

Smoke-free premises and vehicles

*Consultation on proposed regulations to be made
under powers in the Health Bill*

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under powers in the Health Bill*

17 July 2006

DH INFORMATION READER BOX

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1. Introduction

- 1.1 The Health Bill is currently before Parliament. It has completed its passage through the House of Commons and the House of Lords and is now due for the consideration of amendments phase of the parliamentary process. If approved by Parliament, the smoke-free legislative provisions set out in Chapter 1 of Part 1 of the Bill are planned to be implemented in summer 2007.
- 1.2 The medical and scientific evidence of the risks to health from exposure to secondhand smoke is well established. Through the *Choosing Health* White Paper,¹ the Government set out a clear strategy to tackle smoking, as well as the effects of smoking on others. Smoking is recognised to be the greatest single cause of preventable illness and premature death in the UK, killing around 106,000 people a year.
- 1.3 A key aspect of the Government's strategy on tobacco control is to shift the balance significantly in favour of smoke-free enclosed public places and workplaces through legislation, to reduce levels of exposure to secondhand smoke. Through the inclusion of smoke-free provisions within the Health Bill, virtually all enclosed public places and workplaces will be smoke-free.
- 1.4 The Government's objectives through delivering smoke-free legislation are to:
 - reduce the risks to health from exposure to secondhand smoke;
 - recognise a person's right to be protected from harm and to enjoy smoke-free air;
 - increase the benefits of smoke-free enclosed public places and workplaces for people trying to give up smoking so that they can succeed in an environment where social pressures to smoke are reduced; and
 - save thousands of lives over the next decade by reducing both exposure to hazardous secondhand smoke and overall smoking rates.
- 1.5 The Health Bill enables the creation of regulations providing for smoke-free premises and vehicles. The draft regulations that the Government proposes making if the Bill is approved by Parliament are set out in this consultation document.
- 1.6 The smoke-free provisions within the Health Bill relate to smoking of tobacco or anything that contains tobacco, or smoking any other substance, including manufactured cigarettes, hand-rolled cigarettes, pipes and cigars. The smoke-free provisions in the Health Bill also cover the smoking of waterpipes. According to World Health Organization (WHO) advice, "using a waterpipe to smoke tobacco poses a serious potential health hazard to smokers and others exposed to the smoke emitted", and "secondhand smoke from waterpipes is a mixture of

¹ Department of Health (2004) *Choosing Health: Making healthy choices easier*. Department of Health, London. Available at: www.dh.gov.uk/PublicationsAndStatistics/Publications/PublicationsPolicyAndGuidance/PublicationsPolicyAndGuidanceArticle/fs/en?CONTENT_ID=4094550&chk=aN5COr

tobacco smoke in addition to smoke from the fuel, and therefore poses a serious health risk for non-smokers”. The WHO therefore recommends that “waterpipes should be prohibited in public places consistent with bans on cigarette and other forms of tobacco smoking”.²

Structure and territorial scope of regulations to be made under the Health Bill

- 1.7 We propose making three sets of regulations under the powers in the Health Bill. The Smoke-free (General Provisions) Regulations 200X will be subject to the negative parliamentary procedure and apply to England only. The Smoke-free (Exemptions and Vehicles) Regulations 200X will be subject to the affirmative parliamentary procedure and apply to England only. The Smoke-free (Penalties and Discounted Amounts) Regulations 200X will be subject to the affirmative parliamentary procedure and apply to England and Wales.

This consultation

- 1.8 The purpose of this consultation is to share with stakeholders proposals for regulations to be made under Chapter 1 of Part 1 of the Health Bill, and to invite views on these plans. We have asked questions throughout on issues where we would particularly welcome feedback, although we would welcome other comments on any aspect of these proposals.
- 1.9 A partial Regulatory Impact Assessment (RIA) is attached as Annex A. This partial RIA is based on the partial RIA provided with the Health Bill, which has been updated to take into account the plans set out within the regulations proposed in this document. Stakeholders’ comments are also welcome on this partial RIA.
- 1.10 Within this consultation document, the “Health Act” or “the Act” refers to the Health Bill, on the assumption of its enactment if Parliament approves the Bill.

Future reviews of smoke-free legislation

- 1.11 Health ministers have undertaken to keep smoke-free legislation under review into the future, and have committed to conducting a comprehensive evaluation of the legislation to be published within three years of implementation.

² World Health Organization (2005) *Waterpipe Tobacco Smoke: Health effects, research needs and recommended actions by regulators*. WHO, Geneva.

How to respond

- 1.12 The consultation will run from Monday 17 July to Monday 9 October 2006. All responses must be received within these dates for consideration. Please send responses by hard copy or email to:

Smoke-free Regulations Consultation
Health Improvement Directorate
Department of Health
Room 712, Wellington House
133–155 Waterloo Road
London SE1 8UG

Email: smokefreeregulations@dh.gsi.gov.uk

- 1.13 An electronic version of this consultation is available on the web at:
www.dh.gov.uk/consultations/liveconsultations

Publication of responses

- 1.14 All information in responses, including personal information, may be subject to publication or disclosure in accordance with the access to information regimes (these are primarily the Freedom of Information Act 2000, the Data Protection Act 1998 and the Environmental Information Regulations 2004). If you want your response to remain confidential, you should explain why confidentiality is necessary; your request will only be acceded to if it is appropriate in all the circumstances. An automatic confidentiality disclaimer generated by your IT system will not, of itself, be regarded as binding on the Department of Health.
- 1.15 The consultation will be carried out in accordance with the Cabinet Office code on written consultations (see Annex B).

2. Smoke-free (General Provisions) Regulations 200X

a. Proposals

- 2.1 The Smoke-free (General Provisions) Regulations 200X will set out specific arrangements for the following aspects of smoke-free legislation:
- a. definitions of “enclosed” and “substantially enclosed”;
 - b. signage requirements for smoke-free premises and vehicles;
 - c. duties to comply with signage requirements for smoke-free vehicles;
 - d. duties to prevent smoking in smoke-free vehicles;
 - e. enforcement; and
 - f. the form of penalty notices.
- 2.2 This section of the consultation document details arrangements we intend to include within the Smoke-free (General Provisions) Regulations 200X and poses a number of questions regarding specific regulatory proposals to which stakeholders are invited to respond.

Definitions of “enclosed” and “substantially enclosed” premises

- 2.3 During the passage of the Health Bill through Parliament, we committed to follow the model for defining “enclosed” and “substantially enclosed” premises which is set out in Scotland’s smoke-free regulations.³
- 2.4 **Enclosed premises:** Premises will be considered to be enclosed if they have a ceiling or roof and, except for doors, windows or passageways, are wholly enclosed, whether on a permanent or temporary basis.
- 2.5 **Substantially enclosed premises:** Premises will be considered to be substantially enclosed if they have a ceiling or roof, but there are openings in the walls which are **less than half** of the total area of walls, including other structures that serve the purpose of walls and constitute the perimeter of the premises. When determining the area of an opening, no account can be taken of openings in which doors, windows or other fittings can be opened or shut.
- 2.6 For this regulation, “roof” includes any fixed or moveable structure or device which is capable of covering all or part of premises as a roof. This would include retractable canvas awnings.

³ The Prohibition of Smoking in Certain Premises (Scotland) Regulations 2006.

Signage requirements for smoke-free premises and vehicles

- 2.7 The Health Bill requires that no-smoking signs are to be displayed in smoke-free premises, in accordance with requirements set out in regulations. Likewise, regulations will also set out requirements for signs to be displayed in smoke-free vehicles.
- 2.8 Proposed requirements for signs in smoke-free premises and vehicles are set out below. We intend for signage requirements to be proportionate and not present unnecessary burdens on businesses. To assist with compliance of signage requirements, the Department of Health has undertaken to make signs that will meet requirements set out in regulations readily available during the lead-up to implementation of smoke-free legislation.
- 2.9 **Signage requirements for smoke-free premises:** In these regulations, we propose that smoke-free premises will be required to display a no-smoking sign that meets minimum requirements at each public entrance to the premises, to be displayed in a position that is prominently visible to persons entering the premises.
- 2.10 The minimum requirements are that the no-smoking sign is to:
- a. be a flat, rectangular sign with minimum dimensions of A5 in size (148mm by 210mm);
 - b. display the international “no smoking” symbol, consisting of a graphic representation of a burning cigarette enclosed in a red circle with a red bar across it, at least 75mm in diameter; and
 - c. carry the following words, in characters that can be easily read:

“No smoking. It is against the law to smoke in these premises.”
- 2.11 Clause 3 of the Health Bill provides for some premises to continue to allow smoking, if certain conditions are met. Regulations will allow certain premises, such as hotels or care homes, to have designated rooms for smoking, and in these cases the required wording for the sign, in place of what is required in the paragraph above, is proposed to be:
- “No smoking.
It is against the law to smoke in these premises except in a designated room.”*
- 2.12 We wish to provide flexibility in the design and wording of signage for smoke-free premises, and propose that the design of signs be at the discretion of the manager of the premises, provided that minimum requirements are met. In addition, for the words “these premises” may be substituted references to the particular smoke-free premises in which the sign is displayed, for example “this salon”, “this pub”, or “this gym”.
- 2.13 These regulations will require that any wording on no-smoking signs in premises must be in English. We will encourage the display of equivalent signs in other languages to promote compliance where necessary. To support the implementation of smoke-free legislation, the Department of Health will also make signs available in other languages. Although signs in other languages might be necessary in certain places, only signs in English will satisfy the legal requirements of these regulations.

- 2.14 **Signage requirements for smoke-free vehicles:** Within these regulations, we propose that smoke-free vehicles will be required to display at least one no-smoking sign that meets minimum requirements in any compartment of the vehicle used by operators, crew members or passengers which is wholly or partly covered by a roof. The sign is to be displayed in a position that is prominently visible to a person entering the vehicle.
- 2.15 The minimum requirements are that the sign for smoke-free vehicles is to display the international “no smoking” symbol, consisting of a graphic representation of a burning cigarette enclosed in a red circle with a red bar across it, at least 75mm in diameter.
- 2.16 We wish to provide flexibility in the design of signage for smoke-free vehicles, and propose that the design of signs be at the discretion of the operator of the vehicle, provided that the minimum requirements are met.
- 2.17 Signage requirements for smoke-free vehicles are proposed to be more relaxed than signage requirements for smoke-free premises for a number of reasons. The majority of public transport is already smoke-free and already displays no-smoking signs. We consider the replacement of pre-existing signage in such vehicles to be unnecessary. We also do not wish to create any conflicts with signage requirements currently in place for smoke-free vehicles in Scotland, or with requirements that might be incorporated into Wales and Northern Ireland smoke-free legislation.

Question 1:

Views are invited on proposals in these regulations for no-smoking signs in smoke-free premises and vehicles.

Duties to comply with signage requirements for smoke-free vehicles

- 2.18 We propose that regulations should require the operator of a smoke-free vehicle to have the same duties to display no-smoking signs that conform with legislative requirements as a person who is concerned with the management of smoke-free premises (as set out in clause 6(1) of the Health Bill).
- 2.19 In these regulations, we define operator in relation to a smoke-free vehicle to mean any person with management responsibilities for the vehicle. Arrangements for smoke-free vehicles are set out in the draft Smoke-free (Exemptions and Vehicles) Regulations 200X later in this consultation document.

Duties to prevent smoking in smoke-free vehicles

- 2.20 We propose that regulations will require the operator, any driver or any person on the vehicle who is responsible for public order or safety (such as the driver/conductor, guard or ticket inspector) to have duties to prevent smoking in a smoke-free vehicle as set out in clause 8 of the Health Bill. This will be the same duty to prevent smoking in a smoke-free vehicle as the duty set out for persons who control or are concerned in the management of smoke-free premises (as set out in clause 8(1) of the Health Bill) to prevent smoking. In some cases, the operator of a vehicle might not be in a position to know whether someone is smoking, for example a train

driver who is located in a separate compartment on the train. The defences set out in clause 8(5) for the offence of failing to prevent smoking in a smoke-free place could be applicable in such a case.

Compliance and enforcement

- 2.21 The Government's intention is to create a supportive environment where people are encouraged to comply with the new legislation. We are encouraged by international precedents, where compliance with smoke-free laws has been high. The approach to enforcement will be non-confrontational, focused on raising awareness and understanding to ensure compliance, and enforcement officers will work closely with local businesses to build compliance through education, advice and support. We expect that enforcement action will be considered only when the seriousness of the situation warrants it. Any enforcement action that is taken will be fair, proportional and consistent. Enforcement inspections will be based on risk and, where possible, combined with other regulatory inspections to reduce burdens on business.
- 2.22 **Enforcement authorities:** We propose that the following local authorities will be enforcement authorities for smoke-free legislation:
- a. county councils;
 - b. district councils which are the sole principal councils for their areas;
 - c. London borough councils;
 - d. the Common Council of the City of London;
 - e. the Sub-Treasurer of the Inner Temple and the Under Treasurer of the Middle Temple; and
 - f. the Council of the Isles of Scilly.
- 2.23 We will expect that these local authorities will collaborate with other inspection and enforcement bodies where necessary to carry out enforcement responsibilities. Enforcement authorities will have enforcement responsibilities for both smoke-free premises and smoke-free vehicles in their areas, and for enforcement cases that are transferred to them by other enforcement authorities.
- 2.24 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 are under way with the Local Government Association (LGA) and other stakeholders on questions around enforcement and likely costs.
- 2.25 **Transfer of enforcement functions:** We propose that regulations also enable the transfer of enforcement functions between enforcement authorities. Where more than one enforcement authority is investigating the same person under powers in smoke-free legislation, enforcement functions may be transferred from one or more enforcement authorities, under arrangements made between the enforcement authorities, to:
- a. another enforcement authority that is carrying out any of those investigations; or
 - b. any other enforcement authority.

Question 2:

Views are invited on proposals in these regulations for the enforcement of smoke-free legislation.

