

Royal College
of Nursing
Northern Ireland

Investing for Health Team (Tobacco Control)
DHSSPS
Room C4.22
Castle Buildings
Stormont
Belfast BT4 3SQ

Royal College of Nursing
17 Windsor Avenue
Belfast BT9 6EE

Telephone 028 90 668 236
Fax 028 90 382 188
john.knape@rcn.org.uk

4 May 2006
JK/JK

Dear Sir/Madam

RCN Northern Ireland response to a DHSSPS consultation on the draft Smoking (Northern Ireland) Order 2006

I am pleased to enclose the response of the Royal College of Nursing Northern Ireland in respect of the above consultation.

This response represents the culmination of an extensive process of engagement with RCN members and staff and we hope that our response is helpful to the DHSSPS.

I also append an appendix setting out the RCN's reasons for opposing the granting of any exemptions, particularly in health and social care establishments, together with a new RCN publication that addresses concerns about how community nurses can also be protected from the effects of second-hand smoke.

Yours sincerely

Dr John Knape
Public Affairs Adviser

Enclosures: Response of the Royal College of Nursing Northern Ireland
Appendix
Protecting community staff from exposure to second-hand smoke

**Royal College of Nursing
of the United Kingdom**
20 Cavendish Square
London W1G 0RN
Telephone +44 (0) 20 7409 3333
Fax +44 (0) 20 7647 3433
RCN Direct 0845 772 6100

Patron
Her Majesty the Queen

President
Sylvia Denton OBE, FRCN

General Secretary
Beverly Malone RN, PhD, FAAN

Director, RCN Northern Ireland
Mary Hinds

***The RCN represents nurses
and nursing, promotes
excellence in practice and
shapes health policies***

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.

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

RCN Northern Ireland does not wish to suggest any further exemptions but we do wish to record our reasons for opposing the above exemptions, particularly in relation to health and social care establishments. These are set out in an appendix to this consultation response questionnaire.

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.

We congratulate the DHSSPS on having the courage to set reasonably robust penalties for breaching the legislation and trust that these penalties will be consistently and unswervingly enforced. However, we believe that penalties should be targeted at the owners of premises, rather than managers. Moreover, not all premises will have an individual owner, particularly within health and social care services.

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.

Rather than fixed penalties, we believe that the example of the Republic of Ireland should be followed whereby instead offences lead to prosecution and a fixed fine. This has produced high compliance rates and low prosecution rates.

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.

RCN Northern Ireland supports the legislative provision for the DHSSPS to specify the legal age for the purchase of tobacco and believes that there is strong case to be made for supporting an increase in the age limit to 18. This is based on two principal considerations. Firstly, medical evidence suggests that, at the age of 16, a young person's lungs and bronchial system may not always be fully developed. Anything that helps to postpone the onset of smoking will therefore be of medical benefit. Secondly, and irrespective of its practical impact, increasing the age limit will serve as an effective expression of Northern Ireland society's increased acceptance of the health-related arguments against smoking.

In formulating its position, we urge the DHSSPS, perhaps through the offices of the Northern Ireland Commissioner for Children and Young People, to consult young people themselves on this issue before adopting a definitive position.

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?

No.

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. We believe that the draft Order will promote equality of opportunity and good relations.

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

No.

Partial Regulatory Impact Assessment (RIA)
(see Annex 3 of IIA Overview)

Health

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

No.

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

No.

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

No.

Economic

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

No, but we urge the DHSSPS to regard with caution some of the more outlandish claims being made by the alcohol lobby regarding the likely impact of the legislation on employment in pubs and bars. Firstly, there is no evidence from the Republic of Ireland or any other jurisdiction that has enacted similar legislation that a smoking ban leads to job losses in the hospitality sector. Secondly, even if this were to be true, the RCN does not believe that it would constitute a sufficiently compelling reason for failing to enact such a ban.

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?

In broad terms we endorse the analysis provided in the explanatory memorandum to the draft Order.

Public Expenditure and Public Service

Q20. Do you agree with the Department's view that a separate Economic Appraisal is not required?

Yes.

