

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

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.

The definition of partially enclosed is critical to the impact of the ban, and the regulations should specify very strictly the precise definition. In Scotland, it is over 50% enclosed but there are pressures in England for this to be reduced.

Regulations need to be drafted carefully to ensure all areas where people gather are captured, including station platforms, bus shelters, sports stadia etc. It would be helpful to specify restrictions around doorways and porches to avoid a smoking ghetto immediately outside public buildings, which can be intimidating and which does not support smoking cessation for those attempting to give up.

The College believes that the detail within the regulations is critical to the impact of the legislation, particularly as all changes must be laid before the Assembly.

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

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

It is critical that the presumption within these establishments is for non-smoking, and that designated rooms only in some types of residential accommodation may be exempt. Psychiatric units may be day, outpatient or residential and may be integrated with other health facilities, and there should be no presumption that all healthcare facilities for such patients should be exempt. The regulations should restrict smoking only to designated rooms in areas which are effectively the smoker's home for a significant period of time.

It is important that the definitions and regulations do not leave open to any doubt the inclusion of private clubs within the scope of the ban. These should not be exempted.

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.

The College considers that the penalties should be sufficient to encourage compliance, but has no specific comments on the precise levels.

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.

Early enforcement will be critical to success and fixed penalty notices provide a quick and visible solution, provided that the resources are available to support surveillance.

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.

Resources available to support the implementation of such an important public health measure will be stretched, and broadening the team responsible is welcome.

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 College is in favour of all measures to encourage smoking cessation and prevent young people starting. However, if the enforcement of the 16 year rule is already limited, it is difficult to see whether this change will be effective. Additional communications, surveillance and enforcement measures will be required for this desirable change to have an effect.

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?

The right to life (Human Rights Act) gives the health protection measures within the legislation priority over any rights to smoke if this endangers the health of others.

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 - this is a health protection measure for all sectors of the population.

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?

There may be early implementation challenges for organisations with significant numbers of smokers. Additional support to encourage smoking cessation and dialogue over the evidence and the principles within the legislation should support implementation and minimise conflict.

Q12. Are you aware of any other equality implications likely to arise from the draft Order?

This legislation is about ensuring all have an equal opportunity to avoid the dangers of tobacco smoke when in a public building.

Partial Regulatory Impact Assessment (RIA)

(see Annex 3 of IIA Overview)

Health

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

The evidence of the dangers of passive smoking are incontrovertible, and this legislation will bring health benefits.

Q14. Are there any other potential health impacts that you consider should have been addressed?

No further comment.

Q15. Is there any other material evidence which you consider should have been taken into account in this assessment of health impacts?

The College has taken an active part in the campaign for the ban in Scotland and continues to press the Westminster Parliament for similar legislation. All the evidence compiled by ASH Scotland should be available to Northern Ireland.

The “de-normalising” of smoking is an important aspect of this legislation - to discourage young people from starting and support smokers who wish to stop.

Economic

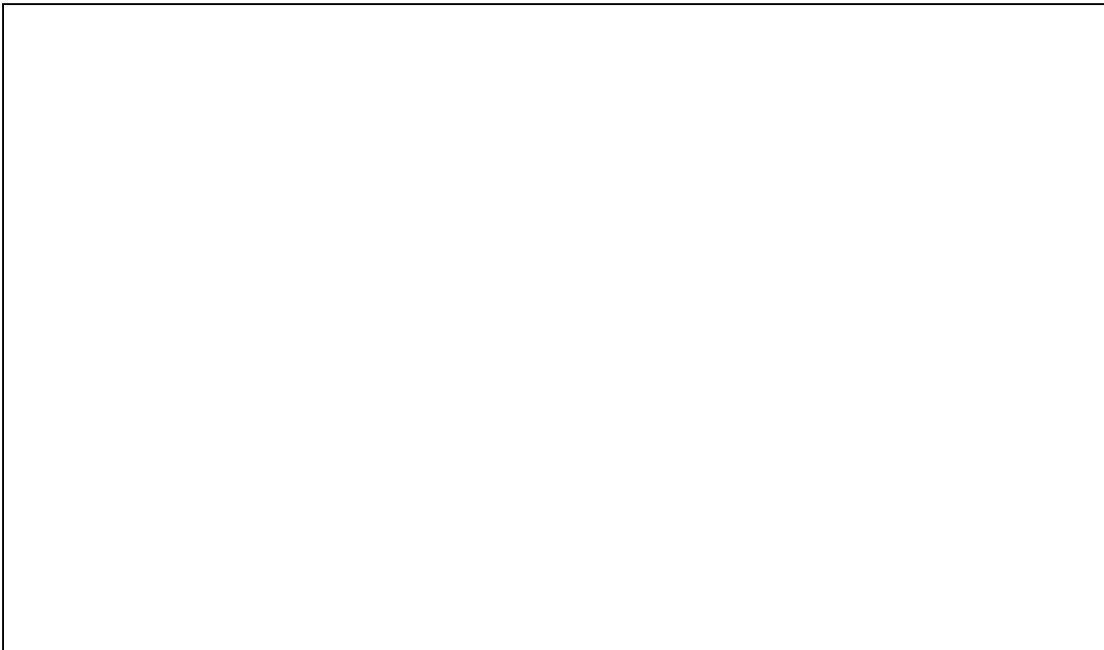
Q16. Do you have any general comments on the overall approach that was taken in completing the RIA?

No further comments.