Form of penalty notices

- 2.26 The Schedule to these regulations also specifies proposed forms of penalty notices to be used for no-smoking sign offences (as specified in clause 6 of the Health Bill) and the offence of smoking in a smoke-free place (as specified in clause 7 of the Health Bill).
- 2.27 The regulations provide that where there is a change to the amount of a fixed penalty, discounted amount or change to a level on the standard scale, the specified form shall be varied to reflect that change without needing to amend regulations. The regulations also allow for enforcement authorities to:
- a. use a form in a different size or design, provided that the substance of the form is not changed;
 - b. include additional information about how payments can be made; and
 - c. include coats of arms, logos or other devices, or any illustration to assist with the completion of the notice.

b. Draft regulations

The Secretary of State for Health, in the exercise of her powers in sections 2(5), 6(2), (3) and (4), 8(3), 9(3), 10(1) and (2) and 79(3) of, and paragraph 4 of Schedule 1 to, the Health Act 2006, makes the following regulations:

Citation, commencement, application and interpretation

1.—(1) These Regulations may be cited as the Smoke-free (General Provisions) Regulations 2007 and come into force on XX XXXXX 200X.

(2) In these Regulations—

“A5 sign” means a flat, rectangular sign that is not less than 148 millimetres by 210 millimetres;

“the Act” means the Health Act 2006;

“entrance” means an entrance for use by persons;

“no-smoking symbol” means a symbol which consists of a graphic representation of a burning cigarette enclosed in a red circle with a red bar across it, at least 75 millimetres in diameter

“operator” in relation to a vehicle means any person with management responsibilities for the vehicle;

“smoke-free premises” means all public places and workplaces other than those that are exempt by virtue of regulations made under section 3 of the Act; and

“smoke-free vehicle” means a vehicle in respect of which regulations under section 5 of the Act have applied smoke-free provision.

Enclosed and substantially enclosed premises

2.—(1) For the purposes of section 2 of the Act, premises are enclosed if they have a ceiling or roof and, except for doors, windows and passageways, they are wholly enclosed either permanently or temporarily.

(2) For the purposes of section 2 of the Act, premises are substantially enclosed if they have a ceiling or roof but there is—

(a) an opening or

(b) an aggregate area of openings

in the walls which is less than half of the area of the walls, including other structures that serve the purpose of walls and constitute the perimeter of the premises.

(3) In determining the area of an opening or an aggregate area of openings for the purposes of paragraph (2), no account is to be taken of openings in which there are doors, windows or other fittings that can be opened or shut.

(4) In this regulation “roof” includes any fixed or moveable structure or device which is capable of covering all or part of premises as a roof, including for example a canvas awning.

No-smoking signs in premises

3.—(1) In each entrance to smoke-free premises there shall be displayed in a prominent position at least one A5 sign that—

- (a) displays the no-smoking symbol; and
- (b) contains in characters that can be easily read the following words—
“No smoking. It is against the law to smoke in these premises.”

(2) Where in accordance with regulations made under section 3 of the Act any room in smoke-free premises is designated as one in which smoking is permitted, for the words which are required by paragraph (1)(b) there are substituted the words—

“No smoking.
It is against the law to smoke in these premises except in a designated room.”

(3) For the words required by paragraph (1) or (2) there may be substituted words which differ only in that for “these premises” there are substituted words which refer to the particular smoke-free premises in which a sign is displayed (such as “this hotel”).

No-smoking signs in vehicles

4.—(1) The operator of a smoke-free vehicle shall be under a duty corresponding to that in section 6(1) of the Act to make sure that at least one no-smoking symbol is displayed in a prominent position in each compartment of his vehicle.

(2) In paragraph (1) “compartment” includes—

- (a) any compartment for use by the driver; and
- (b) any compartment for use by the persons who are conveyed;
which is wholly or partly covered by a roof.

(3) In this regulation “roof” does not include any roof that is completely stowed away so that it does not cover any part of a compartment in which persons may travel.

Failing to prevent smoking in smoke-free vehicles

5.—The following persons are under a duty corresponding to that in section 8(1) of the Act to cause any person who is smoking in a smoke-free vehicle to stop smoking—

- (a) the operator;
- (b) the driver; and
- (c) any person on a vehicle who is responsible for order or safety on it.

Enforcement

6.—(1) The following authorities are designated as enforcement authorities for the purposes of Chapter 1 of Part 1 of the Act—

- (a) county councils;
- (b) district councils which are the sole principal councils for their areas;
- (c) London borough councils;
- (d) the Common Council of the City of London;
- (e) the Sub-Treasurer of the Inner Temple and the Under Treasurer of the Middle Temple;
and
- (f) the Council of the Isles of Scilly.

(2) For the purposes of paragraph (1) “principal council” means a district council elected for a principal area as defined in section 270 of the Local Government Act 1972 **(a)**.

(3) Each enforcement authority has enforcement functions in relation to the premises and vehicles that are within the area for which it is a local authority except to the extent that those functions have been transferred to another enforcement authority under paragraph (5).

(4) In addition, each enforcement authority has enforcement functions in relation to premises and vehicles to the extent to which functions are transferred to it under paragraph (5).

(5) Where more than one enforcement authority is investigating the same person for offences created by section 6(5) (no-smoking signs), 7(2) (smoking in a smoke-free place), 8(4) (failing to prevent smoking in a smoke-free place) or 11(1) (obstruction etc of officers) of the Act, enforcement functions may be transferred from one or more of those enforcement authorities to—

- (a) an enforcement authority that is carrying out any of those investigations; or
- (b) any other enforcement authority

under arrangements made between the transferring and receiving authorities.

(a) 1972 c. 70.

Form of fixed penalty notice

7.—(1) The penalty notice forms set out in the Schedule to these Regulations are specified in relation to the offences described in them.

(2) Where there is a change to the amount of a fixed penalty or a discounted amount or to a level on the standard scale, the specified form shall reflect that change.

(3) Nothing in those forms shall prevent an enforcement authority from—

(a) using a form in different size or design, provided that the substance of the form is not changed;

(b) including additional information on how payments can be made; or

(c) including coats of arms, logos or other devices or any other illustration to assist with the completion of the notice.

[Signature block]

[Date]

THE SCHEDULE

Form 1—Failing to display prescribed no-smoking signs or failing to display no-smoking signs in a prescribed manner.

[NAME OF ENFORCEMENT AUTHORITY]
[ADDRESS OF ENFORCEMENT AUTHORITY]

HEALTH ACT 2006:
SECTION 6 (FAILURE TO DISPLAY NO-SMOKING SIGNS IN ACCORDANCE
WITH REQUIREMENTS MADE BY OR UNDER SECTION 6)

FIXED PENALTY NOTICE

PENALTY AMOUNT £200

PART 1: RECIPIENT COPY

Penalty notice number: _____

Full name of alleged offender: _____

Address of alleged offender: _____

_____ Post code: _____

Date of birth: _____ Male, female (circle one)

I, _____ (name), an authorised officer of [name of enforcement authority] under section 10 of the Health Act 2006, have reason to believe that you committed an offence under section 6 of the Health Act 2006 (failure to display no-smoking signs in accordance with requirements made by or under section 6) in premises, a place or vehicle in which [name of enforcement authority] has enforcement responsibilities.

The circumstances alleged to constitute the offence are that at:

_____ (time) on _____ (date)

you, at/on the following premises, place or vehicle (where alleged offence took place, including address, if any):

being premises, a place or vehicle to which the provisions of Section 6 of the Health Act 2006 applies, allegedly (details of offence):

This notice offers you the opportunity of discharging any liability for conviction for that offence by payment of a fixed penalty of **£200 (two hundred pounds)**. No proceedings will be taken for this offence before the expiration of 29 days following the date of this notice. You will not be liable to conviction for the offence if you pay the fixed penalty during the period of 29 days from the date of this notice.

You can pay a discounted amount of £150 (one hundred and fifty pounds) if you pay within 15 days from the date of this notice.

Information for the immediate attention of the person who has been issued with this penalty notice is at part 2 of this notice. Details about how to pay this fixed penalty is at part 3 of this notice. Details about how to request a court hearing in relation to this alleged offence are at part 3 of this notice.

Signature of authorised officer

Date of issue

PART 2: INFORMATION FOR THE IMMEDIATE ATTENTION OF THE PERSON WHO HAS BEEN ISSUED WITH THIS PENALTY NOTICE

You have received this notice because the authorised officer of *[name of enforcement authority]* named in part 1 of this notice has reason to believe that you have committed the offence of failing to display a no-smoking sign in accordance with requirements made by or under section 6 as described in part 1. Within 29 days of the **date of issue** of this notice, you **must either** pay the penalty or request that the matter be heard by a court. You may not do both.

If you fail to do either, *[name of enforcement authority]* as an enforcement authority by virtue of section 10 of the Health Act 2006, may pursue this matter in court. A person found guilty of the offence of smoking in a smoke-free place is liable on summary conviction to a fine not exceeding level 3 on the standard scale, as specified in the Smoke-free (Penalties and Discounted Amounts) Regulations 200X.

PART 3: PAYING THE PENALTY

The amount of the fixed penalty is **£200 (two hundred pounds)**, which must be paid within 29 days of the date of issue of this notice, as shown in part 1.

You can pay a discounted amount of **£150 (one hundred and fifty pounds)** if you pay within 15 days of the date of issue of this notice, as shown in part 1.

If you choose to pay this penalty, no further action will be taken in respect of the alleged offence described at part 1 of this penalty notice. The payment of the penalty involves no admission of guilt and will not result in a record of criminal conviction being made against you.

Payment may be made by completing part 3A below and returning part 3A with payment to the address stated on form 3A, or by completing part 3A below and paying in person at the *[name and address of enforcement authority]*. Acceptable methods of payment are cash, cheque, postal order or money order.

Cheques, postal orders or money orders should be made payable to *[name of enforcement authority]*. If you choose to pay this penalty in cash by post, this must be sent by registered post, and a proof of posting must be retained. If you require a receipt for the payment of the penalty, you must ask for one at the time of payment, and if paying by post, you must provide a stamped, self-addressed envelope.

WARNING: LATE PAYMENT WILL NOT BE ACCEPTED. YOU WILL NOT BE SENT A REMINDER.

**PART 3A: PAYMENT OF FIXED PENALTY ISSUED UNDER SECTION SIX OF THE HEALTH ACT 2006, (FAILURE TO DISPLAY NO-SMOKING SIGNS IN ACCORDANCE WITH REQUIREMENTS MADE BY OR UNDER SECTION 6)**

This slip must accompany all payments

To: *[name of address at enforcement authority where payment should be remitted]*

Penalty notice number: _____

I enclose the amount of: £150 (if payment will be received within 15 days of the issue of this penalty notice)

£200 (if payment will be received within 29 days of the issue of this penalty notice)

Full name: _____

Address: _____

_____ Post code: _____

Signature

Date

PART 4: REQUESTING A COURT HEARING

If you wish to contest the issue of this penalty notice and have your case heard in a court of law, **you must** complete form 4A below in full and return it by post to the address stated on form 4A within 29 days of the of the date of issue of this notice.

If you choose to request a court hearing, you must do so by completing form 4A, or by writing to *[name of enforcement authority]* at the address stated on form 4A, giving your details, the penalty notice number (which can be found in part 1 of this notice) and an address at which a summons can be served on you. The summons will tell you when and where to attend court. Only the recipient of this penalty notice (the person named at part 1) may request a court hearing.

If you have any questions or any representations on this penalty notice, please contact *[name of enforcement authority and contact details]*.

S

PART 4A: REQUEST FOR ALLEGED OFFENCE TO BE DEALT WITH BY A COURT OF LAW

To: *[name of address at enforcement authority where payment should be remitted]*

Penalty notice number: _____

I wish to be dealt with by a court of law for the alleged offence described in part 1 of this notice.

Full name: _____

Address: _____

_____ Post code: _____

Signature

Date

Form 2—Smoking in a smoke-free place.

[NAME OF ENFORCEMENT AUTHORITY]
[ADDRESS OF ENFORCEMENT AUTHORITY]

HEALTH ACT 2006:
SECTION 7 (OFFENCE OF SMOKING IN A SMOKE-FREE PLACE)

FIXED PENALTY NOTICE

PENALTY AMOUNT £50

PART 1: RECIPIENT COPY

Penalty notice number: _____

Full name of alleged offender: _____

Address of alleged offender: _____

_____ Post code: _____

Date of birth: _____ Male, female (circle one)

I, _____ (name), an authorised officer of the [name of enforcement authority] under section 10 of the Health Act 2006, have reason to believe that you committed an offence under section 7 of the Health Act 2006 (smoking in a smoke-free place) within premises, a place or vehicle that [name of enforcement authority] has enforcement responsibilities. Section 7(1) provides that smoke-free places include smoke-free premises and smoke-free vehicles.

The circumstances alleged to constitute the offence are that at:

_____ (time) on _____ (date)

you, at/on the following premises, place or vehicle (where alleged offence took place, including address, if any):

being premises, a place or vehicle to which the provisions of Section 7 of the Health Act 2006 applies, allegedly (details of offence):

This notice offers you the opportunity of discharging any liability for conviction for that offence by payment of a fixed penalty of **£50 (fifty pounds)**. No proceedings will be taken for this offence before the expiration of 29 days following the date of this notice. You will not be liable to conviction for the offence if you pay the fixed penalty during the period of 29 days from the date of this notice.

You can pay a discounted amount of £30 (thirty pounds) if you pay within 15 days from the date of this notice.

Information for the immediate attention of the person who has been issued with this penalty notice is at part 2 of this notice. Details about how to pay this fixed penalty is at part 3 of this notice. Details about how to request a court hearing in relation to this alleged offence are at part 3 of this notice.

Signature of authorised officer

Date of issue

PART 2: INFORMATION FOR THE IMMEDIATE ATTENTION OF THE PERSON WHO HAS BEEN ISSUED WITH THIS PENALTY NOTICE

You have received this notice because the authorised officer of *[name of enforcement authority]* named in part 1 of this notice has reason to believe that you have committed the offence of smoking in a smoke-free place as described in part 1. Within 29 days of the **date of issue** of this notice, you **must either** pay the penalty or request that the matter be heard by a court. You may not do both.

