



**A RESPONSE TO THE QUESTIONNAIRE ON THE
DRAFT SMOKING (NORTHERN IRELAND) ORDER
2006**

On Behalf Of

**THE WESTERN HEALTH AND SOCIAL SERVICES
BOARD AND THE WESTERN TOBACCO CONTROL
GROUP**

(Officer-led response. To be approved by WHSSB)

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 describes places that must be smoke free. It should also be clearly stated in 2(3) that “Smoke Free” means that there are no designated smoking areas within the premises or enclosed public places.

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?

*** NB With the limitations outlined below:**

| | | | | | | |
|--------------------------|------------|-------------------------------------|-----------|-------------------------------------|-------------------|-------------------------------------|
| Hotel Bedrooms | Yes | <input type="checkbox"/> | No | <input checked="" 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 checked="" 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 checked="" type="checkbox"/> |

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

The WHSSB holds the view that there should be no permanent exemptions. A phased approach may be required in some areas, using the principles outlined below.

Regarding proposed exemptions:

WHSSB recommends that the term ‘home’ be defined as ‘a person’s primary residence’ and this be made clear in the legislation, before any exemptions be considered. This definition would make it clear that exemptions could not apply to staff or visitors. Exemptions must also take account of those residents who do not smoke, and those who have, or are trying to quit. This would mean that all premises should be predominately free from smoke. The needs of individuals who smoke should be considered by the legislation within this context.

From this it follows that;

Hotel rooms are short-term stay and not a person’s home. People who clean and maintain these facilities tend to be low paid workers who are at added risk from cigarette smoke. The primary concern in short-term accommodation like this should be the protection of the workforce. Therefore, we propose answering no, ie hotel rooms should not be exempt.

Care Homes

This should be addressed using the guidelines outlined above, with exemptions being addressed on a case-by-case basis by the staff who manage the care of residents who wish to smoke.

Psychiatric settings

The terminology here is confusing; psychiatric facilities, hospitals and units have all been mentioned and circumstances in each could potentially be different. In future consultations it would be useful to seek views on the range of settings.

The WHSSB considers that it would be discriminatory to determine access to a smoke-free environment purely on the grounds of having a mental health issue that requires attendance in any kind of psychiatric setting. Therefore the Board would not be in agreement with a blanket exemption being made in any of these facilities. The decisions that are made about smoking would be better taken on a case-by-case basis, by staff charged with patient care and who have access to NRT and cessation support. The norm for the facility should be that it is, as far as possible, free from smoke. Short stay psychiatric facilities should ultimately have the same policy as any other short-term care in the NHS, albeit it might take more time to reach this point. The legislation should be written so as to make this possible. There is a body of evidence to support the feasibility of smoke free psychiatric settings can be found in a review of reviews. (eg: **Sharon Lawn, Rene Pols. Australian and New Zealand Journal of Psychiatry** Volume 39 Page 866 - October 2005)

Prisons

This should be addressed using the guidelines outlined above, with a phased approach towards smoke-free prisons.

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 wording of the legislation in 4.(iii) above would suggest that the person who controls or manages the premises is only culpable if they personally are aware of a contravention. This is a potential loophole. It should read

*'a person who controls the management of the smoke free premises and **fails to prevent smoking in a smoke-free place** commits an offence and is liable to fines'* rather than 'fails to prevent a person smoking'.

In relation to 4 (iii) the level of fine should be raised to level 5 to be in line with equivalent health & safety fines. In relation to (iv) above the level of fine should be raised to at least 4 to reflect the seriousness of the offence.

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.

Fixed penalties, particularly where the fines are low, are unlikely to be an effective deterrent. A study in British Columbia showed that when fixed penalties were in place the system failed for this reason. Although concerns may exist that not having fixed penalties would result in courts being overloaded, experience from the Republic of Ireland has shown that only a small number of contraventions were taken to court during 2005.

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.

District councils are well placed to take on board this responsibility as enforcement would be easily integrated into their advisory, health and safety enforcement and entertainment licensing role.

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 order should not just “provide the power” to enact legislation, raising the age limit should be consulted on as part of the current process and legislation established immediately. Evidence from ASH shows that raising the age limit alone has minimal impact. The WHSSB believes that introducing this change as part of an integrated approach, may increase likelihood of success.

Cigarettes are the single most preventable cause of ill health and premature death. Age restrictions should be brought into line with those for sale of solvents, alcohol and butane gas to reinforce the danger associated with their use.

Implementing the raising of the age of sales would remove the differential for purchase between both sides of the border. This is particularly relevant to the border counties.

Some children as young as twelve are sold cigarettes because they look sixteen. Raising the age limit to 18 would reduce the number of younger children who would be able purchase cigarettes because they look old enough to do so.

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 WHSSB believes that there is no need for further screening.

Human Rights Commission has additional information, which the Minister may wish to access, which supports the implementation of the smoke free legislation.

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?

Low paid workers who have the highest smoking prevalence would benefit more from the legislation than those from higher income groups.

We acknowledge that there is a religious differential in term of employment by cigarette manufacturers and this may have an impact if cigarette production ceased. However although this is a possibility, there is insufficient evidence that this will be the case. The WHSSB believes that the possible job losses do not outweigh the benefits of enacting the legislation.

The work done in the impact assessment shows this possible differential does not need to be addressed further.

Partial Regulatory Impact Assessment (RIA)

(see Annex 3 of IIA Overview)

Health

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

We support the work done on the HIA. This is based on the body of knowledge around the health benefits of a smoke free environment.

The WHSSB believes that the predicted decrease in smoking rates of 2% is an underestimate. A 4% decrease in smoking prevalence due to the introduction of the legislation is suggested in the Wanless report.

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

Exposure to second hand smoke in pregnancy causes long-term risks to child health, such as low birth weight and premature birth. Smoke-free workplaces will positively affect the children of women in the workforce.

Everyone's health will benefit from implementation of the legislation. There will, in the longer term be a beneficial impact on children who will see the smoke-free environment as the norm and smoking as a health harming behaviour.

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

A cross border study carried out by the Western IFH showed the high levels of pollutants bar workers in Northern Ireland were subjected to from second hand smoke, compared to the minimal levels experienced by their counterparts in the smoke-free bars in the Republic of Ireland.
(REF: BMJ Vol. 331 No. 7525 12.11.05 Pages 1117-1120)

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

The WHSSB supports the approach taken in the Rural Impact Assessment.

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?

Further economic appraisal is not required.

There is clear evidence that smoke-free policies in the hospitality industry do not have negative economic consequences
(eg ref: <http://www.vctc.org.au/tc-res/Hospitalitysummary.pdf>)

The main benefit stated, of time gained due to removal of smoke breaks seems high.

The cost of signage being provided by employers has not been included. It might be beneficial to consider a centralised approach to provision of signage.

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?

The WHSSB supports the enactment of the legislation.

Experience from across the world shows that where smoke free environments are created compliance is generally high. We are not alone in tackling the difficult issues particularly in relation to potential exemptions. Others have done so successfully. The WHSSB believes that a smoke free environment for all can be achieved with strong leadership and drive from government matched by commitment from key organisations and sectors across Northern Ireland. This Health and Social Services Board is committed to playing a leading role in the development of smoke-free workplaces.

Thank you for taking time to complete this Questionnaire.