

Report to: **District Council of Easington**
Date: **8th September 2005**
Report of: **Executive Member for Health**
Subject: **Department of Health Consultation on Smoking Legislation**
Ward: **All**

1. Purpose of Report

1.1 To seek Council endorsement to the views expressed by the Executive in response to recent consultation from the Department of Health on the smoke free elements of the Health Improvement and Protection Bill.

2. Consultation

2.1 The Department of Health has recently consulted on proposals for introducing smoke free legislation for workplaces and enclosed public places. The consultation period ended on 5th September 2005, before Council could meet to fully debate the issue.

2.2 The Council's Executive did however meet on 30th August and received a report that is attached in Appendix 1. The report was developed in consultation with a wide range of people and organisations. It also incorporated recent survey findings from the Easington Primary Care Trust.

3. Background

3.1 The Government has signalled its intention to introduce legalisation aimed at combating the harmful effects of second hand smoke in enclosed public areas. Its favoured option is a phased introduction with exemptions for pubs that do not serve food, membership clubs (where there will be a requirement for an annual ballot), and communal residential areas. The consultation document does highlight other options, which range from continuing with the voluntary code, a full ban or devolving the decision locally.

3.2 Easington has high levels of ill health, and prevalence of smoking (an undoubted contributory factor) are also high, estimated as 34% of the adult population against a national average of 25%. There is consequently much to gain, in health terms from the legislation.

3.3 At its meeting on 30th August, Executive considered the response to the Department of Health consultation. The agreed response (attached in Appendix 1) called for a full ban rather than a ban with exemptions, and highlighted the following issues:

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- The consultation should have considered all options equally rather than giving most consideration to the option favoured by Government.
- Under the proposals for exemptions, health inequalities will widen. In Easington 81% of pubs and clubs could be exempt, much higher than the Governments estimates of 10%-30% nationally.
- There is a need to protect those who work in smoke filled environments such as bar staff.
- Public opinion appears to be changing in favour of a full ban in pubs. Two local surveys undertaken by Easington PCT reveal 56% and 57% respectively in favour of this.
- In addition to the general comments, more detailed feedback was provided on the sixteen questions posed by the Department of Health.

4. Position Statement and Option Appraisal

- 4.1 The Council's Executive have now submitted their comments to the Department of Health by the required deadline of 5th September 2005.
- 4.2 Subject to the endorsement of the District Council, this could be followed up with a short note indicating full Council support for a full ban also. Whilst this is after the deadline, it would nevertheless add further weight to the comments already made.

5. Implications

The financial, legal and policy recommendations are already set out in Appendix 1 of this report.

At the 30th August meeting of Executive it was recognised that there is an opportunity to promote the Council's stance, in conjunction with the Primary Care Trust. It was emphasised however that the position taken is not anti-smoker, but a matter of *where* you smoke rather than *whether* you smoke.

6. Recommendations

It is recommended that Council:

- i) Endorse the response made by Executive to the recent Department of Health consultation on smoke free legislation.
- ii) Agree to a follow-up note to the Department of Health setting out this endorsement.

Background Papers/Documents referred to:

- i) Department of Health Consultation on Smoke Free Elements of the Health Improvement and Protection Bill.
- ii) Easington PCT surveys and health statistics for Easington.

Report to: **Executive**
Date: **30th August 2005**
Report of: **Executive Member for Health**
Subject: **Department of Health Consultation on Smoking Legislation**
Ward: **All**

1. Purpose of Report

- 1.1 To highlight to Members the issues raised in a Department of Health consultation on the smoke free elements of the Health Improvement and Protection Bill.
- 1.2 For Members to consider a draft response to this consultation, attached in Appendix 1.