If you fail to do either, *[name of enforcement authority]* as an enforcement authority by virtue of section 10 of the Health Act 2006, may pursue this matter in court. A person found guilty of the offence of smoking in a smoke-free place is liable on summary conviction to a fine not exceeding level 1 on the standard scale, as specified in the Smoke-free (Penalties and Discounted Amounts) Regulations 200X.

PART 3: PAYING THE PENALTY

The amount of the fixed penalty is **£50 (fifty pounds)**, which must be paid within 29 days of the date of issue of this notice, as shown in part 1.

You can pay a discounted amount of **£30 (thirty pounds)** if you pay within 15 days of the date of issue of this notice, as shown in part 1.

If you choose to pay this penalty, no further action will be taken in respect of the alleged offence described at part 1 of this penalty notice. The payment of the penalty involves no admission of guilt and will not result in a record of criminal conviction being made against you.

Payment may be made by completing part 3A below and returning it with payment to the address stated on form 3A, or by completing part 3A below and paying in person at *[name and address of enforcement authority]*. Acceptable methods of payment are cash, cheque, postal order or money order.

Cheques, postal orders or money orders should be made payable to *[name of enforcement authority]*. If you choose to pay this penalty in cash by post, this must be sent by registered post, and proof of posting must be retained. If you require a receipt for the payment of the penalty, you must ask for one at the time of payment, and if paying by post, you must provide a stamped, self-addressed envelope.

WARNING: LATE PAYMENT WILL NOT BE ACCEPTED. YOU WILL NOT BE SENT A REMINDER.

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PART 3A: PAYMENT OF FIXED PENALTY ISSUED UNDER SECTION 7 OF THE HEALTH ACT 2006, (OFFENCE OF SMOKING IN A SMOKE-FREE PLACE)

This slip must accompany all payments

To: *[name of address at enforcement authority where payment should be remitted]*

Penalty notice number: _____

I enclose the amount of: £30 (if payment will be received within 15 days of the issue of this penalty notice)

(tick one box)

£50 (if payment will be received within 29 days of the issue of this penalty notice)

Full name: _____

Address: _____

_____ Post code: _____

Signature

Date

PART 4: REQUESTING A COURT HEARING

If you wish to contest the issue of this penalty notice and have your case heard in a court of law, **you must** complete form 4A below in full and return it by post to the address stated on form 4A within 29 days of the of the date of issue of this notice.

If you choose to request a court hearing, you must do so by completing form 4A, or by writing to *[name of enforcement authority]* at the address stated on form 4A, giving your details, the penalty notice number (which can be found in part 1 of this notice) and an address at which a summons can be served on you. The summons will tell you when and where to attend court. Only the recipient of this penalty notice (the person named at part 1) may request a court hearing.

If you have any questions or any representations about this penalty notice, please contact *[name of enforcement authority and contact details]*.

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PART 4A: REQUEST FOR ALLEGED OFFENCE TO BE DEALT WITH BY A COURT OF LAW

To: *[name of address at enforcement authority where payment should be remitted]*

Penalty notice number: _____

I wish to be dealt with by a court of law for the alleged offence described in part 1 of this notice.

Full name: _____

Address: _____

_____ Post code: _____

Signature

Date

3. Smoke-free (Exemptions and Vehicles) Regulations 200X

a. Proposals

- 3.1 The Smoke-free (Exemptions and Vehicles) Regulations 200X will set out specific arrangements for the following aspects of smoke-free legislation:
- a. exemptions; and
 - b. smoke-free vehicles.
- 3.2 This section of the consultation document details arrangements we intend to include within the Smoke-free (Exemptions and Vehicles) Regulations 200X and poses a number of questions regarding these proposals, to which stakeholders are invited to respond.

Exemptions

- 3.3 Clause 3 of the Health Bill enables regulations to be made providing for specified descriptions of premises, or specified areas within specified descriptions of premises, not to be smoke-free despite the provisions in the Health Bill. In general, clause 3(3) does not allow exemptions for licensed premises or membership clubs. These regulations specify these exemptions and the proposed conditions that are to be met for premises to access an exemption.
- 3.4 **Private accommodation:** The Government has no intention to make private residential space smoke-free. Exemptions proposed in these regulations for private accommodation are for those private premises that might fall under clause 2 of the Bill as also being workplace or places that are open to the public.⁴ By providing this exemption, we will ensure that, apart from in areas of a private dwelling that are used solely as a place of work, the person who lives in the premises can decide themselves whether people are allowed to smoke in the premises.
- 3.5 Under these proposed regulations, any part of a private dwelling that is shared with other premises (including other private dwellings) will be required to be smoke-free if they are open to the public or used as places of work, for example by cleaners. This means, for example, that communal lifts, indoor stairwells or communal corridors in blocks of flats; shared kitchens or laundries in dormitory-style accommodation; or common entrance foyers to apartment blocks will be required to be smoke-free to provide protection within these common spaces from secondhand smoke.

⁴ Clause 2(7) of the Health Bill defines that premises are “open to the public” if the public or a section of the public has access to them, whether by invitation or not, and whether by payment or not.

- 3.6 Any part of a private dwelling is proposed to be smoke-free if it is used solely as a place of work (other than for types of work specified within the regulations) by:
- a. more than one person who does not live in the dwelling;
 - b. a person who does not live in the dwelling and any person who does live in the dwelling; or
 - c. a person (whether they live in the dwelling or not) who in the course of their work invite persons who do not live or work in the dwelling to attend the part of it which is used solely for work.
- 3.7 The smoke-free requirements in these proposed regulations will not apply to work that is undertaken in any part of a private dwelling if it is undertaken to provide personal care for a person living in the dwelling, to assist with the domestic work of the household in the dwelling, to maintain the structure or fabric of the dwelling, or to install, maintain or remove any service provided to the dwelling for the benefit of persons living in it. This means that there will be no requirement within regulations for an individual not to smoke in their own home if a tradesman, nanny, cleaner or carer is present. In these cases, we would expect that the householder and the person providing services would come to their own agreement about smoking, including when and where smoking can take place within the dwelling, if at all.
- 3.8 We propose that within these regulations, self-contained accommodation for temporary or holiday use should be treated similarly to arrangements for private accommodation, including any garage or outhouse for the exclusive use of persons occupying the dwelling. This means that any self-contained short-term rental accommodation, holiday cottage or residential caravan will not be required by regulations to be smoke-free. We do recognise that many providers of these types of accommodation do voluntarily require premises to be smoke-free at all times. These regulations would not affect provider's right to require accommodation to be entirely smoke-free if desired.

Question 3:

Views are invited on proposals in these regulations for private accommodation, especially on proposals where private dwellings are also a workplace.

- 3.9 **Accommodation for guests and club members:** A designated bedroom in a hotel, guest house, inn, hostel or members' club will not have to be smoke-free if the person in charge of the premises designates that the room is not smoke-free.
- 3.10 Under these proposed regulations, a "designated bedroom" means a room which:
- a. is set apart exclusively for sleeping accommodation;
 - b. has been designated by the person in charge of the premises in which the room is situated as being a room in which smoking is permitted;
 - c. has a ceiling and, except for doors and windows, is completely enclosed on all sides by solid, floor-to-ceiling walls;
 - d. does not have a ventilation system that ventilates into any other smoke-free part of the premises (except any other designated bedrooms);

- e. does not have any door that opens onto smoke-free premises which is not mechanically closed immediately after use; and
 - f. is clearly marked as a bedroom in which smoking is permitted.
- 3.11 We do not intend for these regulations to allow smoking in dormitories or other rooms within premises which are made available under separate arrangements to persons to share at the same time.
- 3.12 **Other residential accommodation:** The Government has made it clear that there is no intention through smoke-free legislation to prevent individuals from smoking in areas of premises which are considered to be private residential space. Nevertheless, in certain types of residential accommodation, balance is needed between allowing people to smoke in their own residential spaces and protecting others from exposure to secondhand smoke, including the other people who call the premises home and the people who work there. In these regulations, we propose that exemptions from smoke-free legislation should be made available in certain types of residential accommodation, subject to specified conditions. Under these proposed regulations, designated rooms that are used for accommodation for persons 18 years and over will not have to be smoke-free in the following premises:
- a. care homes as defined in the Care Standards Act 2000;
 - b. hospices which, as their whole or main purpose, provide palliative care for persons resident there who are suffering from progressive disease in its final stages;
 - c. mental health units that provide long-term residential accommodation; and
 - d. prisons.
- 3.13 Within these types of residential accommodation, “designated room” means either a bedroom or a room used only for smoking which:
- a. has been designated by the person having charge of the premises in which the room is situated as being a room in which smoking is permitted;
 - b. has a ceiling and, except for doors and windows, is completely enclosed on all sides by solid, floor-to-ceiling walls;
 - c. does not have a ventilation system that ventilates into any other smoke-free part of the premises (except any other designated smoking rooms);
 - d. does not have any door that opens onto smoke-free premises which is not mechanically closed immediately after use; and
 - e. is clearly marked as a room in which smoking is permitted.
- 3.14 Within these proposed regulations, “mental health unit” means any establishment (or part of an establishment) maintained wholly or mainly for the reception and treatment of persons suffering from any form of mental disorder as defined in section 1(2) of the Mental Health Act 1983. For mental health units, any exemption from smoke-free legislation will be limited to premises that provide “long-term” accommodation. Long-term in relation to residential accommodation in a mental health unit means accommodation which, in the normal course of events, is provided for patients to occupy for not less than six months.

Question 4:

Do these proposed regulations cover the types of residential accommodation that should be exempted under smoke-free legislation?

- 3.15 **Performers:** The Health Bill makes provision in clause 3 for those participating as performers in a performance, or in a performance of a specified description, not to be prevented from smoking if the artistic integrity of the performance makes it appropriate for them to smoke. These proposed regulations set out that where the artistic integrity of a performance makes it appropriate for a person who is taking part in that performance to smoke, the part of the premises in which that person performs is not smoke-free in relation to that performer, only during the time of the performance.
- 3.16 We intend for this provision to be self-regulating; however, there are responsibilities under the Health Bill on the person who controls or is concerned in the management of premises in which a person performs to ensure that persons do not smoke unlawfully. Therefore, we would expect that the director and/or producer of an artistic performance, together with the person who controls or is concerned in the management of premises in which a person performs to ensure that the requirements set out in these regulations for performers are followed.

Question 5:

Views are invited on proposals in these regulations for exempting performers from smoke-free legislation. Are the arrangements adequate enough to prevent the development of loopholes, while providing adequate flexibility to uphold the artistic integrity of performance?

- 3.17 **Specialist tobacconists:** The shop premises of a specialist tobacconist will not be required to be smoke-free under these proposed regulations, only for the purposes of sampling smoking products that are not cigarettes or rolling tobacco. For these regulations, the definition of “specialist tobacconist” is the same as specified in section 6(2) of the Tobacco Advertising and Promotion Act 2002. We understand that there are approximately 50 specialist tobacconists in England. We will monitor this exemption closely to ensure that it does not become problematic.
- 3.18 Under these proposed regulations, the entirety of a specialist tobacconist shop is exempted if the premises:
- a. have a ceiling and, except for doors and windows, are completely enclosed on all sides by solid, floor-to-ceiling walls;
 - b. do not have a ventilation system that ventilates into any smoke-free premises;
 - c. do not have any door that opens onto smoke-free premises which is not mechanically closed immediately after use; and
 - d. are clearly marked as premises in which smoking is permitted.
- 3.19 **Offshore platforms:** A designated room in an offshore installation, as defined in clause 12 of the Health Bill, is not smoke-free if it:
- a. has been designated by the person in charge of the installation in which the room is situated as being a room in which smoking is permitted;

- b. has a ceiling and, except for doors and windows, is completely enclosed on all sides by solid, floor-to-ceiling walls;
- c. does not have a ventilation system that ventilates into any other smoke-free part of the premises (except any other designated rooms);
- d. does not have any door that opens onto smoke-free premises which is not mechanically closed immediately after use; and
- e. is clearly marked as a room in which smoking is permitted.

3.20 **Research and testing facilities:** A designated room in a research or testing facility is not smoke-free while it is being used for any research or tests that relate to:

- a. emissions from tobacco and other products used for smoking;
- b. development of products for smoking with lower fire hazard or the fire safety testing of materials involving products for smoking;
- c. development of smoking or pharmaceutical products that could result in the manufacture of less dangerous products for smoking; or
- d. smoking cessation programmes.

3.21 Within these proposed regulations, a “designated room” in a research or testing facility is not smoke-free while it is being used for any research or tests if it:

- a. has been designated by the person in charge of the laboratory in which the room is situated as being a room in which smoking is permitted for research or tests specified in the paragraph above and is a room for the use only of the persons who are required to supervise or participate in the research or tests;
- b. has a ceiling and, except for doors and windows, is completely enclosed on all sides by solid, floor-to-ceiling walls;
- c. does not have a ventilation system that ventilates into any other smoke-free part of the premises or other premises (except any other designated rooms);
- d. does not have any door that opens onto smoke-free premises which is not mechanically closed immediately after use; and
- e. is clearly marked on each entrance door as a room in which smoking is permitted.

Question 6:

Views are invited on proposals in these regulations for exempting research and treatment facilities.

3.22 **Notes on exemptions:** There is no obligation for persons in control of premises who can rely on exemptions from smoke-free legislation for parts of their premises to allow smoking to take place within them. The regulations have been drafted in a way that recognises that all premises are unique and provides the flexibility for managers to make decisions about whether to implement exemptions, based on factors that will be specific to their premises. Such considerations are likely to include the nature of the client, resident or customer base, the physical layout of their premises and how other legislation (including fire and building

regulations and health and safety laws) applies to premises. Important considerations will also include how the health of employees, visitors and (if applicable) residents will be best protected, and the availability of and/or access to outside space for smoking.