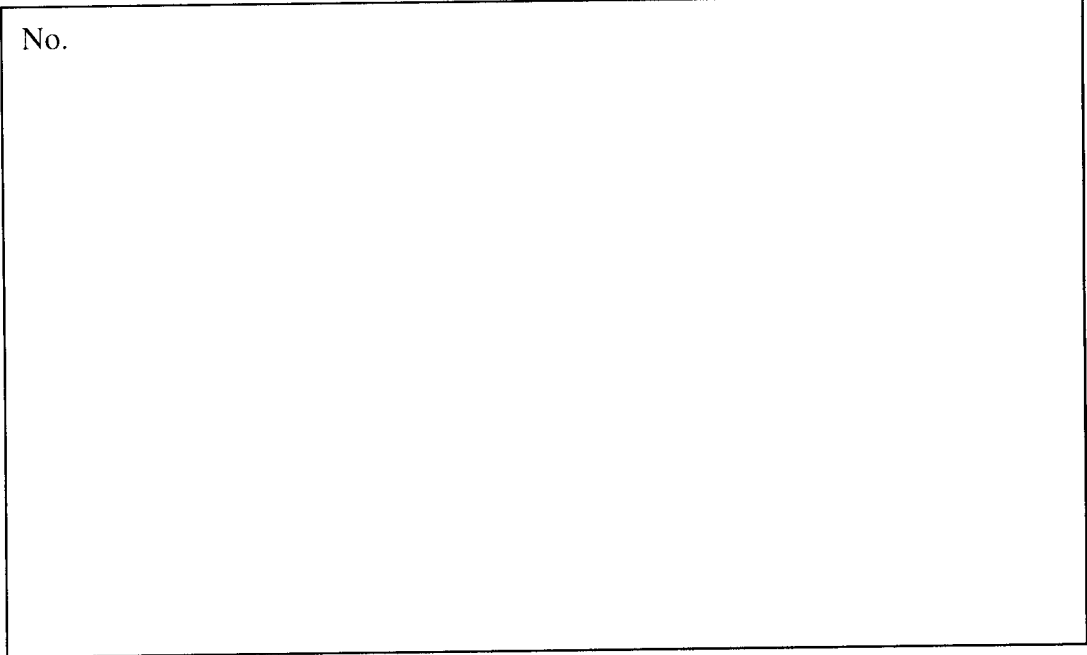
Rural Proofing

Q21. Do you agree that the draft Order will not have a disproportionate adverse impact on rural business?

Yes.

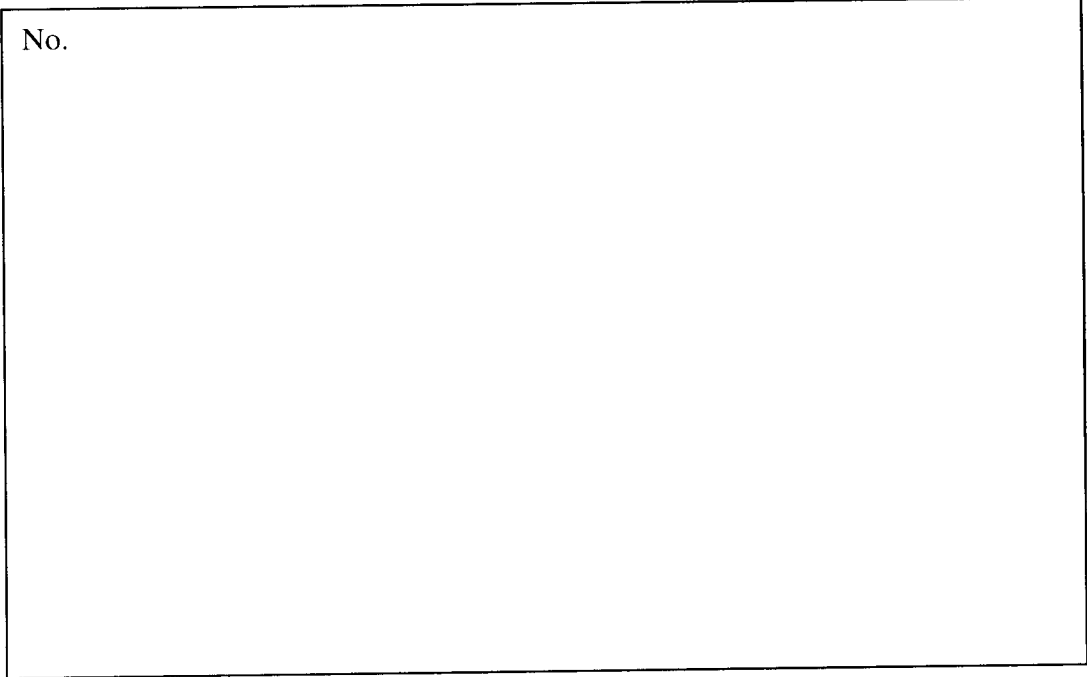
Q22. Are there any rural impacts that you consider should have been addressed?

No.



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

No.

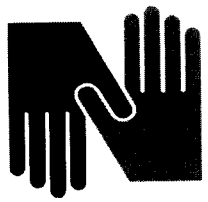


Additional Comments

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.



