

Draft Smoking NI Order 2006 econsultation on-line response

North Down and Ards Response

Q1: YES

Q1a: The broad definition of smoking should remain in order to prevent enforcement difficulties.

Q2: YES

Q2a: The definition of smoke-free premises hinges upon the understanding of what constitutes "the public" .We agree with the definition provided that members of a club, whether licensed or not, are members of the public or a section of the public. If this is not the case the definition needs to be more explicit.

Q3a: NO

Q3b: NO

Q3c: NO

Q3d: NO

Q3e: We believe the smoke-free legislation should be as comprehensive as possible and that all workers should be afforded the same level of protection. We do acknowledge that this will create some practical difficulties and expect that others will have views on these matters.

Q4: NO

Q4a: We are broadly content with the four offences as set out in the Draft Order. However we have some reservations concerning the meaning of Article 9(1) in relation to the person "who controls or who is concerned with the management of the premise". It is our opinion that the offence should extend to cover the person "who controls or who is concerned with the management of the premise" whether present or not. Furthermore it is essential that the phrase "cause a person smoking there to stop smoking" must include actions such as having a smoking policy in place, training staff and ensuring that the policy is implemented. It is our view that the owner of a business must be held responsible for the inaction of his staff if they fail to cause a person smoking there to stop smoking.

Penalties

In relation to the offence of failing to prevent smoking in smoke-free places (Article 9) we feel the level of the penalty should increase to level 5 so as to be consistent with other legislation for example health and safety.

Defences

Burden of proof. In respect of Articles 7(7), 8(4), 9(5) it is our view that these subsections of the articles are not necessary and it should be for the defendant to establish the defence and not for the prosecution to disprove it if an issue is raised.

In relation to the defence available for breach of Article 9(1) set out in 9(4)(b) we believe that this would create enforcement difficulties in relation to prosecution of the person "who controls or who is concerned with the management of the premise" who are not present while the person is smoking, the defence relates to a lack of knowledge of this specific person smoking. We feel that this defence is not necessary given the defence available in 9(4)(a).

Q5: NO

Q5a: We believe that fixed penalty notices are only appropriate for Article 7 offences. Fixed penalty notices have not been used in the Republic of Ireland where controls have been introduced successfully. There is evidence from British Columbia that fixed penalty notices for this type of offence are not effective. (Ref: Tobacco Control 2003:12:264-268). We believe that breach of this legislation is a serious matter and the use of fixed penalties does not create the correct image in terms of being a deterrent and ensuring compliance. The issuing of fixed penalty notices may also create enforcement difficulties. Experience from the Republic of Ireland indicates that sensible enforcement will not result in large numbers of cases going to court, to date there have been 36 prosecutions. The use of fixed penalty notices would also create different regimes in cross-border areas. We also believe that persistent breaches of this legislation should be relevant for consideration!

by the Licensing Authority when applications for liquor licence renewals are made. Development. DHSSPS-NI should liaise with the Department of Social Development to ensure that this link is included in the new licensing system.

Q6: YES

Q6a: We believe that district councils should be the sole enforcing authority. District councils currently enforce legislation in large numbers of premises through functions in relation to health and safety at work, food hygiene, environmental protection entertainment and petroleum licensing, consumer protection, public health and noise control. District councils currently enforce other tobacco control functions and the addition of this responsibility would help to provide a focus for public health issues within district councils. District councils are currently working with other partners such as Investing for Health Partnerships, Health Promotion Commissioners, Smoking Cessation Co-ordinators, Health Promotion Officers, Health Promotion Agency, representatives of the business community and charities to ensure the objectives set in the Tobacco Action Plan are met.

Q7: YES

Q7a: We believe that it is prudent for the department to take this power and perhaps through regulations consult on increasing the age limit to 18.

Q8: No

Q9: Yes

Q10: No

Q11: No

Q12: It is our opinion that all workers should be afforded equal protection by this legislation. In the event that the exemptions that have been suggested are incorporated into the legislation, workers in those exempted areas will not be afforded the same level of protection as others. The exemptions may also exacerbate health inequalities, as some of the workers will be from lower socio economic groups.

Q13: No

Q14: No

Q15: No

Q16: No

Q17: No

Q18: Yes

Q19: There is a presumption that the costs of signage would be borne by business but we feel it may help compliance if there was central production and distribution of signage for all smoke free premises.

Q20: Yes

Q21: Yes

Q22: No

Q23: No

Q24: This response is presented by North Down Borough Council following its meeting on 25th April 2006.