3.23 **Notes on specified conditions for premises with designated rooms for smoking:** These regulations specify a number of conditions that must be met for the different types of premises included in these proposed regulation to access an exemption from smoke-free legislation (apart from private accommodation). These conditions have been developed to best protect persons within premises that have designated smoking rooms from exposure to hazardous secondhand smoke. The following is elaboration on a number of these conditions:

- a. **Designation of rooms that are not smoke-free:** Where indicated, designated rooms that are not smoke-free must be designated in writing by the person in charge of the premises. Proprietors will be advised to retain the written designation so that it may be made available for inspection by an enforcement officer at any time.
- b. **Rooms designated for smoking must be clearly marked as a room in which smoking is permitted:** People should know in which rooms they might expect to be exposed to secondhand smoke. Designated rooms are to be clearly marked as rooms in which smoking is permitted. Premises will be free to determine how to best mark designated rooms, but the Department of Health will make signage that meets requirements readily available.
- c. **Rooms designated for smoking must not have any door that opens onto smoke-free parts of premises which is not mechanically closed immediately after use:** Mechanically closing doors into designated rooms for smoking will assist in preventing drift of secondhand smoke into smoke-free parts of the premises.
- d. **Designated rooms in accommodation for guests and other residential accommodation:** These regulations provide for designated rooms in guest accommodation in premises such as hotels, guest houses, inns, hostels and members' clubs, and in other residential accommodation in specified care homes, adult hospices or mental health units. In such premises, designated rooms where smoking may take place are intended only for residents, and if management allows, for the guests of residents. The provisions in the Health Bill are for places of work to be smoke-free, so the Department of Health would expect that all employees in such premises be required not to smoke anywhere within the premises.
- e. **Designated communal smoking rooms in other residential accommodation and in offshore installations:** Under these proposed regulations, any communal smoking room in these premises must be used solely for smoking and must not serve any other purpose. For example, these regulations would not allow for a communal smoking room in an adult care home also to be used as a recreation or television room, so as to discourage non-smoking residents from spending extended periods of time being exposed to secondhand smoke when engaged in other activities.

Question 7:

Views are invited on the specific conditions for exempted premises proposed in these regulations to ensure that protection from secondhand smoke is provided.

Smoke-free vehicles

- 3.24 Clause 5 of the Health Bill provides powers for regulations to provide for vehicles to be smoke-free and can specify the descriptions of vehicles and particular circumstances when vehicles are to be smoke-free.
- 3.25 **Private vehicles:** Under these proposed regulations, there is no intention to require private vehicles, including rental vehicles for private use, to be smoke-free.
- 3.26 Under these proposed regulations, a vehicle is to be smoke-free if it is used:
- a. for the transport of members of the public or a section of the public (whether or not for reward or hire); or
 - b. for work by more than one person (even if the persons who work there do so at different times, or only intermittently).
- 3.27 **Public transport:** We intend any vehicle used for transportation of members of the public to be smoke-free at all times. This will provide members of the public with the reassurance that all public transport will be smoke-free, regardless of when or where they use it in England. Indeed, given that the vast majority of public transport is already smoke-free, we do not expect the impact from the introduction of the legislation with respect to public transport to be especially remarkable.
- 3.28 **Work vehicles:** We intend vehicles used as a workplace by more than one person, regardless of whether they are in the vehicle at the same time, to be smoke-free at all times. This would be applicable to any vehicle used for work, regardless of whether it was a heavy goods vehicle, a delivery van or a farming vehicle, on the basis that the vehicle was enclosed. This protects shift and other workers who use the same vehicle from the health risks associated with secondhand smoke and provides consistency with other non-mobile workplaces.
- 3.29 Under these regulations, smoking will be permitted in vehicles that are for the sole use of the driver and are not used as a workplace by anyone else, either as a driver or passenger. This is consistent with provisions for places of work that are premises in clause 2(2)(a) of the Health Bill.
- 3.30 **Water-borne craft:** The Health Bill does not extend to water-borne craft for which regulations could be made under section 85 of the Merchant Shipping Act 1995 (c. 21). This is because smoke-free regulations for those craft will be made by the Secretary of State for Transport under that Act. Any water-borne craft, including hovercraft, not covered by the Merchant Shipping Act 1995 would be covered by the provisions of the Health Bill if they are used for public transportation or workplaces as specified above.
- 3.31 **Aircraft:** The Government believes that provisions in the Air Navigation Order 2005 regarding smoking in aircraft are working satisfactorily, and therefore will not seek to include commercial aircraft in regulations to be made under the Bill at this stage. The Air Navigation Order also makes suitable provision regarding no-smoking signage, and provides for an individual found guilty of not complying with no-smoking directions from the aircraft's commander to be liable on summary conviction to a fine not exceeding level 4 on the standard scale.

- 3.32 The Government is reassured that no UK-registered airline permits smoking on board its aircraft and we understand that virtually no airline registered abroad that operates into the UK does either. The Department of Health will keep the situation with aircraft under review, and if smoking on commercial aircraft is permitted in the future, powers exist to make regulatory provision to protect passengers from secondhand smoke. But, for now, we do not see that inclusion of commercial aircraft in this set of regulations is necessary.
- 3.33 **Enclosed vehicles:** Only the vehicles, or parts of vehicles, specified above which are enclosed will be required to be smoke-free. Under these proposed regulations, a vehicle is only to be smoke-free when it is wholly or partly covered by a roof. This means that if a convertible car is to be smoke-free under regulations, it would only be required to be smoke-free when the top of the car is in place.

Question 8:

Views are invited on proposals in these regulations to make certain vehicles smoke-free.

Additional smoke-free places

- 3.34 The Government has no intention at present to use regulation making powers set out in clause 4 of the Health Bill to specify any additional places to be smoke-free.

b. Draft regulations

The Secretary of State for Health, in exercise of the powers conferred by sections 3(1), 5(1) and 79(3) of the Health Act 2006 makes the following Regulations, a draft of which was laid before Parliament in accordance with section 79(4) of that Act:

Part 1

General

Citation, commencement, application and interpretation

1.—(1) These Regulations may be cited as the Smoke-free (Exemptions and Vehicles) Regulations 200X.

(2) These Regulations come into force on XX XXXXX 200X and apply to England.

(3) In these Regulations—

“the Act” means the Health Act 2006; and

“designated” means designated in writing by the person in charge of premises.

(4) The exemptions in Part 2 of these Regulations apply only to premises that would be smoke-free under section 2 of the Act if those exemptions had not been made.

Part 2

Exemptions

Private accommodation

2.—(1) A private dwelling is not smoke-free except for any part of it which is—

(a) shared with other premises (including any other private dwelling or dwellings);

or

(b) used solely as a place of work (other than work that is excluded by paragraph (2)) by—

(i) more than one person who does not live in the dwelling;

(ii) a person who does not live in the dwelling and any person who does live in the dwelling; or

(iii) a person (whether he lives in the dwelling or not) who in the course of his work invites persons who do not live or work in the dwelling to attend the part of it which is used solely for work.

(2) There is excluded from paragraph (1)(b) all work that is undertaken solely—

(a) to provide personal care for a person living in the dwelling;

(b) to assist with the domestic work of the household in the dwelling;

(c) to maintain the structure or fabric of the dwelling; or

(d) to install, maintain or remove any service provided to the dwelling for the benefit of persons living in it.

(3) In this regulation, “private dwelling” includes self-contained residential accommodation for temporary or holiday use and any garage, outhouse or other appurtenance for the exclusive use of persons living in the dwelling.

Accommodation for guests and club members

3.—(1) A designated bedroom in an hotel, guest house, inn, hostel or members’ club is not smoke-free.

(2) In this regulation “a designated bedroom” means a room which—

(a) is set apart exclusively for sleeping accommodation;

(b) has been designated by the person having the charge of the premises in which the room is situated as being a room in which smoking is permitted;

(c) has a ceiling and, except for doors and windows, is completely enclosed on all sides by solid, floor-to-ceiling walls;

(d) does not have a ventilation system that ventilates into any other part of the premises (except any other designated bedrooms);

(e) does not have any door that opens onto smoke-free premises which is not mechanically closed immediately after use; and

(f) is clearly marked as a bedroom in which smoking is permitted.

(3) In this regulation “bedroom” does not include any dormitory or other room that a person in charge of premises makes available under separate arrangements for persons to share at the same time.

Other residential accommodation

4.—(1) A designated room that is used as accommodation for persons aged not less than 18 years in the premises specified in paragraph (2) is not smoke-free.

(2) The specified premises are—

(a) care homes as defined in section 3 of the Care Standards Act 2000 **(a)**;

(b) hospices which as their whole or main purpose provide palliative care for persons resident there who are suffering from progressive disease in its final stages;

(c) mental health units that provide long-term residential accommodation; and

(d) prisons.

(3) In this regulation—

“designated room” means a bedroom or a room used only for smoking which—

(a) has been designated by the person having charge of the premises in which the room is situated as being a room in which smoking is permitted;

(a) 2000 c. 14.

(b) has a ceiling and, except for doors and windows, is completely enclosed on all sides by solid, floor-to-ceiling walls;

(c) does not have a ventilation system that ventilates into any other part of the premises (except any other designated smoking rooms);

(d) does not have any door that opens on to smoke-free premises which is not mechanically closed immediately after use; and

(e) is clearly marked as a room in which smoking is permitted;

“long-term” in relation to residential accommodation in a mental health unit means accommodation which, in the normal course of events, is provided for patients to occupy for not less than 6 months; and

“mental health unit” means any establishment (or part of an establishment) maintained wholly or mainly for the reception and treatment of persons suffering from any form of mental disorder as defined in section 1(2) of the Mental Health Act 1983 **(b)**.

Performers

5.—Where the artistic integrity of a performance makes it appropriate for a person who is taking part in that performance to smoke, the part of the premises in which that person performs is not smoke-free in relation to that performer during his performance.

Specialist tobacconists

6.—(1) The shop of a specialist tobacconist that is being used by persons who are sampling products for smoking other than cigarettes or rolling tobacco is not smoke-free for the duration of that sampling if it—

(a) has a ceiling and, except for doors and windows, is completely enclosed on all sides by solid, floor-to-ceiling walls;

(b) does not have a ventilation system that ventilates into any smoke-free premises;

(c) does not have any door that opens onto smoke-free premises which is not mechanically closed immediately after use; and

(d) is clearly marked as premises in which smoking is permitted.

(2) In this regulation “specialist tobacconist” has the same meaning as in section 6(2) of the Tobacco Advertising and Promotion Act 2002 **(c)**.

Offshore installations

7.—(1) A designated room in an offshore installation is not smoke-free.

(2) In this regulation a “designated room” means a room used only for smoking which—

(a) has been designated by the person in charge of the installation in which the room is situated as being a room in which smoking is permitted;

(b) has a ceiling and, except for doors and windows, is completely enclosed on all sides by solid, floor-to-ceiling walls;

(b) 1983 c. 20.

(c) 2002 c. 36.

- (c) does not have a ventilation system that ventilates into any other part of the premises (except any other designated rooms);
- (d) does not have any door that opens onto smoke-free premises which is not mechanically closed immediately after use; and
- (e) is clearly marked as a room in which smoking is permitted.

Research and testing facilities

8.—(1) A designated room in a research or testing facility is not smoke-free whilst it is being used for any research or tests specified in paragraph (2).

- (2) The research or tests that are specified are those that relate to—
 - (a) emissions from tobacco and other products used for smoking;
 - (b) development of products for smoking with lower fire hazard or the fire safety testing of materials involving products for smoking;
 - (c) development of smoking or pharmaceutical products that could result in the manufacture of less dangerous products for smoking; or
 - (d) smoking cessation programmes.
- (3) In this regulation a “designated room” means a room which—
 - (a) has been designated by the person in charge of the laboratory in which the room is situated as being a room in which smoking is permitted for research or tests specified in paragraph (2) and is a room for the use only of the persons who are required to supervise or participate in the research, tests or treatment;
 - (b) has a ceiling and, except for doors and windows, is completely enclosed on all sides by solid, floor-to-ceiling walls;
 - (c) does not have a ventilation system that ventilates into any other part of the premises or other premises (except any other designated rooms);
 - (d) does not have any door that opens onto smoke-free premises which is not mechanically closed immediately after use; and
 - (e) is clearly marked on each entrance door as a room in which smoking is permitted.

Part 3

Vehicles

Enclosed vehicles

9.—(1) Subject to the following paragraphs of this regulation, a vehicle shall be smoke-free if it is used—

- (a) for the transport of members of the public or a section of the public (whether or not for reward or hire); or

(b) for work by more than one person (even if the persons who work there do so at different times, or only intermittently).

(2) This regulation applies to vehicles and parts of vehicles which are enclosed.

(3) A vehicle or part of a vehicle is enclosed for the purposes of paragraph (2) where it has doors or windows that may be opened but it is not enclosed unless it is wholly or partly covered by a roof.

(4) This regulation applies to all vehicles other than—

(a) aircraft; or

(b) ships or hovercraft in respect of which regulations could be made under section 85 of the Merchant Shipping Act 1995 (c. 21) (safety and health on ships), including that section as applied by any Order in Council under section 1(1)(h) of the Hovercraft Act 1968 (c. 59) or to persons on any such ships or hovercraft.

(5) In this regulation “roof” does not include any roof that is completely stowed away so that it does not cover any part of a compartment in which persons may travel.

[Signature block]

[Date]

4. Smoke-free (Penalties and Discounted Amounts) Regulations 200X

a. Proposals

- 4.1 The Smoke-free (Penalties and Discounted Amounts) Regulations 200X will specify the penalties and discounted amounts for the following smoking offences created by the Health Bill:
- a. no-smoking sign offences;
 - b. offence of smoking in a smoke-free place; and
 - c. offence of failing to prevent smoking in a smoke-free place.
- 4.2 This section of the consultation document details arrangements we intend to include within the Smoke-free (Penalties and Discounted Amounts) Regulations 200X, which will apply to England and Wales. The levels of penalties were subject to consultation in 2005, as part of the *Consultation on the Smoke-free Elements of the Health Improvement and Protection Bill*. The proposals in this consultation document reflect the feedback from the 2005 consultation, as well as advice received from other bodies including the Home Office. The Government's intentions for penalties and discounted amounts were also set out in detail during the passage of the Health Bill through both Houses of Parliament.