2. Consultation

- 2.1 The Director of Public Health, Director of Community Services, Environmental Health & Licensing Manager, Coronary Heart Disease Prevention Manager, Assistant Chief Executive, Tobacco Control Training & Development Specialist, Chairman of the Joint Trade Unions and the Health & Safety Manager have been closely involved in producing this report and preparing the draft response to the Department of Health for Members consideration.
- 2.2 The report incorporates consultation findings from a variety of sources, including the Easington Primary Care Trust and Smoke Free North East. The Primary Care Trust have held a consultation event on this matter at the Glebe centre on 5th August 2005 and have also undertaken surveys of over 600 residents throughout the District.
- 2.3 The views advocated by the East Durham Local Strategic Partnership, Association of North East Councils, the Chartered Institute for Environmental Health and the British Medical Association are also referenced.

3. Background

3.1 The Context to the Consultation

- 3.1.1 In its White Paper, *Choosing Health: making choices easier* (2004), the Government recognises the dangers of second hand smoke (SHS). The White Paper utilised the work by the Scientific Committee on Tobacco and Health (2004) which concluded that it represented a significant health hazard, and cited evidence for example that for non-smokers SHS increased the risk of lung cancer by 24% and heart disease by 25%.

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3.1.2 The Department of Health are currently consulting on the smoke free elements of the Health Improvement and Protection Bill, aimed at combating the effects of second hand smoke. The Bill has flagship status meaning it is likely to be progressed quickly and the intention is to produce legislation which intended to achieve:

- by the end of 2006 all central government departments and the NHS will be smoke free.
- by the end of 2007 all enclosed public places and workplaces, other than licensed premises (and those specifically exempted) will, subject to the legislation be smoke free.
- By the end of 2008 arrangements for licensed premises will be in place.

3.1.3 The main part of the Department of Health Consultation paper is inviting response to a series of issues surrounding the Governments favoured option ("option 4") which is to make all indoor public places and workplaces completely smoke free *with exemptions*. The exemptions include:

- Licensed premises that do not prepare and serve food.
- Membership clubs where it is proposed to require qualifying clubs to undertake an annual ballot on whether or not to permit smoking.
- Living accommodation in residential premises, halls of residence, psychiatric hospitals, prisons and detention centres.

3.1.4 As an Annex to the Departmental of Health report the consultation document also referenced other options that the Government had considered before arriving at its preferred choice. These include:

Option 1 – Voluntary action. This would continue with a voluntary approach to reducing second hand smoke, encouraging employers and businesses to take steps for more places to be smoke free.

Option 2 – Full ban. This would involve legislation to make all indoor public places and workplaces in the country completely smoke free. No exemptions would be made for hospitality industry or others.

Option 3 - Local Powers. The Government would 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 with the regulation tailored to their needs. They could chose not to legislate at all.

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3.1.5 The Department of Health are seeking detailed comments on their preferred choice, as well as any general comments. Evidence based comments would be most useful to them. The deadline for response is **5th September 2005** and although this does not allow time for full Council to give its views, nevertheless the views from the Executive could be provided and followed up, if desired, by the views of the full Council after this date.

3.2 Local Context and Regional Context

3.2.1 There are high levels of smoking within the District, with conservative estimates (Easington PCT) of 34% of adults, well above the national average of 25%. Linked with this there is likely to be corresponding higher levels of second hand smoke pollution. Whilst the smoke free legislation will be very important nationally, it takes on an even greater significance in areas like Easington.

3.2.2 It is difficult to precisely quantify the exact number of enclosed public places within the District but based on properties who pay non domestic rates, residential homes and other areas this is estimated at 2,500 premises. This represents considerably more premises than currently came under the Council's enforcement jurisdiction.

3.2.3 Easington has 137 pubs and Workingmen's Clubs. Under the Government preferred choice, a high proportion 81% (111) are estimated as exempt on the basis that they are Membership Clubs (subject to an annual ballot), or not preparing and serving food. This proportion of exemptions is the highest in the region and considerably above national norms. An area that has the most potentially to gain from the legislation would ironically see the least benefit if the exemptions are permitted.

