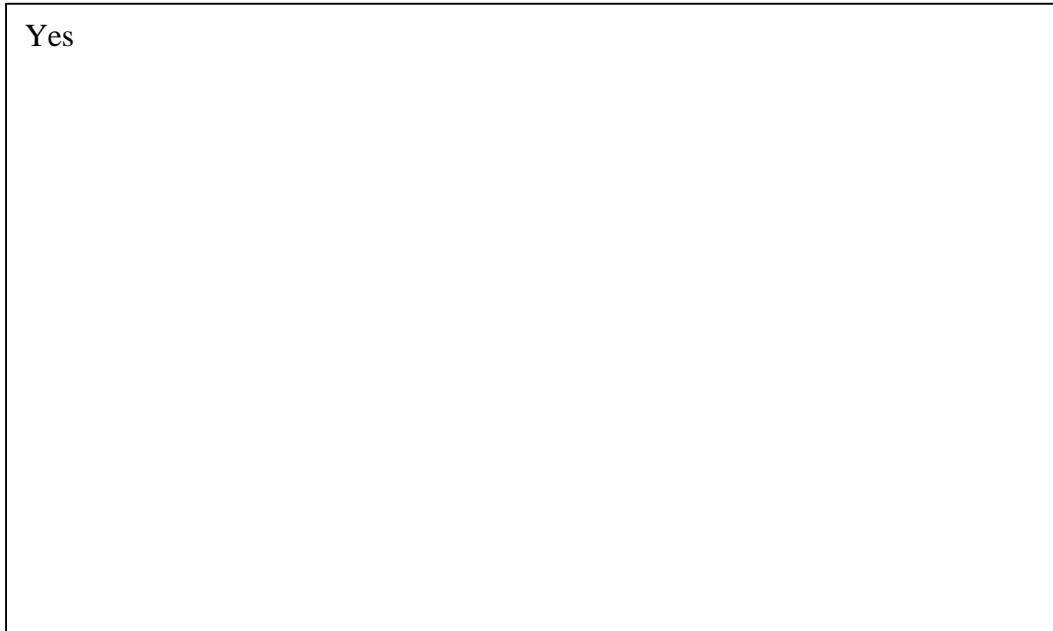
**Q19. What are your views on the identification and assessment of the costs and benefits?**



***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.**