

03 May 2006

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

Dear Sir/Madam

RE: Draft Smoking (Northern Ireland) Order 2006

Attached please find United Hospital Trust's completed questionnaire in response to the public consultation on the Draft Smoking (Northern Ireland) Order 2006.

Yours faithfully



Miss Bronagh Scott
Director of Nursing and Allied Health Professions

Enc

DHSSPS /letter/aw **Awarded for Excellence**



- Physiotherapy Service
- Children's Services, Mid Ulster Hospital
- Cardiac Department, Antrim Area Hospital
- Outpatient Department, Mid Ulster Hospital
- Respiratory Service, Antrim Area Hospital
- Day Procedure Unit, Whiteabbey Hospital

- Day Surgery Unit, Antrim Area Hospital
- Day Rehabilitation Unit, Whiteabbey Hospital
- Hotel Services, Mid Ulster Hospital
- Neonatal Unit, Antrim Area Hospital
- Theatre Department and Acute Pain Clinic, Mid Ulster Hospital



INVESTOR IN PEOPLE

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 is unclear as it appears to contradict itself eg point 3(2) (in the Order document) specifies that premises are smoke-free only when open to the public, however, point 3 (2b) says that premises are smoke-free all of the time.

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

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

(Hostels have not been mentioned above) Suggest hotel bedrooms in a specified area with the best mechanical ventilation available.
 Need wider consultation with the Psychiatric/Mental Health specialists.
 Care Homes should have a designated smoking area with good mechanical ventilation away from the normal living space of the residents.
 In prisons could smoke outside and in a designated area. Could be sharing a cell with a non smoker. Still need to protect employees. Should not be allowed to smoke continuously as this exacerbates the problem.

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.

Point (iii) may be difficult for a 'concerned' person to prevent someone from smoking but if they don't they are committing an offence. How would you manage the situation if someone refuses to stop smoking and are breaking the law?

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.

Will be difficult to implement, need consistency with the council areas.
Point 10 (1) Page 12 of the Order allows a district council officer to give a penalty notice even if they only suspect an offence. This is open to misinterpretation.

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.

Agree that it should be brought into line with eg the legislation on purchasing alcohol etc at 18 years of age. It is setting a good health standard for the population.

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?

There is a community safety issue in relation to smokers smoking in places where they shouldn't and also not extinguishing cigarettes properly etc.

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?

Does not require a full equality assessment.

Q10. Is there any other qualitative or quantitative information which you consider should have been taken into account in performing this exercise?

Not aware of any.

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?

Good relations with some businesses eg Gallahers and small tobacconist shops and roadside cafes etc.
In a hospital setting if you let a dying person etc smoke a cigarette would it be deemed to be breaking the law?
There is an exemption in our current Trust policy to allow a patient with a terminal illness to smoke as this would be within their human rights to do so. Perhaps such an exemption should be built into this Order as well.

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

Not aware Not aware of any.
Blind people obviously will not see the signs. May need some other way as an addition to say the hospital or business is smoke-free.
Suggest changing the term 'blind people' to 'people with a visual disability'. Should also include patients whose first language is not English, as they may not be able to understand signage as well.

Partial Regulatory Impact Assessment (RIA)

(see Annex 3 of IIA Overview)

Health

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

Find it incredible that page 50 1st paragraph of the Ingegrated Impact Assessment Overview document states that 'There is however no universally accepted list of smoking related illnesses.' There is considerable amount of research and credible information papers to state otherwise. Further on in the text it speficies the number of people who have died from a smoking related disease!

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?

Some areas of the legislation may be open to broad interpretation and not necessarily to what the Order/Policy intended.

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

There are issues which will impact as specified before on small tobaccoists and small hotels etc. Some livelihoods will be affected.
Have noted that re point 92 small and rural businesses will be invited to comment on the impact of the Policy/Order.

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

Not entirely sure as some statistics are merely only suggested or projected figures.

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

Productivity costs may not necessarily be any higher as people will probably still have their smoke breaks.

Not convinced that figures and statistics in Page 81 are correct.

Public Expenditure and Public Service

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

Not sure. Would ? need to find out if there is more information. Can only presently go with what was contained in these documents.

Rural Proofing

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

There will be adverse effects on some rural businesses. There isn't enough detail/findings to make an informed choice re this question.
To date as specified the small businesses have not been asked for their views.

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

What help/advice/support will be available to help with rural impacts for those who require it.

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

Would be better to wait and take account of the findings re the small businesses after they are invited to give their comments.

Additional Comments

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

Can a child/underage person who smokes in an enclosed space even though they are breaking the law receive a fixed penalty? If not, what happens?

The Order should specify that it is to protect the employer as opposed to the employees and general public.

Thank you for taking time to complete this Questionnaire.