3.2.4 Three of the options have cost implications for local authorities in relation to enforcement. There are no prescriptive measures proposed in the consultation as to how local authorities should undertake this role, although an estimated cost of £20 million nationally is provided, and more than this to enforce a ban with exemptions. For a small authority like Easington it would be likely to be achieved by extending the duties of existing Environmental Health Officers or contributing to a County wide post to achieve economies of scale. Several of the questions in the consultation are linked to seeking views on how the enforcement might be achieved, legal definitions and fines.

4. Position Statement and Option Appraisal

4.1 The Government identified option 4 (ban with exemption) as preferred on the basis that it more closely reflects public opinion. They cite surveys undertaken in 2003 (ONS) that indicate whilst there is strong support for bans in most public places and workplaces (80%), there was a feeling that pubs stood apart, with support for restrictions reduced to 56%. Members should note that only 20% were in favour of a total ban, but this has risen to 31% in 2005 (ONS). Other polls put those in favour of a total ban much higher, indeed a survey of 1,000 people by Cancer Research UK and ASH found this to be 73%.

4.2 It might be expected that within high smoking areas such as Easington these would be less in favour of a full ban. The evidence however from surveys undertaken at supermarkets, involving over 600 residents do not bear this out, with Easington PCT finding from two surveys 56% and 57% respectively in favour of a full ban.

4.3 The Government do however acknowledge that the ban with exemptions will be less effective in reducing smoking and protecting from second hand smoke, and that this is a more costly and complex approach.

4.4 A smoke free alliance including the British Medical Association, Chartered Institute of Environmental Health and others are opposed to the exemptions. They believe that the government has not gone far enough. They argue:

“These exemptions are highly undesirable because a) many tens of thousands of workers, including those who are exposed to some of the highest levels of second hand smoke, will fail to be protected; and b) they are likely to increase regional differences in people’s health, since the exempted pubs are more likely to be found in poorer areas where people already have poorer health”

4.5 Even within a small area there could be health inequalities. A Survey by the British Medical Association just published reveals that within Telford and Wrekin two thirds of the pubs in deprived areas would be exempt compared with only a quarter in affluent areas. In Easington of those pubs that would be smoke free (on the basis of serving food), two thirds are located in the five least disadvantaged wards.

4.6 The local evidence from Easington supports the view that the exemptions will make health inequalities worse, not better. Accordingly, a central message in the draft response (**attached in Appendix 1**) is to call for a total ban, as outlined in Option 2.

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This is based around two key principles; firstly that no-one should be required to work where other people are allowed to smoke; and secondly the only enclosed place where a person has a right to smoke is in their private abode and when they are not receiving services or treatments. In the Executive considering the draft response, Members will however need to consider if this emphasis on public protection merits the proposed restrictions. It should be noted however that the Association of North East Councils are in support of option 2.

- 4.7 The Department of Health consultation paper invites responses to sixteen questions, many (but not all) of which are framed around the preferred option 4 of exemptions. The draft response to these questions (attached in Appendix 1), supports option 2 (complete ban), broadly agrees with definitions and enforcement measures, calls on the need for local resources to Councils to be fully assessed and proposes, and suggests for pubs and clubs that their could be integration with the Licensing Act regulations, which would require applicants to outline their smoke control measures as part of the licensing process.

5. Implications

5.1 *Financial*

The introduction of this legislation will significantly increase workload within the Environmental Health and Licensing Unit and additional resources will be required dependant upon which option is chosen and the extent of any exemption allowed. The Government propose to make additional resources available to Local Authorities to cover the resource implications. Clearly, from the Council's perspective, these additional resources should reflect need. Insufficient information is available at this time to allow the financial implications to be fully addressed and future reports will provide more detail on this matter.

The Consultation document details the financial implications of each option taking into account health benefits (savings), as well as loss of tax revenue. This identifies the net benefits for Option 1 (voluntary) at £367-449 Million, Option 2 (full ban) £1344-1754 Million, Option 3 (Local decision) £0-1755 Million and Option 4 (ban with exemptions) £977-1651 Million. The full ban is most likely to have the best net financial benefit.

