
CONSULTATION ON SMOKING BAN PROPOSALS

1 SUMMARY

- 1.1 The Department of Health (DOH) has published a consultation paper concerning banning smoking in public places and workplaces with exemptions.
- 1.2 Members are invited to consider the report and make comments on the proposals as outlined.

2 INTRODUCTION

- 2.1 Following consultation, in November 2004, the Department of Health published the White Paper, *Choosing Health: Making healthy choices easier*. This set out proposals to regulate, with legislation where necessary to ensure that:
- All enclosed public places and workplaces (other than licensed premises) will be smoke free;
 - Licensed premises will be treated as follows:
 - All restaurants will be smoke free;
 - All pubs and bars preparing and serving food will be smoke free;
 - Other pubs and bars will be free to choose whether to allow smoking or be smoke free;
 - In membership clubs the members will be free to choose whether to allow smoking or be smoke free; and
 - Smoking in the bar area will be prohibited everywhere.
- 2.2 The introduction of these proposals is intended through a staged approach:-
- By the end of 2006, all central government departments and the NHS will be smoke free;
 - By the end of 2007, all enclosed public places and workplaces, other than licensed premises (and those specifically exempted), will, subject to legislation, be smoke free;
 - By the end of 2008, arrangements for licensed premises will be in place.

2.3 A copy of the Consultation document “Consultation on the Smoke free Elements of the Health Improvement and Protection Bill”, which puts forward proposed details on the policy outlined in the White Paper, has been placed in the Members library.

2.4 The Queen’s Speech of 17th May 2005 announced that “Legislation to restrict smoking in enclosed public places and workplaces will be introduced”.

3 PROPOSALS

3.1 It is proposed that the only enclosed public places and workplaces that will not be smoke free will be licensed premises that do not serve food, membership clubs and a very limited list of exempt places such as living accommodation.

3.2 It is proposed that smoke is defined as “smoke tobacco or any substance or mixture which includes it and a person is smoking if they are holding or otherwise in possession or control of lit tobacco or any lit substance or mixture which includes tobacco”. Therefore non tobacco cigarettes are not covered.

3.3 It is intended that enclosed public places and workplaces will be smoke free unless exempted. A place is to be regarded as enclosed if it is fully enclosed (on all sides) or is substantially enclosed, that is at least partially covered by a roof and has walls such that the total wall and roof area exceeds 70 per cent of the notional area.

3.4 One of the exemptions included in the proposals is for licensed premises that do not prepare and serve food. This has been defined as premises that do more than sell pre-packaged ambient shelf stable snacks. This exemption is a novel approach to smoke free legislation internationally. It is proposed to either have a list of exempted foods or broad definitions.

3.5 It is proposed that membership clubs will be free to ballot their members to choose the smoking status of the club.

3.6 It is proposed that smoke free areas should be designated by no-smoking signs at the entrance to premises and in conspicuous areas. These should be A4 size with the international no smoking symbol, stating it is illegal to smoke on the premises and information on the maximum fine. It would be the responsibility of the owner, manager or person in charge to ensure the no-smoking status is clearly highlighted.

3.7 There are three offences proposed:-

- Not displaying the prescribed notice, for which there is a fine of level 1 (£200)
- Failing to act to prevent smoking in a smoke free premises, for which there is a fine of level 1 (£200)

- Knowingly smoking in a smoke free premises, for which there is a fine of £50 (fixed penalty notice).