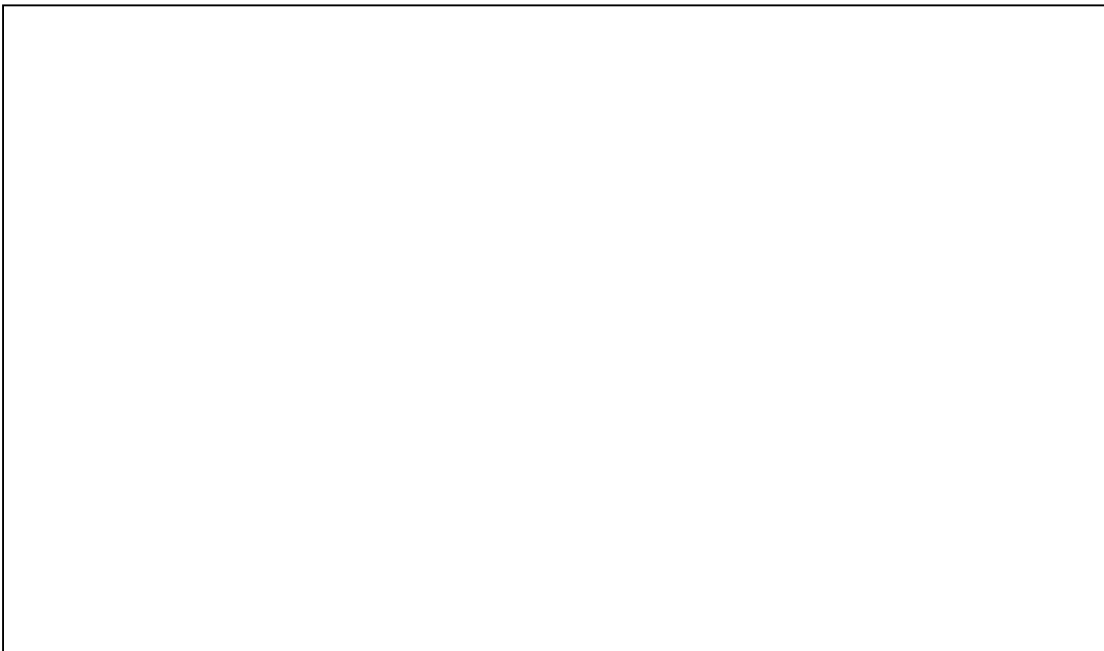
Q17. Do you consider that there are other issues which need to be taken into account in the assessment of the impact on business?

Early experience in Scotland of raised turn-over in pubs since the ban may influence some of the modelling in Northern Ireland.

Q18. Do you agree with the analysis of the sectors and business/organisations which might be particularly affected by the introduction of this policy?



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?

Yes.

Q22. Are there any rural impacts that you consider should have been addressed?

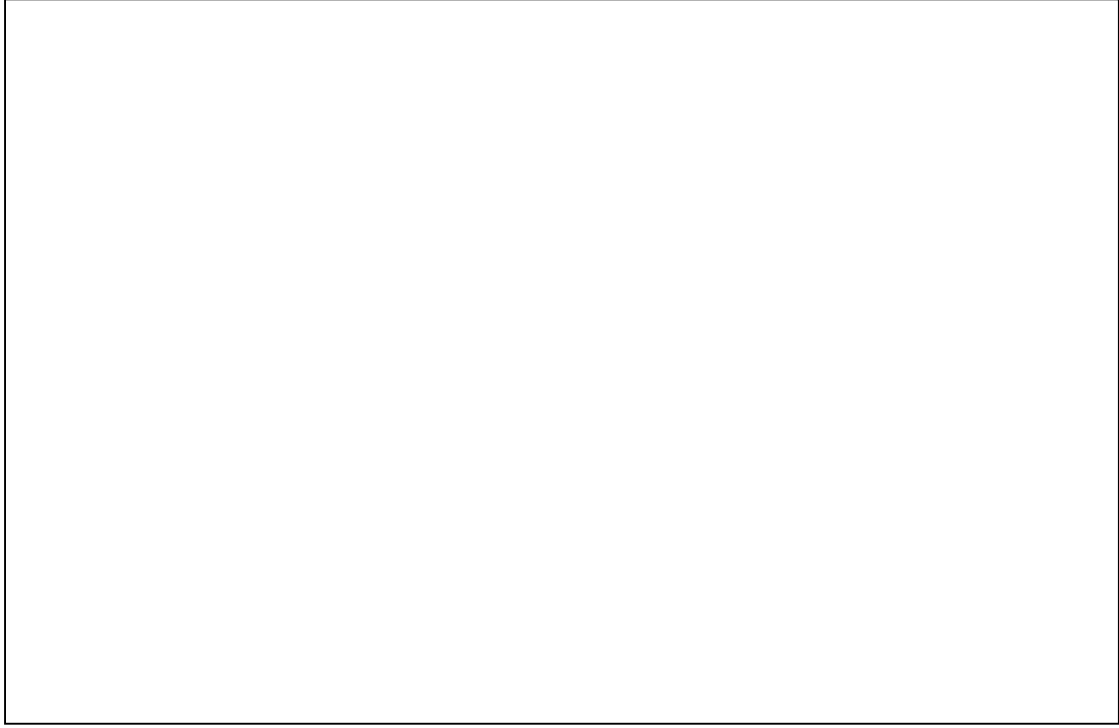
It would be helpful to consider the effects of the ban in the Republic of Ireland in rural areas specifically.

Q23. Is there any other material evidence which you consider should have been taken into account in this assessment of rural impacts?

See Q.22, above.

Additional Comments

Q24. Do you have any other comments or suggestions on the draft Order and/or the Integrated Impact Assessment Overview?



Thank you for taking time to complete this Questionnaire.