
**CONSULTATIONS ON REGULATIONS TO UNDERAGE SALE OF TOBACCO
AND SMOKE FREE PREMISES AND VEHICLES**

**Responsible Cabinet Member - Councillor Stephen Harker,
Consumer and Environmental Services Portfolio**

Responsible Director - John Buxton, Director of Development and Environment

Purpose of Report

1. To seek Members' views on the response that should be made to two national consultations by the Department of Health on smoking related issues.

Background

2. The Department of Health (DoH) has released two separate consultations on proposed regulations on smoking related issues; the first on underage sale of tobacco and the second on smoke free premises and vehicles. The deadlines for responses to these two consultations are 2 and 9 October respectively.

Information and Analysis

3. The Government's objectives through delivering smoking related legislation are to:
 - (a) Reduce the risks to health from exposure to secondhand smoke.
 - (b) Recognise a person's right to be protected from harm and to enjoy smoke-free air.
 - (c) 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.
 - (d) Save thousands of lives over the next decade by reducing both exposure to hazardous secondhand smoke and overall smoking rates.

Consultation Paper On Underage Sale of Tobacco

4. The consultation document invites responses on options to address two issues:
 - (a) Raising the minimum age for the sale of tobacco products
The current law controlling the sale of tobacco to young people sets the minimum age at 16. The consultation paper considers revising the minimum age and sets out the following three options:

Option 1: Continuing with an age limit of 16
Option 2: Increasing the age limit to 17
Option 3: Increasing the age limit to 18

The consultation paper considers the case for and against each option. The Government's preferred option is option three, raising the age limit to 18.

(b) Strengthening sanctions against retailers for underage sale of tobacco.

The consultation paper also considers sanctions against retailers to effectively prohibit underage sales. Two options are considered:

Option 1: To introduce a positive licensing system

Option 2: To introduce a negative licensing system

5. Under the positive licensing system prospective tobacco retailers would be required to apply for a Local Authority licence before they can sell tobacco products. Retailers found to be persistently breaking the law on underage sales could face a temporary or permanent suspension of their licence.
6. Under a negative licensing system retailers are free to sell tobacco unless or until they are proven to have persistently flouted the law. Magistrates would apply an Order suspending retailers from selling tobacco where underage sales were evidenced.
7. The Government's preferred option is for negative licensing.

Consultation Paper On Smoke Free Premises and Vehicles

8. The Smoke-Free (General Provisions) Regulations 200X set out specific arrangements for:
 - (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 duties to prevent smoking in smoke-free vehicles.
 - (d) Enforcement.
 - (e) The form of penalty notices.
9. The Smoke-Free (Exemptions and Vehicles) Regulations 200X set out specific arrangements for exemptions and smoke-free vehicles.
10. The Smoke-Free (Penalties and Discounted Amounts) Regulations specifies the penalties and discounted amounts for smoking offences created by the Health Act 2006:
 - (a) No-smoking sign offences.
 - (b) Offence of smoking in a smoke-free place.
 - (c) Offence of failing to prevent smoking in a smoke-free place.
11. To assist the response process a series of questions are posed in the consultation document. The draft responses attached to these questions (below) are those considered by the Joint Special Meeting of Social Affairs and Health and Public Protection and Community Partnerships Scrutiny Committees (refer to the section on "Outcome of Consultation in paragraph 14).
 - (a) Question 1: Views are invited on proposals in these regulations for no-smoking signs in smoke-free premises and vehicles.

Draft Response - We agree with the proposal in providing discretion to the manager,

provided minimum requirements are met. We welcome DoH making signs available on request and providing a telephone helpdesk and Internet information to businesses.

- (b) Question 2: Views are invited on proposals in these regulations for the enforcement of smoke-free legislation.

Draft Response -

- i. We welcome the Government's intention to create a supportive environment to encourage compliance and that enforcement action will follow the Council's existing strategy of fair, proportional and consistent action.*
- ii. We would wish to see the Health and Safety Executive as an enforcement authority for smoke free legislation in those premises for which is the enforcement authority for the Health and Safety at Work Act.*
- iii. We welcome the use of fixed penalty notices as proposed.*

- (c) Question 3: Views are invited on proposals in these regulations for private accommodation, especially on proposals where private dwellings are also a workplace.

