



**Chartered
Institute of
Environmental
Health**

**Submission to
Welsh Assembly Government
on consultation on
Smoke Free Elements of the Health
Improvement and Protection Bill**

**Pembroke House__
Ty Coch Lane,
Llantarnum Parkway,
Cwmbran
NP44 3AU__**

Tel: + 44 (0)1633 865533
Fax: + 44 (0)1633 485193
Website: www.cieh.org.uk

July 2005

THE CHARTERED INSTITUTE OF ENVIRONMENTAL HEALTH

Founded in 1883, the Chartered Institute of Environmental Health (CIEH) is a professional and educational body, dedicated to the promotion of environmental health and to encouraging the highest possible standards in the training and the work of environmental health professionals.

The Chartered Institute has approximately 9,500 members, most of whom work for local authorities in England, Wales and Northern Ireland. As well as providing services and information for its members the Chartered Institute provides information to government departments and evidence to them on proposed legislation relevant to environmental health.

In 1993 the Chartered Institute became the World Health Organisation Collaborating Centre for Environmental Health in Europe.

In 2002 the Chartered Institute established a regional office in Wales in order to facilitate direct liaison with the National Assembly for Wales, local authorities and non-governmental organisations within Wales, promoting and representing Chartered Institute of Environmental Health policies in a Welsh context.

The Chartered Institute of Environmental Health (CIEH) welcomes the opportunity to comment on this consultation document, recognising that the scope of the document in detail applies to England only, and that the Bill enables the Welsh Assembly Government to determine policy in Wales in respect of this matter.

The CIEH has responded to the Department of Health insofar as the parts of the consultation relate to England, this response adopts and advances the comments made in that document. A specific number of points need however to be made to clarify the position of CIEH in respect to the position in Wales.

The CIEH does have concerns regarding the proposals in England, in particular the potential risks of confusion caused by an inconsistent approach across the UK and the detrimental effect such confusion may have on the success of a ban on smoking in public places in Wales. Comments are submitted regarding the content of this consultation document on the basis that definitions developed in England and Wales will need to be consistent.

The failure to impose a comprehensive ban for all enclosed workplaces, including all licensed premises, will mean that some hospitality workers will be unprotected from the harmful effects of smoke. We are pleased that in Wales this has been recognised and there are only limited exemptions to a proposed ban. We support and endorse the comments of colleagues in England who are pressing for reconsideration of the exemption for “non-food” licensed premises.

Proposed definition of *smoke or smoking*

The proposed definition refers only to the smoking of tobacco, and exempts, for example, the smoking of herbal cigarettes. Evidence relating to harm to health from second hand smoke relates only to tobacco smoke, however the definition does not take account of the discomfort caused to others, such as those suffering from asthma and emphysema, by smoke from any source.

CIEH is also concerned that the definition will cause considerable practical difficulties to enforcement officers, who will not be in a position to distinguish whether a product is tobacco or an alternative during an inspection. Laboratory analysis may be required to provide definitive evidence if a prosecution for non-compliance with a ban contemplated. This will have cost implications for local authorities, and will also have the effect of bringing the ban into disrepute with public loss of confidence in both the ban and the ability of the enforcing agencies to enforce it.

Proposed definition of *enclosed*

There is no dissent from the proposed definition of enclosed space. We do however wish to raise concerns regarding shelters for smokers that may be provided by owners of premises subject to the ban. Difficulties may arise with the proximity of such structures to enclosed buildings leading to ingress of smoke and undermining the purpose of the ban, and the location of such structures in courtyards and under stair wells where natural ventilation is limited.

As outlined in the CIEH response to the Department of Health we take the view that there should be a requirement for submission of plans and calculations for such 'non enclosed' spaces to avoid the need for complicated on-site measurements. A Code of Practice, to apply both in England and Wales, is recommended to provide model constructions and acceptable construction materials.

Other public places that fall outside the proposed definition of 'Enclosed spaces'

Although smoking in the open air is less hazardous than smoking in enclosed places due to the dilution factors involved the CIEH supports the proposal to include certain places where there is a risk of harm from secondhand smoke due to the inevitable close grouping together of people in the ban. Such places could include sports stadia, open air events, bus shelters and entrances and exits to public buildings and workplaces.

Exceptions

The CIEH repeats the arguments advanced in our evidence, written and oral to the Committee on Smoking in Public Places. CIEH is of the view that the legislation should be framed around two key principles:

1. No one should be required to work where other people are allowed to smoke,
2. The only place a person has a right to smoke is in the private home and when they are not receiving services or treatments.

Adding of exemptions to the legislation introduces complexities and inconsistency that is not desirable. CIEH specifically takes the view that there should be no differentiation between licensed premises and clubs selling food and those not doing so, since staff are equally at risk from secondhand tobacco smoke in both types of premises.

The suggestion that membership clubs should be exempt from the ban or may by annual ballot decide whether to impose the ban is, in the view of CIEH, failing to address the critical issue, which is that of protection of the health of the occupationally exposed workers. It cannot be right that the level of protection that an occupationally exposed worker receives is to be based on the choice of others, whether on a permanent or annually reviewed basis.

CIEH further is of the view that there should be no extension to the period for licensed premises to comply with the legislation, since the effect of such an extension is to expose staff in such premises to risk for longer than is necessary.

Timetable

It is essential in our view that the ban in Wales and in England should come into force on the same date. This will ensure certainty for all parties and ensure that issues such as smoker 'leakage' and tobacco tourism do not arise.

Enforcement

The CIEH response to the Department of Health details the view taken by CIEH as to the enforcement proposals for England. CIEH in Wales is to be part of the Welsh Assembly Government Steering Group to consider, inter alia, enforcement issues. We therefore adopt those relevant parts of the response to the Department of Health, in particular the suggestion that the arrangement in the Republic of Ireland for enforcement should be followed, but will be making further contributions on this point at the meetings of the steering group.

The CIEH would be happy to clarify or expand upon any points arising from this response, and to comment upon any further proposals on this subject.