Intended levels of penalties

- 4.3 **No-smoking sign offences:** We propose that a person who is found guilty of an offence under clause 6 of the Health Bill will be liable on summary conviction to a fine **not exceeding level 3 on the standard scale**. A court may impose a fine up to the maximum for the prescribed level on the standard scale, which for level 3 is currently £1,000.
- 4.4 An authorised officer of an enforcement authority who has reason to believe that a person has committed an offence under clause 6 of the Health Bill may alternatively issue a penalty notice in respect of the offence. The amount of the penalty for a no-smoking sign offence is proposed to be £200, while the discounted amount if the penalty is paid within 15 days of issue is proposed to be £150. If an individual who is issued with a penalty notice pays within 29 days of when the notice is given, no further action will be taken in respect of the alleged offence. The payment of the penalty involves no admission of guilt and will not result in a record of criminal conviction.
- 4.5 **Offence of smoking in a smoke-free place:** We propose that a person who is found guilty of an offence under clause 7 of the Health Bill will be liable on summary conviction to a fine **not exceeding level 1 on the standard scale**. A court may impose a fine up to the maximum for the prescribed level on the standard scale, which for level 1 is currently £200.

- 4.6 An authorised officer of an enforcement authority who has reason to believe that a person has committed an offence under clause 7 of the Health Bill may alternatively issue a penalty notice in respect of the offence. The amount of the penalty for the offence of smoking in a smoke-free place is proposed to be £50, while the discounted amount if the penalty is paid within 15 days of issue is proposed to be £30. If an individual who is issued with a penalty pays within 29 days of when the notice is given, no further action will be taken in respect of the alleged offence. The payment of the penalty involves no admission of guilt and will not result in a record of criminal conviction.
- 4.7 **Offence of failing to prevent smoking in a smoke-free place:** We propose that a person who is found guilty of an offence under clause 8 of the Health Bill will be liable on summary conviction to a fine **not exceeding level 4 on the standard scale**. A court may impose a fine up to the maximum for the prescribed level on the standard scale, which for level 4 is currently £2,500. Under the Health Bill, enforcement officers will not be able to issue a penalty notice for this offence.

b. Draft regulations

The Secretary of State for Health, in exercise of the powers conferred by sections 6(8), 7(6), 8(7), 9(3) and 79(3) of, and paragraphs 5 and 8 of Schedule 1 to, the Health Act 2006 makes the following Regulations, a draft of which was laid before Parliament in accordance with section 79(4) of that Act:

Citation, commencement, extent and interpretation

1.—(1) These Regulations may be cited as the Smoke-free (Penalties and Discounted Amounts) Regulations 200X.

(2) These Regulations come into force on XX XXXXX 200X and extend to England and Wales.

(3) In these Regulations —

“level” means a level on the standard scale;

“Schedule 1” means Schedule 1 to the Health Act 2006; and

“section” means a section of that Act.

Penalties and discounted amounts

2.—(1) Level 3 is specified for the purposes of section 6(8) (no-smoking sign offences).

(2) Level 1 is specified for the purposes of section 7(5) (offence of smoking in a smoke-free place).

(3) Level 4 is specified for the purposes of section 8(6) (offence of failing to prevent smoking in a smoke-free place).

(4) In respect of an offence alleged under section 6—

(a) the amount of the penalty specified for the purposes of paragraph 5 of Schedule 1 is £200;

(b) the discounted amount specified for the purposes of paragraph 8 of Schedule 1 is £150.

(5) In respect of an offence alleged under section 7—

(a) the amount of the penalty specified for the purposes of paragraph 5 of Schedule 1 is £50;

(b) the discounted amount specified for the purposes of paragraph 8 of Schedule 1 is £30.

[Signature block]

[Date]

Annex A:

Partial Regulatory Impact Assessment

Introduction

1. The *Choosing Health* White Paper⁵ announced the Government's proposed action on secondhand smoke. This is a revised version of a partial Regulatory Impact Assessment (RIA) first published alongside the *Choosing Health* White Paper in November 2004, then published in an updated form as part of the consultation run by the Department of Health from 5 June 2005. The partial RIA was updated again on the introduction of the Health Bill into the House of Commons, on the introduction of the Health Bill into the House of Lords and for inclusion within the consultation document.⁶
2. This RIA sets out options for action, including the identifiable impacts on business and on health as a result of taking action in this area, and where applicable includes implementation costs associated with proposed regulations. This RIA applies to proposals for England only. Although the consultation and partial RIA asks for evidence to allow the RIA to be updated where necessary, comments from stakeholders on any aspect are welcome.

Objective

3. The Government's objective through this legislation is to:
 - reduce the risk to health from exposure to secondhand smoke;
 - recognise a person's right to be protected from harm and to enjoy smoke-free air;
 - increase the benefits of smoke-free enclosed public places and workplaces for people trying to give up smoking so that they can succeed in an environment where social pressures to smoke are reduced and, as a result;
 - save thousands of lives over the next decade by reducing overall smoking rates.

Background

4. Smoking rates in England have fallen from 28 per cent in 1998 to 25 per cent in 2004 – meaning around 1.2 million fewer smokers. The Department of Health has a target to reduce smoking rates further to 21 per cent or less by 2010, and to reduce smoking amongst routine and manual groups to 26 per cent or less over the same time period (from the 2004 level of 32 per cent).

5 Department of Health (2004) *Choosing Health: Making healthy choices easier*. Department of Health, London. Available at: www.dh.gov.uk/PublicationsAndStatistics/Publications/PublicationsPolicyAndGuidance/PublicationsPolicyAndGuidanceArticle/fs/en?CONTENT_ID=4094550&chk=aN5Cor

6 The latest version of the partial RIA for the Health Bill is available on the web at: www.dh.gov.uk/PublicationsAndStatistics/Legislation/RegulatoryImpactAssessment/RegulatoryImpactAssessmentArticle/fs/en?CONTENT_ID=4121917&chk=sUauD

5. The Government aims to achieve reductions in smoking prevalence through an integrated combination of policies that will help the 70 per cent of smokers who say they want to quit to be successful.⁷ One important policy initiative has been to raise awareness of the health risks from secondhand smoke (for example, the smoking children “*if you smoke, I smoke*” media campaign, the more recent “*secondhand smoke is a killer*” campaign and new pack warnings including “Smoking seriously harms you and others around you”). We have also encouraged public places and workplaces to become smoke-free voluntarily.
6. Through the provisions within the Health Bill, smoke-free enclosed public places and workplaces will become the norm. Virtually all enclosed public places to which members of the public have access in the course of their daily work, business and leisure will be covered by smoke-free legislation, with the exception of some very specific places that will be exempted. In covering virtually all enclosed public places and workplaces, smoke-free legislation will cover trains, buses, taxis, shops, schools, early years settings, healthcare facilities, sports centres, offices, factories, cinemas, pubs, restaurants and membership clubs. In addition to the protection from secondhand smoke that will be afforded through the provisions of the Health Bill, employers will continue to have a duty of care to protect the health, safety and welfare at work of all their employees under the Health and Safety at Work Act 1974.⁸
7. Across the world, as the evidence of the risks associated with secondhand smoke exposure has accumulated, action has been taken to reduce people’s exposure to secondhand smoke. Ireland’s smoke-free legislation for enclosed public places and workplaces came into operation in March 2004. In America, California has had state-wide smoke-free legislation for public places since 1998, while New York passed smoke-free legislation in 2003. In total, nine US states have smoke-free legislation in place, which includes completely smoke-free restaurants and bars. These laws have proved effective in protecting people from secondhand smoke. The *Journal of the American Medical Association* documented a significant improvement in respiratory health among bartenders after the passage of the Californian smoke-free workplace legislation.⁹ In New York, cotinine levels¹⁰ in non-smoking bar and restaurant staff declined by 85 per cent.¹¹ Montana saw a 40 per cent drop in hospital admissions for heart attacks during a 6-month period of smoke-free workplaces.¹² In Ireland, almost total compliance with the legislation has been reported, with surveys showing that 97 per cent of premises inspected are compliant in respect of the smoking prohibition, and 99 per cent of all smokers who visited a pub either smoked outside or did not smoke at all. In Ireland, almost one in five smokers chose not to smoke at all when out socialising.¹³

7 Lader, D. and Goodard, E. (2004) *Smoking-related Behaviour and Attitudes, 2004*. Office for National Statistics, London.

8 Further advice is available from the Health and Safety Executive at: www.hse.gov.uk/contact/faqs/smoking.htm

9 Eisner, M., Smith A. and Blanc P. (1998). “Bartenders’ respiratory health after establishment of smoke-free bars and taverns”, *JAMA*, **280**, pp 1909–1914.

10 Cotinine is a major metabolite of nicotine. Exposure to nicotine can be measured by analysing the cotinine levels in the blood, saliva or urine. Since nicotine is highly specific for tobacco smoke, serum cotinine levels track exposure to tobacco smoke and its toxic constituents. More information on cotinine is available at: www.cdc.gov/tobacco/research_data/environmental/factsheet_ets.htm

11 NYC Department of Finance, NYC Department of Health and Mental Hygiene, NYC Department of Small Business Services, NYC Economic Development Corporation (2004) *The State of Smoke-Free New York City: A One-Year Review*. New York.

12 Sargent, R. et al. (2004) “Reduced incidence of admissions for myocardial infarction associated with public smoking ban: before and after study” *BMJ*, 5 April.

13 Ireland Office of Tobacco Control (2004) *Smoke-Free Workplace Legislation Implementation Progress Report*, Ireland Office of Tobacco Control. Dublin.

8. Progress reports from the following countries and US states that have introduced smoke-free legislation have been drawn on during the compilation of this partial RIA:
- a. **Norway:** *Norway's Ban on Smoking in Bars and Restaurants: A Review of the First Year*, available on the web at:
www.shdir.no/tobakk/english/tobacco_control_in_norway/review_of_the_first_year_of_norway_rsquo_s_ban_on_smoking_in_bars_and_restaurants_22156
 - b. **Ireland:** *Smoke-free Workplaces in Ireland: A One Year Review*, available on the web at:
www.otc.ie/article.asp?=&article271
 - c. **New Zealand:** *The Smoke is Clearing: Anniversary Report 2005*, available on the web at:
[www.moh.govt.nz/moh.nsf/0/7EC01E1971949178CC2570D20019E782/\\$File/SmokeClearing.pdf](http://www.moh.govt.nz/moh.nsf/0/7EC01E1971949178CC2570D20019E782/$File/SmokeClearing.pdf)
 - d. **New York, USA:** *The State of Smoke-Free New York City: A One-Year Review*, available on the web at:
www.nyc.gov/html/doh/downloads/pdf/smoke/sfaa-2004report.pdf
 - e. **California, USA:** *Eliminating Smoking in Bars, Taverns and Gaming Clubs: The California Smoke-free Workplace Act*, available on the web at:
www.dhs.ca.gov/tobacco/documents/pubs/smokefreeworkplacecasestudy.pdf
9. Across Europe, there are moves towards smoke-free places, with comprehensive smoke-free legislation in place in Norway and Ireland, and partial legislation in Finland, Sweden, Malta, Spain and Italy. In the UK, all countries have committed to introduce smoke-free legislation to include completely smoke-free pubs, clubs and restaurants, as well as other enclosed public places and workplaces. Scotland's smoke-free legislation came into force on 26 March 2006.
10. In addition, parties to the World Health Organization's Framework Convention on Tobacco Control (FCTC)¹⁴ are required, inter alia, to adopt and implement measures that provide protection from secondhand smoke. The FCTC is the world's first public health treaty, and was adopted unanimously by 192 countries during the 56th World Health Assembly in May 2003. The convention came into force in February 2005, and the United Kingdom is a signatory to the convention, along with 168 other member states.
11. The FCTC is an evidence-based treaty, with the objective to:
- “...protect present and future generations from the devastating health, social, environmental and economic consequences of tobacco consumption and exposure to tobacco smoke by providing a framework for tobacco control measures to be implemented by the Parties at the national, regional and international levels in order to reduce continually and substantially the prevalence of tobacco use and exposure to tobacco smoke”.

14 A full version of the FCTC, together with supporting information, is available at: www.who.int/tobacco/framework/en/

12. The FCTC recognises in its preamble that “scientific evidence has unequivocally established that tobacco consumption and exposure to tobacco smoke causes death, disease and disability...”. Furthermore, the treaty obliges parties to the Convention to “provide for protection from exposure to tobacco smoke in indoor workplaces, public transport, indoor public places and other public places and, as appropriate, other places”.

Rationale for Government intervention

13. The health risks from secondhand smoke were set out in the 1998 report of the Scientific Committee on Tobacco and Health (SCOTH).¹⁵ The report recommended restrictions on smoking in public places and workplaces to protect non-smokers and concluded that exposure to secondhand smoke was a cause of a range of medical conditions, including:
 - lung cancer;
 - ischaemic heart disease;
 - asthma attacks;
 - childhood respiratory disease; and
 - sudden infant death syndrome.
14. In 2004, SCOTH published a second report on secondhand smoke,¹⁶ which reviewed the evidence that had become available since the publication of its first report in 1998. The Committee concluded in its 2004 report that the additional evidence further reinforced the conclusions made by SCOTH in 1998 about the health risks associated with exposure to secondhand smoke. Furthermore, SCOTH highlighted the publication of new evidence since 1998 that makes an association between secondhand smoke and reduced lung function. More recently, a report published in June 2006 by the US Surgeon General, on the health consequences of involuntary exposure to tobacco smoke,¹⁷ concluded that:
 - secondhand smoke exposure causes disease and premature death in children and adults who do not smoke;
 - children exposed to secondhand smoke are at an increased risk for sudden infant death syndrome (SIDS), acute respiratory infections ear problems and more severe asthma. Smoking by parents causes respiratory symptoms and slows lung growth in their children;
 - exposure of adults to secondhand smoke has immediate adverse effects on the cardiovascular system and causes coronary heart disease and lung cancer; and
 - scientific evidence indicates that there is no risk-free level of exposure to secondhand smoke.