Royal College of Nursing Northern Ireland

Appendix to the response of the Royal College of Nursing Northern Ireland to a DHSSPS consultation on the draft Smoking (Northern Ireland) Order 2006

Background

- 1 The Royal College of Nursing [RCN] represents nurses and nursing, promotes excellence in practice and shapes health policy. The RCN in Northern Ireland represents around 13,000 registered nurses, nursing student and health care support workers. Across the United Kingdom, we have around 380,000 registered nurse, nursing student and health care support workers.

Introduction

- 2 RCN Northern Ireland welcomes the opportunity to respond to this consultation. Our members engaged proactively with the campaign to enact a workplace smoking ban in Northern Ireland and we warmly welcomed the Minister's announcement last year of his intention to introduce the necessary legislation with effect from April 2007. Recognising the potential strength of feeling amongst nurses on this issue, our response to the draft legislation, as set out in the consultation response questionnaire, is based upon extensive and open consultation with our membership on the key issues.
- 3 Many RCN members contributed their views on the question of exemptions, particularly in relation to health and social care premises. An overwhelming majority (in the region of two-thirds) of those RCN members who submitted their views on this issue have opposed the granting of any such exemptions. Because the consultation questionnaire does not provide sufficient space to enable respondents to explain their decision either to support or oppose exemptions, we have set out below our views on this issue. We hope that these will both prove helpful to the DHSSPS in finalising the legislation and serve as an accurate record of the collective view of RCN Northern Ireland members on this issue.

The case against exemptions: the health and safety of all nurses

- 4 There are a number of reasons why RCN Northern Ireland opposes any such exemptions. Firstly and fundamentally, we believe that our over-riding duty, as a trades union and professional organisation for nurses, is to promote the well-being of our membership. All nurses, regardless of the specific environment in which they practise, are entitled to enjoy the same right to work in a smoke-free environment as other workers in Northern Ireland will enjoy from April 2007. We do not believe that it is sustainable to suggest that some nurses should be

protected from second-hand smoke whilst others (such as those practising in mental health settings or nursing homes, for example) should not. The campaign to secure a workplace smoking ban in Northern Ireland has been won on the basis of the health and safety at work argument and we believe that this principle is inviolable regardless of the nature of the specific workplace.

The case against exemptions: mental health settings

- 5 RCN Northern Ireland recognises that a significant minority of our members believe that, however, desirable it may be to promote a smoke-free environment, permitting smoking in certain circumstances, particularly amongst clients who present with challenging behaviours, can be a useful de-escalation technique and, as such, can help to mitigate the threat of aggression being directed towards nurses and other health care professionals. On balance, however, we do not find this argument convincing. Many of our members have commented that it can never be acceptable for nurses to promote the use of tobacco as a therapeutic tool, regardless of the client group. Others have cited the wider health inequalities amongst people with mental health problems and have expressed concern that continuing to permit smoking in such settings will simply exacerbate these inequalities.
- 6 Other RCN members have observed that it is patronising to assume that people with mental health problems are either incapable of or unwilling to comprehend the health arguments in favour of smoking cessation. Some have made reference to areas of good practice in the Republic of Ireland where a smoke-free environment in mental health settings has been achieved through providing health promotion advice and smoking cessation support in a manner that is specifically tailored towards this client group.

The case against exemptions: nursing and residential care homes

- 7 With regard to nursing and residential care homes, there is a school of thought that such institutions are, for patients or residents, their own home and, as such, that it is impracticable and undesirable to impose a complete smoking ban. Some have even tried to suggest that to do so would breach the human rights of the patient or resident who wishes to smoke, particularly in their own bedroom area. Again, we do not find this argument convincing. Such establishments are workplaces in exactly the same way as an acute hospital or a GP surgery is a workplace for those nurses and other health and social care professionals who practise therein. Furthermore, the RCN does not accept that anybody has an inalienable human right to inflict second-hand smoke, with its attendant dangers, on any other person.

The case against exemptions: community settings

- 8 Whilst we accept that the draft legislation does not seek to address the protection of those for whom their workplace is, in whole or in part, another person's private residence, we urge the DHSSPS to consider urgently how appropriate protection

can be extended to district nurses, health visitors, community midwives, community psychiatric nurses and others who are in this position. As stated at paragraph 4, we believe that all our members are entitled to be protected from the dangers of second-hand smoke and we would be pleased to work with the DHSSPS and others to secure a workable and practical means to achieve this. We append for the information of the DHSSPS *Protecting community staff from exposure to second-hand smoke*, a new RCN publication that provides guidance on this issue.

Further information

- 9 For further information about the work of the RCN in support of nurses and patient services in Northern Ireland, please contact Dr John Knape (Public Affairs Adviser) at john.knape.rcn.org.uk or by telephone on 028 90 668 236.

May 2006