5.2 *Legal*

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The introduction of new legislation would require the council's corporate enforcement policy 'Keeping within the law' to be updated and for new enforcement policies and procedures to be introduced. Further reports will be brought should this legislation be introduced.

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5.3 *Policy*

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The Council currently has a no-smoking policy which would need to be updated to take account of any new legislation introduced. The Council's Licensing Policy and Corporate Enforcement Policy will also need to be reviewed in the light of the legislation.

5.4 *Risk*

There are no risks associated with a response to this consultation document that fall outside the Council's corporate appetite.

5.5 *Communications*

There are no communications implications regarding the consultation stage, unless Members wish to promote the Council's stance.

A major communication exercise will be undertaken should this legislation be introduced.

6. Corporate Implications

6.1 *Corporate Plan and Priorities*

Smoking is a major cause of ill health within this District and the Council has declared 'building healthy communities' as a corporate priority. The recommended response to this consultation supports this commitment.

6.2 *Equality and Diversity*

The Government's favoured option 4, namely the banning of smoking in all premises with exemptions including non-food pubs and licensed clubs may have an adverse impact on health inequalities in poorer communities as there may be a higher proportion of smoking pubs and clubs in such areas. The Council's suggestion that option 2, namely a complete ban, would remove this inequality.

7. Recommendations

- i) That the Consultation from the Department of Health on the smoke free elements of the Health Improvement and Protection Bill be noted.
- ii) That Executive decides on the response to the Department of Health, considering the draft included in this report.

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- iii) That Executive considers the referral of this consultation to full Council and notes that further reports on the implications for this authority will be presented in due course.

Background Papers/Documents referred to:

- i) Department of Health Consultation on Smoke Free Elements of the Health Improvement and Protection Bill.
- ii) Office of National Statistics - Public attitudes to smoking.
- iii) Chartered Institute of Environmental Health Response to Department of Health Consultation.
- iv) Easington PCT surveys and health statistics for Easington

APPENDIX 1

Smokefree Legislation Team
Health Improvement Directorate
Department of Health
Room 707
135 – 155 Waterloo Road
London SE1 8UG

Draft

Dear Smokefree Legislation Team

EASINGTON DISTRICT COUNCIL RESPONSE TO THE SMOKEFREE ELEMENTS OF THE HEALTH IMPROVEMENT AND PROTECTION BILL

Thank you for consulting on the very important issues raised in your Department's recent report. Levels of ill health in this District are unfortunately amongst the highest in the country, and smoking prevalence (an undoubted contributory factor) estimated at 34% of the adult population, against a national average of 25%. For these reasons Council Members have taken a particular interest in the consultation. The views expressed in this letter are those of the Councils Executive, as the tight deadline for submissions have not yet allowed Full Council to debate the matter.

I would firstly take issue with how this consultation is framed. The clear and acknowledged preference from the Government is for a ban with exemptions, and much of the document is taken up with seeking responses to specific queries on how this might be implemented. It is only in the Annex to the report that other options are highlighted, including voluntary action, full ban and providing for local powers. It would have been preferable to have the consultation process focused on these, more fundamental issues. To put it another way, the document should have given attention not to ideas for "doing things right", but on "doing the right things."

Reducing inequalities in ill health is quite rightly a prominent feature of many Government health improvement initiatives. It is ironic however that under the favoured option, there is emerging evidence that there will be higher proportions of exemptions in the most deprived areas, compared to those that are comparatively affluent. The attached table illustrates that Easington will have 81% of its pubs and clubs that could be exempt, the highest in the region. It should be no surprise that of those pubs that would be smoke free (on the basis serving food) three quarters (74%) are located in the few areas of the District not within the 30% most deprived nationally. Car ownership within the District is amongst the lowest in the country, and therefore the freedom to choose by travelling to alternative pubs or clubs is more restricted.