15 Scientific Committee on Tobacco and Health (1998) *Report of the Scientific Committee on Tobacco and Health*. TSO, London.

16 Scientific Committee on Tobacco and Health (2004) *Secondhand smoke: Review of evidence since 1988*. TSO, London.

17 U.S. Department of Health and Human Services (2006) *The Health Consequences of Involuntary Exposure to Tobacco Smoke: A Report of the Surgeon General*. U.S. Department of Health and Human Services, Centers for Disease Control and Prevention, National Center for Chronic Disease Prevention and Health Promotion, Office on Smoking and Health, Washington DC.

15. In general, the health benefits of action to provide protection from secondhand smoke include the following:
- reduced illness and mortality from the medical conditions associated with exposure to secondhand smoke;
 - gains in life expectancy to smokers giving up as a result of smoke-free workplaces; and
 - gains in life expectancy from reduced smoking uptake.
16. The benefits of lives saved can be converted into monetary terms using standard Government Economist calculations. Estimates of lives saved can be made by comparing the current levels of exposure to secondhand smoke (both in the workplace and in enclosed public places) with the levels in the suggested options, and reducing the known risk of mortality accordingly. Ranges are necessarily wide as there is a lack of evidence to inform more exact figures. Lives may also be saved by reductions in smoking rates.
17. Secondhand smoke in indoor places not only harms non-smokers, but also harms smokers and makes it difficult for the 7 out of 10 smokers who want to quit¹⁸ to succeed. Completely smoke-free policies in indoor places will assist those people who want to quit but are deterred by the continuation of smoking in indoor public places. International evidence (based on looking at the impact of smoke-free legislation in a range of settings) estimates that completely smoke-free policies in workplaces indoors can reduce smoking prevalence by up to 4 percentage points.¹⁹ The 4 percentage point maximum figure is based on moving from a situation where there are no smoking restrictions (ie, smoking is allowed in all enclosed public places and workplaces) to the implementation of completely smoke-free policy (ie, all enclosed public places and workplaces required to be smoke-free by law).
18. However, substantial progress in smoke-free public places and workplaces has already been achieved. In England, 51 per cent of people already say their workplace is completely smoke-free, and a further 37 per cent have smoking restricted.²⁰ After adjusting for the progress made so far, it is estimated that a move from the current situation to all indoor public places and workplaces being entirely smoke-free might reduce smoking rates among the general population by 0.7 percentage points. This figure is the estimated reduction delivered due to reductions in smoking as a direct result of people's own place of work becoming completely smoke-free.
19. In addition, there will be a reduction in overall smoking due to more places being smoke-free outside the smoker's own workplace. This is more difficult to estimate. For the purposes of the RIA it is estimated that the wider benefit is a reduction in overall prevalence of 1 percentage point. This estimate was reached by combining evidence as to the current distribution of the workforce by degree of smoking restriction with evidence as to the effect on smoking cessation of different degrees of smoking restriction. The estimate of the numbers giving up as a result of smoke-free legislation for public places is based on restrictions in pubs (as the most significant smoking venue). It extrapolates from the workplace adjusting for the different period of enforced abstinence and an estimate of the time smokers spend in pubs.

18 Department of Health/Office for National Statistics (2003) *Statistical Bulletin 2003/21 – Statistics on smoking: England*. Office for National Statistics, London.

19 West, R. (2002) "Banning smoking in the workplace" *BMJ*, **325**, pp 174–175.

20 Lader, D. and Goodard, E. (2004) *Smoking-related Behaviour and Attitudes, 2004*. Office for National Statistics, London.

20. Overall, the total benefit, in reduced smoking, of moving from the current situation to completely smoke-free indoor public places (including workplaces) is therefore estimated at about a 1.7 percentage point fall in smoking prevalence in England. Overall, smoking is estimated to cost the NHS about £1.5 billion a year, and a reduction in smoking will reduce that burden. (A 1.7 percentage point reduction in smoking rate from 25 per cent would mean an estimated annual saving of £100 million to the NHS.)

Current situation/voluntary route

21. In 1998, the Government set out a package of measures in the White Paper *Smoking Kills*²¹ to reduce the 120,000 deaths caused by smoking every year and increase awareness of the risks associated with secondhand smoke. At the time, the Government made clear that “completely smoke-free enclosed public places are the ideal”, but “[did] not think that a universal ban on smoking in all public places is justified while we can make fast and substantial progress in partnership with industry”.
22. Since publication of the White Paper in 1998, the Department of Health has taken action to increase awareness of the risks associated with secondhand smoke through the following:
- UK’s first ever media and education campaign;
 - funding to facilitate the development of a smoke-free communities network and resultant template to help communities move towards smoke-free status on a voluntary basis; and
 - funding of Regional Tobacco Policy Managers who have, as one stream of their work, worked to increase local awareness of the risks associated with secondhand smoke and worked with local partners to encourage the creation of more smoke-free places.
23. In *Smoking Kills*, the Government announced a voluntary agreement, led by the hospitality industry, in which signatories were to commit to “increasing provision of facilities for non-smokers and the availability of clear air”. The detail behind this was later formally launched as the **Public Places Charter**. The Charter provided for written policies for venues to state whether they are smoking or non-smoking, provision of non-smoking areas, air cleaning and ventilation, signs (smoking or no-smoking etc), monitoring, staff training and sharing of practice. The industry agreed to have a national industry-led scheme for signage. Alongside the Charter, the following targets were also set:
- 50 per cent of all pubs (of which there are over 60,000 in the UK) and half the members of the Restaurant Association (which represents over 10,500 group and individual restaurants) should have a formal written smoking policy and signage; and
 - 35 per cent of these premises should restrict smoking to designated and enforced areas and/or have ventilation that meets the agreed standard (“good practice” category).

21 Department of Health (1998) *Smoking Kills: A White Paper on Tobacco*. Department of Health, London. Available at: www.dh.gov.uk/PublicationsAndStatistics/Publications/PublicationsPolicyAndGuidance/PublicationsPolicyAndGuidanceArticle/fs/en?CONTENT_ID=4006684&chk=AqVFgM

24. An independent evaluation in 2003 showed that the key target had not been met and that only 43 per cent of pubs had a formal written smoking policy and appropriate signage in place, although of these, 53 per cent were in the “good practice” category.²² Nearly half of pubs that were Charter compliant allowed smoking throughout and only a handful were entirely smoke-free. Health ministers, in response to the Charter Group report, stated that they were disappointed with the lack of progress. Substantial progress in developing new plans for voluntary change has been made by the hospitality industry since that time, but there is still much more that could be done to protect people from secondhand smoke in public places.

Benefits of action on secondhand smoke

25. Economic and environmental benefits for individuals, society and industry include:
- reduction in NHS expenditure through reduced smoking prevalence (estimates can be derived from annual cost to the NHS from smoking, reduced by the estimated drop in smoking prevalence);
 - reduced costs from sickness absence;
 - improvement of lives for people living with asthma;²³
 - greater efficiency through reduction in time lost by smoking breaks (through closure of smoking rooms as smokers going outside take less work time than smokers going to smoking rooms);²⁴
 - safety benefits such as reduced fire risks;²⁵
 - reduced cleaning and maintenance costs;²⁶
 - reduction in death and disability among those smokers who quit as a result of action to make more places completely smoke-free; and
 - benefits to manufacturers of stop-smoking aids.
26. The following sections attempt to quantify these benefits.

Costs of action on secondhand smoke

27. In general, costs of action to provide protection from secondhand smoke may include the following. The costs for individual courses of action are estimated later as they will have greater or lesser levels of these costs.

22 The Charter Group (2003) *The Public Places Charter on Smoking: Industry Progress Report*. The Charter Group, London

23 Asthma UK report that there are 5.1 million people in the UK with asthma, and cigarette smoke is the second most common asthma trigger in the workplace. They found that “20 per cent of people with asthma feel excluded from parts of their workplace because other people smoke there. This inhibits their daily life as well as opportunities for promotion and development”. Further details are available on the web at: www.asthma.org.uk/news_media/news/smoking_in.html

24 World Bank (1999) *Curbing the Epidemic: Governments and the Economics of Tobacco Control*. World Bank, Washington DC.

25 Parrott, S., Godfrey, C. and Raw, M. (2000) “Costs of employee smoking in the workplace in Scotland”, *Tobacco Control*, **9**, pp 187–192. The authors of the article estimate that 18 per cent of fire damage is caused by smokers’ materials along with matches. As well as the direct cost to businesses, insurance premiums are higher to cover this.

26 World Bank (2002) *Smoke-free Workplaces*. World Bank, Washington DC. Available at: www1.worldbank.org/tobacco/AAG%20SmokeFree%20Workplaces.pdf

28. **Implementation costs:** Depending on the option chosen, costs to industry will vary. There has been speculation that there could be a major negative impact on the hospitality industry from bans on smoking in enclosed venues – for example, there have been reports of falling bar sales in Ireland following the ban. Indeed, responses to the consultation from the pub industry quote figures of volume sales in pubs in Ireland of between “10 per cent and 15 per cent” and “as much as 25 per cent”. However, Irish retail sales data from the Central Statistics Office shows bar sales falls after the ban are in line with year-on-year falls since 2000.²⁷ In general, there is a lack of international evidence to support a prediction of a significant drop in sales in the hospitality industry. Costs associated with proposed regulations have been included in calculations below, and are detailed at the end of this partial RIA.
29. **Enforcement costs:** Dependent on the option chosen, there may be enforcement costs for central and local government. This would primarily be undertaken by local environmental health officers. A substantive set of estimates were commissioned from an independent expert enforcement consultant by the public health charity Action on Smoking and Health (ASH). The Chartered Institute of Environmental Health (CIEH) did not submit separate enforcement estimates but drew attention in their response to the LACORS work. The Department of Health is currently working with the Local Government Association (LGA) to ensure that estimates for enforcement are accurate.
30. **Education and communication:** A level of publicity, education and communication will be needed, depending on what option is chosen. For example, it is normal to set up a helpline to support the implementation and enforcement of smoke-free legislation, as well as making the public fully aware of the changes. Costs for this RIA are estimated based on the experience of current Department of Health tobacco education and awareness campaigns.
31. **Losses to the Exchequer from tax:** As action on secondhand smoke is likely to mean that some smokers will quit or smoke less, there may be a loss to the Exchequer from taxes on cigarettes. This can be measured using the reduction in the amount smoked per day by continuing smokers, and the tax per cigarette. This has been adjusted by reducing the figure by around a quarter to reflect the proportion of cigarettes consumed that do not attract UK tax/duty. Nevertheless, it should be borne in mind that there is an overarching Government target to reduce smoking substantially by 2010. So reductions to the Exchequer are expected as a result of delivering the Government’s target of smoking rates of 21 per cent or less by 2010 (equivalent to 2 million fewer smokers in England). This point also applies to the next item.
32. **Loss of profit to the tobacco industry and tobacco retailers:** As action on secondhand smoke is likely to mean that some smokers will quit or smoke less, the tobacco industry and tobacco retailers may see a loss of profits. This is estimated as unlikely to exceed 10 per cent of the tax loss.
33. **Unintended consequences:** There may be unintended consequences of action, including costs to local authorities or businesses in cleaning up/providing disposal for cigarette butts in outdoor public places, and possible increases in anti-social behaviour from smokers drinking on the streets or at home, rather than in licensed premises. Although the police are not expected to have responsibility for enforcement, consideration has been given, based on other jurisdictions’ experience, as to how they might be affected, for example in cases where smokers refuse to leave

²⁷ From Central Statistics Office, Ireland (2004) *Retail Sales Index (20 August 2004)* CSO, Dublin. Available at: www.cso.ie

a smoke-free area. These are recognised, but the costs are likely to be relatively small, and therefore figures are not included in the cost/benefit table, reflecting responses to the consultation on this point which was raised in the partial RIA.

34. **Production losses and consumer surplus losses:** Some costs can be expected from smokers who were previously allowed to smoke at work and continue to smoke taking smoking breaks (see below for explanation of production losses and consumer surplus).

The options

35. Four options have been identified:

Option 1: *Continue with a voluntary approach*

Option 2: *National legislation to make all indoor public places and workplaces completely smoke-free (with minimal exemptions)*

Option 3: *Legislation giving local authorities new powers to control secondhand smoke in indoor public places and workplaces*

Option 4: *National legislation to make all indoor public places and workplaces completely smoke-free (with exemptions as put forward in Choosing Health)*

36. Further detail is set out below, along with a table of estimated costs and benefits. These are the four options that were identified in the development of the Health Bill – this RIA builds on the pre-existing partial RIA, as the costs and benefits of the Health Bill and these regulations are inextricably linked. Given that it would be option 2 that will be delivered through the Health Bill after its consideration by Parliament, this RIA builds on that option.

Option 1: Continue with a voluntary approach

37. Option 1 is to continue a voluntary approach to reducing secondhand smoke. Employers and businesses would be encouraged to take steps to make more places smoke-free, and the dangers of secondhand smoke would continue to be communicated in media campaigns, but there would be no statutory requirement for smoke-free places, or enforcement of them.

Benefits of Option 1

38. Paragraphs 21 to 24 set out the situation as it currently stands. Given the history of voluntary change the option of doing nothing would seem likely to result in only limited progress (especially in the hospitality sector, as seen with the lack of progress towards the Government's stated ideal through the voluntary approach taken since 1998). The benefits set out could be limited in comparison with the other three options. If we assume that indoor workplaces without bans are those least willing to apply them, we could estimate that only half will voluntarily choose a ban. For other indoor public places, largely the hospitality industry, for illustrative purposes it is assumed that half the customers would be protected from secondhand smoke, but that smokers would be accommodated, and therefore none would stop or cut down.