4 COMMENTS ON THE PROPOSALS

- 4.1 Chartered Institute of Environmental Health (CIEH) has raised concerns that a partial smoking ban would not protect employees and its complexity would make it unworkable. The CIEH have commented that a non-smoking bar area within a pub is unworkable. They have been lobbying for an outright ban, firstly to protect people from second-hand smoke and also because exemptions would be difficult for both managers and regulators to enforce.
- 4.2 The Local Government Association has also warned of confusion. They will be pursuing the need for greater clarity and fewer exemptions, about the definition of food. Whilst they believe that pub landlords would take principal responsibility, the LGA have already warned that policing smoking would be a new burden on local authorities and would need new government funds.
- 4.3 The British Medical Association has continued to argue for a total smoking ban. They argue that “Given it is acknowledged that second-hand smoke kills, the lives and health of employees must be the priority. It should not matter where an employee works. Whether someone works in an office or non-food pub they have a right to have their health protected at work”.
- 4.4 The British Beer and Pub Association also believe that the opt-out relating to food is unworkable. Of the 59,000 pubs in Great Britain, 80% sell food but of those, for 30% selling food is not essential. For those pubs it would be a choice of keeping customers or food and many would choose to stop selling food.
- 4.5 One risk inherent in this proposal is that pub landlords who decide to stop selling food will result in less family friendly establishments and this will adversely affect the drive to tackle binge drinking.
- 4.6 There will also be some difficulties in enforcement of the proposed offences. A cigarette is only something that contains tobacco and therefore herbal cigarettes are not covered. This may lead to more widespread smoking of herbs. In addition, it may be difficult to determine if a cigarette contains tobacco without sampling and the individual smoker is unlikely to volunteer their personal details when this will result in a fixed penalty notice.
- 4.7 Enforcement will be more practical through the business management, where the offence is to permit smoking in the premises. There are proposed defences that the manager was not aware of the contravention and that the manager had requested the smoker to stop. These defences appear too wide in that managers are likely to try and rely on them to prevent a fine and convictions may be rare. It is recommended that these defences are qualified that where smoking continues, despite the manager having previously asked

the smoker to stop, he is required by law to ask the smoker to leave the premises. This would then act as a defence of “due diligence”; that the manager had done everything within his power to prevent smoking in the premises.

- 4.8 In addition there are no recommendations regarding repeat offences or increased fines in this case. It is usual that repeat offenders should receive a higher level of fine to deter recurrence.

5 RESOURCE IMPLICATIONS

- 5.1 The *Choosing Health* White Paper confirms the Government’s commitment to the New Burdens Doctrine, and states that it will reimburse local authorities for any extra costs they face as a result of the policies in the White Paper. Discussions have already started with the Local Government Association on questions around enforcement and likely costs.
- 5.2 The consultation document estimates the overall costs for a total ban in all enclosed places at £20 million and a ban with exemptions as highlighted at £20+ million.

6 LEGAL IMPLICATIONS

- 6.1 Enforcement will be by appropriate local authority enforcement officers such as environmental health officers, trading standards officers and technical officers.

7 RECOMMENDATION

- 7.1 It is proposed that the Committee **RESOLVES** to make the following comments to the Department of Health.
- (1) That all cigarettes and tobacco products, including herbal cigarettes are included in the definition. This will reduce the burden of proof on the enforcing authority.
 - (2) That the exemptions for permitting smoking in non-food pubs be removed. This is an unworkable exemption and does not protect the health of employees in these environments.
 - (3) Rochford District Council supports legislation to make all indoor public places and workplaces completely smoke free. No exemptions should be made for the hospitality industry or others.
 - (4) That the forcing of licensed premises to choose between providing food or permitting smoking may lead to the unintentional creation of a less family friendly atmosphere and more binge-drinking.

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- (5) That the second defence be qualified that where smoking continues, despite the manager having previously asked the smoker to stop, he is required by law to ask the smoker to leave the premises. This would then act as a defence of “due diligence”; that the manager had done everything within his power to prevent smoking in the premises.
 - (6) That the level of fines is unlikely to be a sufficient deterrent and that measures should be introduced within the proposals for higher fines for repeat offences.
 - (7) Support is given to the New Burdens Doctrine, welcoming the reimbursement to local authorities for any extra costs that they face as a result of this policy. The Government are however requested to publish fully the financial support available for Local Authorities before any additional resources have to be committed to these proposals.

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Background Papers:-

None

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