Draft Response - For Council staff providing services to a resident of a private dwelling it would be possible in many cases when arranging an appointment, to ask that a smoker does not smoke for half an hour before and then during the visit. In other cases when an announced visit is made that is associated with enforcement action then this approach is unlikely to receive a positive response.

- (d) Question 4: Do these proposed regulations cover the types of residential accommodation that should be exempted under smoke-free legislation?

Draft Response – The types of exempt premises seems appropriate.

- (e) Question 5: Are the arrangements for exempting performers from smoke-free legislation adequate enough to prevent the development of loopholes, while providing adequate flexibility to uphold the artistic integrity of performance?

Draft Response - It is difficult to accept that the artistic integrity of a performance is more important than compliance with a ban on smoking in public places.

- (f) Question 6: Views are invited on proposals in these regulations for exempting research and treatment facilities.

Draft Response - The exemption of research and treatment facility is appropriate.

- (g) 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.

Draft Response - The specific conditions for exempted premises appear appropriate.

- (h) Question 8: Views are invited on proposals in these regulations to make certain vehicles smoke-free.

Draft Response - We are disappointed to see at this time no reference to bus stations, railway stations as places required to be smoke free.

12. The consultation paper also sets out a partial Regulatory Impact Assessment with four options to legislative control:

Option 1: Continue with 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 second hand smoke in indoor public places and workplaces.

Option 4: National legislation to make all indoor public places and workplaces completely smoke-free (with some exemptions).

Outcome of Consultation

13. These consultation papers were considered by a Joint Special Meeting of Social Affairs and Health and Public Protection and Community Partnerships Scrutiny Committees on 22 August 2006.

14. In respect of the Consultation on Underage Sale of Tobacco the meeting resolved:

- (a) That with regard to changing the age of sale of tobacco products, the support of the joint Committee be given to Option 3 which would raise the minimum age for the sale of tobacco products to 18.
- (b) That with regard to sanctions against retailers, the support of the joint Committee be given to Option 2, which would introduce a negative licensing system.

15. In respect of the Consultation on Smoke Free Premises and Vehicles the meeting resolved:

- (a) That Members welcome the progress in implementing the legislation relating to smoke free premises and vehicles.
- (b) That the support of the joint Committee be given to the proposed option 2 of the Regulatory Impact Assessment.
- (c) That a response to the eight questions contained within the consultation document be forwarded to the Department of Health in line with the recommendation detailed in the submitted report.

Legal Implications

16. This report has been considered by the Borough Solicitor for legal implications in accordance with the Council's approved procedures. There are no issues which the Borough Solicitor considers need to be brought to the specific attention of Members, other than those highlighted in the report.

Section 17 of the Crime and Disorder Act 1998

17. The contents of this report have been considered in the context of the requirements placed on the Council by Section 17 of the Crime and Disorder Act 1998, namely, the duty on the Council to exercise its functions with due regard to the likely effect of the exercise of those functions on, and the need to do all that it reasonably can to prevent, crime and disorder in its area. It is not considered that the contents of this report have any such effect.

Council Policy Framework

18. The issues contained within this report do not represent change to Council policy or the Council's policy framework.

Decision Deadline

19. For the purpose of the 'call-in' procedure this does not represent an urgent matter.

Recommendation

20. It is recommended that the responses to the two consultation papers as agreed by the Joint Special Meeting of the Social Affairs and Health and Public Protection and Community Partnerships Scrutiny Committees held on 22 August, be forwarded to the Department of Health as this Council's formal response.

Reasons

21. The recommendations are supported by the following reasons:
- (a) The consultation papers should lead to better control of smoking.
 - (b) This Council's response will contribute to effective controls being implemented as a consequence of the consultations.

John Buxton
Director of Development and Environment

Background Papers

Smoke-Free Premises and Vehicles: Consultation on proposed regulations to be made under powers in the Health Bill (Department of Health - 17 July 2006)

Consultation on Under-Age Sale of Tobacco: Changing the age of sale and strengthening sanctions against retailers for under-age sale of tobacco (Department of Health - 3 July 2006)

Appendix

DoH Consultation on Regulations Relating to Underage Sale of Tobacco and Smoke Free Premises and Vehicles

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BAH