Accordingly, the cost and benefits of Option 1 have been estimated as half those in Option 2 (see the table at paragraph 61). We have continued to use this estimate reflecting responses to the consultation on this point which was raised in the partial RIA.

39. In September 2004, following a series of meetings with Government ministers, and in response to the White Paper consultation, a group within the hospitality industry launched an initiative for further voluntary action to provide for:
- 35 per cent of the trading space in their pubs and bars to become no smoking by December 2005, moving progressively to 80 per cent by 2009;
 - 50 per cent of pubs' food consumption areas to become no smoking by December 2005; and
 - no smoking "at the bar" and "back of house" (including cellar and food preparation areas) by December 2005.

Costs of Option 1

40. The costs to Government in implementation and enforcement are considered to be zero, as this would be voluntary change (although the voluntary approach may benefit from ongoing media campaigns funded by the Department of Health). Again, we have estimated the other costs (for example loss of tobacco revenues from any fall in tobacco sales) at half those of Option 2. Cost to business will be dependent on how much action is taken voluntarily, including any initial cost of going smoke-free, and cost/benefits of the effect of doing so.

Risks of Option 1

41. This initiative does not cover the whole of the hospitality industry, initially it was five large companies covering approximately one-third of pubs. The British Beer and Pub Association (BBPA) in their consultation response report that around a half of pubs have now committed to the initiative. Even if completely successful, there would still be significant exposure to secondhand smoke for people in the premises and no guarantee of anyone being able to find a smoke-free pub or bar. This would mean possibly little or no demonstrably increased protection from secondhand smoke; and no reason to believe that smoking rates would decrease significantly.

Option 2: National legislation to make all indoor public places and workplaces completely smoke-free (with minimal exemptions)

42. Option 2 would be to legislate to make all indoor public places and workplaces across the country completely smoke-free. No exemptions would be made for the hospitality industry or others, except on human rights or very specific grounds as set out in the consultation paper. The models for this option are Ireland (March 2004), Norway (June 2004) and New Zealand (December 2004).

Benefits of Option 2

43. National legislation would provide protection from the health risks of secondhand smoke and would lead to considerable benefit over and above existing restrictions, with a potential value comfortably in excess of £3 billion annually (including savings for the NHS and through increased productivity for industry). This is principally from the value of averted deaths from employees smoking; from customers' exposure to secondhand smoke and reduced initiation of smoking (see the table at paragraph 62 for detail). Of the five options, this option offers the highest levels of the benefits set out in paragraph 25, including the highest reductions in prevalence, deaths from secondhand smoke, cleaning and fire risk, and increases in productivity. Details of the methodology followed for assessing the costs and benefits are discussed in more detail in the published economic paper *Smoke-free workplaces and public places: Economic Analysis*.²⁸

Costs of Option 2

44. There would be costs to industry to implement Option 2, including the display of no-smoking signage and specific conditions for premises that are exempted from legislation. The costs associated with the implementation of regulatory requirements are detailed in paragraphs 79 to 83. There would also be a cost to Government to enforce the legislation. It was estimated in the partial RIA accompanying the consultation, based on feedback from Ireland, that a ban might cost some £20 million to enforce. The partial RIA asked for views and evidence on this through the consultation. The response received from Jane MacGregor Consulting Limited, commissioned by ASH and referenced by CIEH in their submission, pulled together estimates from consultation involving seven local authority environmental health services. This estimated the national enforcement costs for Option 2 at between £4.5 million and £13.3 million.
45. Coverage in the press has speculated that the pub sector would suffer from reduced profits, but the available published evidence does not support this.²⁹ Evidence was provided to the consultation of reductions in volume sales in Ireland by the pub trade, however this did not take account of the underlying trends in the industry in Ireland. Costs, including loss to the Exchequer and to the tobacco industry and retailers as well as consumer surplus are detailed in the table at paragraph 62.

Risks of Option 2

46. The main risk of Option 2 is that comprehensive smoke-free legislation may not reflect public opinion completely, and may therefore be more controversial and more difficult to enforce. The Office for National Statistics' 2004 survey showed 88 per cent of people in favour of restrictions at work and there are similarly high levels of support for complete bans in most public places and workplaces.
47. For pubs, the figures are 65 per cent for restrictions in pubs and 31 per cent for "no smoking allowed anywhere" in pubs when asked to choose between this and three other options: mostly smoke-free with smoking area; mostly smoking with smoke-free area; and smoking allowed

28 Department of Health (2005) *Smoke-free Workplace and Public Places: Economic Analysis*. Department of Health, London. Available at: www.dh.gov.uk/assetRoot/04/10/27/66/04102766.pdf

29 Scollo, M. et al. (2003) "Review of the quality of studies on the economic effects of smoke-free policies on the hospitality industry", *Tobacco Control*, **12**, pp 13–20.

throughout.³⁰ Between 2003 and 2004 there was a significant shift in public attitudes towards smoke-free and completely smoke-free especially. More recent data (mid-2005) published by ASH from a YouGov poll appears to show this shift has continue with “no smoking allowed throughout” the preferred option in 2005. In December 2005, a further YouGov poll, commissioned by Cancer Research UK and ASH, showed that 71 per cent of respondents would “support a proposal to make all workplaces, including all pubs and all restaurants, smoke-free”. Moreover, experience from Ireland and other jurisdictions has not identified a significant enforcement problem.

48. Legislation for smoke-free enclosed public places and workplaces without exceptions would need to be careful to take account of those places which are primarily where someone lives on a day-to-day basis, for example adult hospices, prisons, or long-stay residential care. Other countries around the world that have such legislation, have some exceptions of this type.

Option 3: Legislation giving local authorities new powers to control secondhand smoke in indoor public places and workplaces

49. Option 3 is to legislate to give local authorities the power to make local legislation on smoke-free places. Local authorities would have the choice to regulate in their area based on local consultation and tailoring the regulation to local needs. They could also choose not to legislate at all.

Risks of Option 3

50. This option would certainly be a longer term and more unpredictable route. In practical terms, the costs and benefits would not be known until the response from all local authorities was known. The main risk is that this may result in a confused system across the country, with businesses, workers and customers having to adapt to different regimes running in neighbouring local authorities; and there is every possibility that some local authorities may not make use of the legislation at all. This option is also the route that the hospitality industry have made clear they favour least – and have stated (though not quantified) there will be costs involved for national chains in ensuring multiple different sets of local legislation, potentially with different exceptions, are adhered to. Further, businesses in the leisure industry with premises on the border of a local authority which had smoke-free legislation might lose smoking customers to businesses in the adjacent local authority; though there may be some offsetting of customers looking for smoke-free premises.

Benefits and costs of Option 3

51. Consideration of the option of allowing local authorities the power to implement a ban within their own boundaries is not that different in terms of impact from a national ban, with or without exceptions. It is reasonable to assume that impact would eventually extend to the vast majority of the population. Many large city authorities across England have already declared their intention to go smoke-free if empowered to do so.

30 Lader, D. and Goodard, E. (2004) *Smoking-related Behaviour and Attitudes, 2004*. Office for National Statistics, London (tables 6.13 and 6.21).

52. In those countries such as the USA, Canada and Australia where local laws/ordinances have been introduced, the pattern has been one of growing momentum, with city after city adopting a smoke-free measure until entire states/provinces have adopted a complete ban. For example, in California, the first local ordinance was introduced in 1988. By 1995 there were 286 cities with smoke-free provisions, and state-wide legislation produced comprehensive legislation in 1998, 10 years after the first local ordinance.³¹ Therefore, this option may be considered as having no greater or lesser impact than national legislation, if the entire country eventually adopted smoke-free legislation. In the cost/benefit table, implementation costs for Option 3 are given as 'unknown', as we do not know what requirements local authorities might put in place.

Option 4: National legislation to make all indoor public places and workplaces completely smoke-free (with exemptions as put forward in Choosing Health)

53. Option 4 would be similar to Option 2, including certain exemptions to mirror public opinion. The White Paper proposed a possible set of enclosed public places affected and exceptions as described below.
54. All enclosed public places and workplaces (other than licensed premises which are dealt with below) would be smoke-free. Licensed premises would be treated as follows:
- all restaurants would be smoke-free;
 - all pubs and bars preparing and serving food would be smoke-free;
 - other pubs and bars would be free to choose whether to allow smoking or to be smoke-free;
 - in membership clubs the members would be free to choose whether to allow smoking or to be smoke-free; and
 - smoking in the bar area would be prohibited everywhere.
55. Special arrangements would be looked at for certain establishments, such as hospices, prisons and long-stay residential care, that are places where someone lives on a day-to-day basis. The full range of costs and benefits, quantified, are set out in the table at paragraph 62. What follows is a description of some of the key areas.

Benefits of Option 4

56. This option is likely to provide the benefits set out in paragraph 25 above, at a level below that of Option 2, but at a much greater level than in Option 1. The loss of benefit in comparison with Option 2 would be likely to be in non-workplace enclosed places (for example pubs). Again, as smokers would be accommodated, we cannot predict the degree to which smokers' behaviour would change as a result of the exemptions in licensed premises. Therefore, the benefits from reductions in deaths due to customers giving up are estimated, at this stage, as between zero and the full benefits in Option 2, though it is unlikely that the actual benefit would be at the extremes of this range. Overall there would be a reduction in secondhand smoke and, for the purposes of this partial RIA, it has been estimated that more than half the deaths from secondhand smoke would be averted (see the table at paragraph 62).

31 Stevens. C. (2003) The California Tobacco Control Program: A Model for Change. Presentation. March 2003.

Costs of Option 4

57. Costs would include costs to enforce the legislation as with Options 2 and 3. The costs, however, were estimated in the partial RIA accompanying the consultation as “likely to be higher” than Option 2. In paragraph 45 we referred to the enforcement cost estimates submitted to the consultation by ASH. This submission estimated that the enforcement costs would be some 50 per cent higher than for Option 2, at between £6.8 million and £19.9 million.

Risks of Option 4

58. In the consultation document and partial RIA it was noted that a risk of this proposal is that food-led licensed premises, pubs in particular, may make a choice to give up serving food in favour of allowing smoking, therefore reversing the recent trend towards pubs being more than simply a place to drink alcohol (however we have been unable to quantify this risk). It was estimated that 10 per cent to 30 per cent of pubs might fall into the category of not “preparing and serving food”.³² In response to the consultation, the BBPA and ASH submitted estimates of how many pubs fall into this category and how many might change as a result of the policy. The BBPA estimated a figure of 19 per cent for July 2005 as “not preparing and serving food” and estimated that 20 per cent of the food pubs would discontinue food sales. An ASH-commissioned independent survey estimated that 29 per cent of pubs would currently fall into the “not preparing and serving food” category, and that this would increase to 40 per cent (therefore some 16 per cent would discontinue serving food). It was also estimated that these smoking pubs would predominate in more deprived areas.
59. The hospitality industry submitted evidence that increased costs would be associated with this option – with pubs that choose to end food incurring costs such as removing kitchens and laying off food staff. The benefits estimated for Option 4 are smaller with regard to economic and environmental benefits, because the exceptions to a total ban would largely affect the hospitality industry where people are exposed to secondhand smoke. Therefore, as Option 4 would have lower impact on exposure to secondhand smoke than Option 2, for the purposes of this partial RIA they are estimated at 40 per cent of the comprehensive legislation benefits.

Net sum of all costs and benefits

60. The table below gives a cost/benefit analysis of the four options that reflect the consultation responses and data submitted. The benefits for Options 1, 3 and 4 have been derived from Option 2, comprehensive legislation. Option 3 has the capability of equalling Option 2’s effects, but with the possibility, though unlikely, of no impact at all. It has been suggested that the lower bound of Option 3 should be Option 1 – that is, giving local authorities powers to legislate would at the very worst be no better than the voluntary change. However, this assumes that Option 1, the voluntary change proposal as set out in paragraph 38, would still be honoured even if Option 3 were followed. Because the consequences for Option 1 of following Option 3 are not clear, we have decided not to make such an assumption. Options 1 and 4 are estimated as having less overall benefit than Option 2 as they deliver fewer completely smoke-free enclosed public places and workplaces.

