

**Office of the Chief Executive
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4 May 2006

Investing for Health Team (Tobacco Control)
Department of Health Social Services and Public Safety
Room C4.22
Castle Buildings
BELFAST BT4 3SQ

Dear Sir/Madam

The Draft Smoking (Northern Ireland) Order 2006 - Public Consultation

Please find enclosed response on behalf of the Southern Health and Social Services Board and Southern Area Tobacco Control Group to the above Public Consultation Document.

Yours faithfully

C Donaghy
Chief Executive

Enc

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.

The Board welcomes and agrees with the definition of ‘smoking’ and how the definition refers to smoking tobacco or anything which contains tobacco, or smoking any other substance.

This will take account of herbal cigarettes, the precise health risks to date are uncertain, the presence of smoke causes discomfort and can provoke illness in susceptible individuals, such as those with asthma.

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 Board believes that smoke-free premises should not permit smoking within 50 yards of the entrances of the building, to prevent smoking zones at entrances and exits of buildings.

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

The policy objective is to protect employees and the general public from exposure to second-hand smoke.

Hotel Bedrooms - The Board firmly believes that hotel bedrooms present no convincing argument for exemption.

Care Homes - Consideration should be given to exempting facilities that may be regarded as a person’s home, however further consideration will be necessary regarding how ‘home’ is defined. Exemptions should be restricted as far as possible with smoke free provision only being available within a building rather than exempting whole buildings and any agreed exemption should not apply to staff or visitors to the facility but solely to those who use the building as a ‘home’

Psychiatric Units - The Consultation document makes references to psychiatric

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 Board has concerns that the level of penalty is not an adequate deterrent.

The Board agrees that the offence of smoking in a smoke-free premises and the offence of not displaying appropriate signage should get a lesser penalty than the owner of the premises.

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.

A system of fixed penalties should not apply; this could potentially encourage risk taking behaviour. The route of application of penalty should be by prosecution through the Courts.

Fixed penalties have not been used in RoI, instead offences

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.

Yes, The Board would be in support of smoke-free legislation being enforced by District Councils.

District Councils already have links with our Southern Area Tobacco Control Group and other Tobacco Control Groups.

District Councils are expected to have a Community Planning role in the future which will enable them to take a strategic view of smoking and related health issues.

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 Board would encourage the DHSSPS to include the change in age to 18 in the package of legislation for adoption rather than the right to change the legislation.

It would be appropriate to ensure a consistent message on sales of alcohol solvents and tobacco. At present tobacco might be perceived as being less damaging because it can be purchased at 16 years of age.

If 18 were the adopted age for sales it would allow consistency across the island of Ireland.

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 Board support the DHSSPS view.

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 are higher prevalence rates for smoking in lower socio-economic groups; therefore the legislation could particularly benefit lower paid workers.

The equality section does not refer to the Partial Regulatory Impact Assessment and it needs to acknowledge this (workforce of tobacco manufacturers are mainly from one equality 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?

The Board supports the work done on the Health Impact Assessment of the proposed legislation.

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

- The benefits of smoke-free schools.
- The benefits of smoke-free legislation for pregnant smokers/non-smokers and their babies.
- Effects of delayed wound healing in smokers and longer hospital stay.

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

The recent 'Harvard School of Public Health paper on How Smoke-free Laws Improve Air Quality in Bars' could be included.

Economic

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

The Board support response.

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, this appears to be a comprehensive piece of work.

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

The Board supports what has been done but believe that, based on the research commissioned by the Scottish Executive, the main benefit may be from the reduction in smoke breaks.

This is an important point which may be worth highlighting to businesses, as part of the DHSSPS smoke-free legislation.

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

The Board supports the work that has been done on this, and note that the identified economic benefits in relation to reduced smoking breaks also has clear positive health impacts for workers.

It does appear there is an assumption that businesses will meet the costs of signage that will be required as part of the implementation of the legislation, the Board would suggest that a co-ordinated approach in this regard might lead to a standardised and consistent approach by businesses.

The Board believes that if signage was produced and distributed from a central source, this would result in a higher level of compliance.

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?

The Board believes that there will be no adverse rural impact.

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?

The Southern Health & Social Services Board regards this legislation to be very important and potentially very effective in relation to public health.

The Northern Ireland Human Rights Commission has stated that it recognises as a human right the right of all bar workers in Northern Ireland to protection from exposure to smoke and that Government is therefore obliged to adopt and implement legislative or other measures providing effective protection.

The Board welcomes the opportunity to be involved in this consultation exercise.

We look forward to receiving notification of the outcomes of this consultation exercise when available.

Thank you for taking time to complete this Questionnaire.