32 Department of Health (2004) *Choosing Health: Making healthy choices easier*. Department of Health, London. Available at: www.dh.gov.uk/PublicationsAndStatistics/Publications/PublicationsPolicyAndGuidance/PublicationsPolicyAndGuidanceArticle/fs/en?CONTENT_ID=4094550&chk=aN5C0r

Cost/benefits of action on secondhand smoke

61. These costs are estimates based on the information received from past consultations on smoke-free legislation ran by the Department of Health. Where costs are from previous research, we have not updated them to current prices. The table is to be used as a guide rather than a definitive costing of the options.

| Benefits | Option 1 Voluntary action | Option 2 Full ban | Option 3 Local powers | Option 4 Comprehensive smoke-free legislation with food/non-food exception |
|-----------------------------------------------------------------|---------------------------------|----------------------|-----------------------------|-------------------------------------------------------------------------------------------|
| Annual benefits £m | | | | |
| <i>Health benefits</i> | | | | |
| a) Averted deaths from secondhand smoke | | | | |
| Employees | 4 | 21 | 0–21 | 21 |
| Customers ³³ | 75 | 350 | 0–350 | 150–250 |
| b) Averted deaths from smokers giving up | | | | |
| Employees | 800 | 1,600 | 0–1,600 | 1,600 |
| Customers | – | 180 | 0–180 | 0–180 |
| c) Averted deaths from reduced uptake of smoking | | | | |
| | 275 | 550 | 0–550 | 550 |
| <i>Economic and environmental benefits</i> | | | | |
| d) NHS expenditure saved through reduced smoking prevalence | | | | |
| | 20 | 100 | 0–100 | 40–100 |
| e) Reduced sickness absence | | | | |
| | 14–28 | 70–140 | 0–140 | 28–140 |
| f) Production gains (from reduced exposure to secondhand smoke) | | | | |
| | 68–136 | 340–680 | 0–680 | 306–612 |
| g) Safety benefits (damage, fire, injuries, etc) | | | | |
| | 13 | 63 | 0–63 | 57–63 |
| h) Reduced cleaning and maintenance costs | | | | |
| | 20 | 100 | 0–100 | 90–100 |
| Total benefits | 1,289–1,371 | 3,374–3,784 | 0–3,784 | 2,842–3,616 |

³³ Employees are those benefitting from smoke-free policies at their workplace. Customers are people making use of smoke-free enclosed public places.

| Costs ³⁴ | Option 1 Voluntary action | Option 2 Full ban | Option 3 Local powers | Option 4 Comprehensive smoke-free legislation with food/non-food exception |
|-------------------------------------------------------------|---------------------------------|----------------------|-------------------------------------------------|-------------------------------------------------------------------------------------------|
| Annual costs £m | | | | |
| i) Implementation of regulatory requirements ³⁴ | - | 0–5 | Unknown (dependent on local decisions) | 0–5 |
| j) Enforcement | - | 5–13 | 0–20+ | 7–20 |
| k) Education/communication | - | 1 | Unknown (dependent on local decisions) | 1 |
| l) Revenue losses to Exchequer from falling cigarette sales | | | | |
| Employees | 428 | 859 | 0–859 | 859 |
| Customers | - | 113 | 0–113 | 0–113 |
| m) Losses to the tobacco industry and retailers | 43 | 97 | 0–97 | 86–97 |
| n) Unintended consequences | - | - | - | - |
| o) Production losses (smoking breaks) | 215 | 430 | 0–430 | 430 |
| p) Consumers' surplus losses to continuing smokers | 80 | 155 | 0–155 | 155 |
| Total costs | 766 | 1,660–1,673 | 0–1,674 | 1,538–1,680 |
| Net benefit | 523–605 | 1,714–2,111 | 0–2,110 | 1,304–1,936 |

Equity and fairness (including race equality assessment)

62. It has been considered whether these measures will have any disproportionate impacts, including in the context of race equality issues. We do not consider that these measures will disadvantage any particular group. Evidence shows that smoking prevalence is particularly high among poorer people and in deprived areas. We are committed to doing all we can to reduce prevalence of smoking in these groups and areas, to protect people from the health risks of exposure to secondhand smoke and reduce the likelihood of taking up the habit that may bring premature death or serious illness. As action will affect all groups equally, we do not think that there are serious race equality issues for action on secondhand smoke. However, we recognise that different cultures use tobacco differently—one example is restaurants where waterpipes are smoked. Under Options 2 and 4, smoking would not be allowed in these food-based premises.

³⁴ As set out in paragraph 46, based on international evidence, hospitality industry turnover effects are not included as there is no expected significant change.

³⁵ Many of these will be one-off rather than annual costs.

Competition assessment

63. A competition assessment has been undertaken following RIA guidance. Based on this assessment a simple competition assessment is set out. The options cover all businesses in England where activity takes place in an enclosed public place – including workplaces. Outside the hospitality sector no significant competition issues were identified. The biggest impact of action on secondhand smoke will be for the hospitality sector and, within the sector, for those businesses that have made least progress in becoming smoke-free (for example, cinemas are almost universally smoke-free whereas smoke-free pubs are very rare).
- **Option 1** is a continuation of existing policy and does not give rise to any issues based on the filter test.
 - **Option 2** provides for a level playing field to business, with no increased entry costs (indeed it will decrease entry costs to the pub sector as expensive ventilation currently used will no longer need to be installed or maintained).
 - **Option 3** may result in impact on competition between businesses in different jurisdictions. This may result in smokers moving from a legally required smoke-free public place in one local authority to a smoking public place in the neighbouring local authority. There is potential for higher entry costs if a local authority were to decide to require specified ventilation in local legislation.
 - **Option 4** would result in a decision for licensed public places about whether to serve food or not. As with Option 2 this route may decrease rather than increase barriers to entry for similar reasons in premises that will be smoke-free. The exemption of Qualifying (members) Clubs from the legislation presents competition issues that were raised by the hospitality industry in responses to the consultation. Their concern is that smoking will continue unrestricted in these clubs, while other premises and hospitality venues will have to choose either to be: completely smoke-free but prepare and serve food; or allow smoking but no longer prepare and serve food.

Rural proofing

64. We have also considered the impact of these measures in relation to rural areas and consider that they will not have a different or disproportionate impact on people living in rural areas. It has been suggested that rural pubs might be disproportionately affected; however, no substantive evidence was provided in response to the consultation to support this. It may be that local powers (Option 3) would result in different decisions in rural versus urban communities.

Costs to small business

65. The Department has consulted with relevant stakeholders and Department of Trade and Industry's Small Business Service to consider the impact of the range of the proposal and the listed exceptions to establish whether these measures would have a disproportionate impact on small and medium-sized enterprises. Business concerns raised about the legislation were almost exclusively from the pub trade. For most other businesses no specific small business impact

concerns were raised. However, for the pub trade the strongest objections have been to Option 4 as this was felt to present an unfair choice between smoking and providing food: with the choice of one or the other likely to result in increased costs to the business or loss of revenue.

Monitoring and review

66. Any action taken will need to be monitored to measure its effectiveness. If Options 2 or 4 are the final outcome, Health ministers have committed that a review of legislation will be completed three years after implementation.

Enforcement and sanctions

67. These are set out in paragraph 29. The enforcement is proposed in these regulations to be through local authorities for Option 2.

Summary and recommendation

68. Option 4 was the originally preferred option, as it offers the highest level of benefits possible taking into account the original desire for limited exceptions from smoke-free legislation for enclosed public places and workplaces, which would offer smokers some enclosed public places in which to continue to smoke. Option 4 was therefore brought forward in the Health Bill as introduced in October 2005. However, as a result of strong feelings inside and outside Parliament and changing public opinion, the Government facilitated a free vote at Report stage in the House of Commons on how far smoke-free legislation should extend, which resulted in the amendment of the Health Bill to ensure that licensed premises and membership clubs could not be exempted from smoke-free legislation.
69. The table below sets out a summary of the four options.

| Option 1 | Option 2 | Option 3 | Option 4 |
|--------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Least restrictive and costly but may not make significant progress | Most effective but may be seen by the public as too restrictive, as minimal exemptions are identified. However, supported by majority of MPs at Report stage in the House of Commons, and is the preferred option. | Potentially equally as effective as Option 2, but with no guarantee of action, no way of predicting what type of action would be taken, and no guarantee of a timescale for action | The original preferred <i>Choosing Health</i> option – it offered some degree of choice for customers and licensees but is likely to be less effective in reducing smoking and protecting from secondhand smoke than a total ban |
| Net benefit: £523–£605 | Net benefit: £1,714–£2,111 | Net benefit: £0–£2,110 | Net benefit: £1,304–£1,936 |

Notes on derivation of figures

70. **Calculation of value of life years:** The mortality benefits from smoking cessation are converted into life years gained using epidemiological evidence as to the increase in life expectancy associated with smoking cessation. Each life year gained is valued at £30,000. This value of a life year, in turn, is derived from (a) the Department for Transport's value of a statistical life, about £1 million or a little over and (b) statistics showing that the average road death leads to a loss of about 35 years of life years.

Benefits

71. **Averted deaths from secondhand smoke:** The deaths averted from secondhand smoke are calculated separately for the workplace and public places. The estimates rely on a combination of factors: (a) estimates of prevalence of exposure to secondhand smoke in different locations and (b) epidemiological evidence as to the dangers of these levels of secondhand smoke exposure. The reductions in mortality are then converted into life years lost, and evaluated in money terms using similar assumptions as in deaths averted by smoking cessation. For a complete ban the benefit in public places is £350 million and in the workplace £21 million. Option 1 uses 20 per cent of these figures to illustrate the assumption that voluntary action would deliver much less than a ban. Option 4 is assumed to deliver less than half the secondhand smoke protection associated with comprehensive smoke-free legislation for customers because of the exemptions in the hospitality sector. Among workers the protection is, across the workforce, practically the same as for Option 2.
72. **Averted deaths from smokers giving up:** The numbers giving up were estimated by combining evidence as to (a) the current distribution of the workforce by degree of smoking restriction and (b) evidence as to the effect on smoking cessation of different degrees of smoking restriction. Those stopping were assumed to gain on average one year of life expectancy, valued at about £30,000. The estimate of the numbers giving up as a result of a ban in public places is based on restrictions in pubs. It extrapolates from the workplace ban adjusting for the different period of enforced abstinence and an estimate of the time smokers spend in pubs.
73. **Averted deaths from reduced uptake of smoking:** This estimate is based on the number of young people who take up smoking at work, and evidence as to lower uptake in environments where smoking is restricted.
74. **Reduced sickness absence and production gains:** The production gains relate to employees working more productively in smoke-free environments. Gains are also made from reduced time off work through smoking-related illness. The figures are based on the ACoP RIA.³⁶
75. **Safety benefits:** Safety benefits include damage, deaths, injuries, cost to fire services, and administration costs. Individually they are too small to be included so are rolled together. These are also based on the ACoP RIA.
76. **Cleaning costs:** These are also based on the ACoP RIA.

³⁶ Health and Safety Commission (1999) *Proposal for an Approved Code of Practice on Passive Smoking at Work: Consultative Document*. HSC, London.

77. **For Option 4:** As the exceptions to comprehensive legislation will largely affect the hospitality industry, these economic effects will be less great – they have been estimated at 90 per cent of a total ban.

Costs

78. **Implementation of regulatory requirements:** This figure incorporates the cost of fitting closing mechanisms on the doors of the estimated number of rooms likely to be designated as rooms for smoking in premises that can access an exemption under proposed regulations. The figure includes costs of hardware (£15) and fitting (£35) per door. Nevertheless, it is likely that these costs are going to be at the lower end of this estimate, as rooms for smoking (including individual bedrooms) should be classified as **higher fire risk** rooms under current and incoming fire regulations. This means that it is likely that rooms where smoking takes place would need to meet stricter requirements for fire protection, and therefore it is likely that such rooms would already be fitted with equipment such as self-closing fire doors **before** regulations are implemented in summer 2007. Nevertheless, for completeness, costs up to installing door-closing mechanisms on estimated rooms for smoking have been included in the table of costs and benefits.
79. We estimate that training costs associated with the implementation of regulations will be £1 million per annum. The Department of Health will produce a range of guidance documents and other resources for businesses to incorporate into their pre-existing staff training arrangements. Most businesses already train staff where smoking rules apply. The policy in Option 2 (comprehensive smoke-free legislation with minimal exemptions) will make this training more straightforward as rules will not vary from workplace to workplace.
80. We anticipate that other costs associated with implementing proposed regulations will be minimal, including:
- a. **Requirement that rooms to have a ceiling and floor and, except for doors and windows, to be enclosed by solid, floor-to ceiling walls:** We expect that premises that will be able to access an exemption will already have bedrooms or rooms for smoking in existence, and will not need to undertake any reconfiguration works.
 - b. **Written designation of rooms for smoking by management:** We do not expect that this requirement will present any significant burden, as we are simply requiring premises managers to keep a written note on their files of the rooms within the premises that are designated for smoking. We have no plans to require premises managers to complete forms or send designations to any other parties.
 - c. **Ensuring that ventilation systems in rooms for smoking do not ventilate into any smoke-free parts of premises:** After discussions with stakeholders, the Department of Health is not able to estimate what impact this requirement might have on businesses, if any. We would welcome input from stakeholders who wish to provide figures on the cost of this proposed regulatory requirement. To be clear, this does not require the installation of ventilation where smoking rooms are allowed, rather that where ventilation exists in smoking rooms it should not circulate air from that room to another smoke-free part of the premises.

- d. **No-smoking signage and markings on doors of rooms for smoking:** We expect that costs of displaying signage will be minimal, as the Department of Health intends to provide signage that meets requirements to businesses free of charge in the lead-up to implementation. Proposed signage requirements are likely to be less complex than the signage that would be required for Option 1, while signage requirements for vehicles seek to maximise no-smoking signage that is currently in place.
82. **Production losses:** These relate to smokers taking smoking breaks away from workplaces that previously allowed smoking in the workplace. The figures are based on the ACoP RIA.
83. **Consumer surplus:** Consumer surplus is the value a consumer places on the opportunity to consume goods or services over and above the price. Smokers unable to smoke at work lose consumer surplus. This can be thought of as the compensation which would be required to induce them voluntarily to accept a ban, or, alternatively, the sum they would be prepared to pay to bribe the employer not to impose a ban. The amount is estimated by calculating the price rise (given evidence as to the “elasticity of demand”) which would induce smokers to cut down by the amount associated with a ban. The loss of consumer surplus is equal to half this price rise times the amount smoked. As each option has a potentially different effect on smoking, the consumer surplus estimates will vary for different options.

Annex B:

Cabinet Office code of practice on written consultation

This consultation is carried out in the context of the following criteria contained in the *Cabinet Office code of practice on consultation*:

1. Consult widely throughout the process, allowing a minimum of 12 weeks for written consultation at least once during the development of the policy.
2. Be clear about what your proposals are, who may be affected, what questions are being asked and the timescale for responses.
3. Ensure that your consultation is clear, concise and widely accessible.
4. Give feedback regarding the responses received and how the consultation process influenced the policy.
5. Monitor your department's effectiveness at consultation, including through the use of a designated consultation co-ordinator.
6. Ensure your consultation follows better regulation best practice, including carrying out a Regulatory Impact Assessment, if appropriate.

Respondents are invited to comment on the extent to which the criteria have been adhered to and to suggest ways for further improving the consultation process. Comments or complaints about the consultation process, but not your response to the consultation itself, should be directed to:

Steve Wells
Consultations Co-ordinator
Department of Health
Skipton House
80 London Road
London SE1 6LH
E-mail: steve.wells@dh.gsi.gov.uk



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