I am concerned about those who work in smoke filled environments. Smoke will not respect the one metre exclusion proposed around a bar, and furthermore the law would not adequately protect those who collect glasses and clean these establishments. As a basic principle no-one should have to work where other people smoke. For some people, particularly those from disadvantaged communities where employment opportunities are limited, this freedom to choose will be compromised.

The recent report highlights that the Government identified its preferred choice of ban with exemptions, largely on the basis of public opinion. One might expect therefore that within such a high smoking area as Easington, even greater proportions return a view in support of exemptions and against a full ban. I can inform you however that from two surveys of shoppers (500 in one sample, 100 in another) by Easington PCT returned results that 57% and 56% respectively were in support of the full ban (option 2). This is consistent with a random telephone sample of 1,202 NE residents (fresh.ne) which found 55% wanted a total ban.

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Nationally there is growing support for a full ban in pubs and whilst The Office of National Statistics (2005) reports this to be currently only 31% it has nevertheless risen significantly from 20% in 2003, and likely to rise still further. The most recent survey by ASH and Cancer Research UK demonstrates this, with 73% in favour of a total ban, the opposite of the ONS findings.

After giving this matter careful consideration the Councils Executive would wish to record its support for the option 2 in the report i.e. the complete ban on smoking in workplaces and enclosed public spaces. In so doing it does recognise that a distinction needs to be made in some communal residential premises where communal areas should be included in the ban, but private living quarters not.

I am also attaching with this letter detailed feedback on the range of questions covered in the consultation. These highlight the potential impact of costs for enforcement to local authorities for which support would be required, as well as broadly agreeing with the proposed penalties and definitions. Timescales might be reviewed to introduce all at the same time, in order to prevent public confusion on the issue.

Clearly the matter of smoking in enclosed public places is a contentious one, and in Easington, just as anywhere else there will be a range of views. Faced however with the incontrovertible evidence of the health risks of second hand smoke, the Councils priority is to protect those who in public places may suffer its harm through no choice of their own.

Cllr Alan Napier. Leader of the Council

c.c. Dr Roger Bolas, Chief Executive, Easington PCT
Elaine Rodger, Association of NE Councils
Fiona Dunlop, Smoke Free North East

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NORTH EAST RESULTS OF EXEMPTIONS/INEQUALITIES MAPPING

Local Authority	Total Number of Pubs/WMC	Total No. exempt	Percentage of premises exempt under proposed Option 4	Index of Multiple Deprivation*- 1) average score 2) ranking	Lung Cancer SMR** (persons)
Northumberland / Tyne and Wear area					
Alnwick	80	52	65%	15.84 202	83
Berwick	61	28	46%	20.65 138	78
Blyth Valley	79	34	43%	26.10 77	158
Castle Morpeth	66	32	49%	15.72 203	111
Tynedale	70	16	23%	14.81 221	101
Wansbeck	95	67	71%	30.50 43	170
Gateshead	248	178	72%	32.60 30	165
Newcastle	359	169	47%	33.55 23	165
North Tyneside	223	127	57%	25.88 79	157
South Tyneside	179	36	20%	32.66 27	160
Sunderland	230	100	43%	33.84 22	159
County Durham / Tees Valley area					
Chester-le-Street	69	36	52%	21.26 124	138
Derwentside	183	64	35%	27.84 62	148
Durham	131	58	44%	18.47 160	97
Easington	137	111	81%	41.44 6	141
Sedgefield	159	80	50%	29.01 53	171
Teesdale	76	19	25%	15.21 214	92
Wear Valley	139	85	61%	31.84 36	124
Darlington	153	74	48%	24.93 87	128
Hartlepool	142	79	56%	37.67 12	152
Middlesbrough	141	77	55%	40.68 9	146
Redcar/Cleveland	149	69	46%	31.07 41	124
Stockton	180	115	64%	26.73 71	148
NORTH EAST			50% licensed premises will be exempt		

*- Ranks of all districts in England (1= most deprived (Knowsley 48.18); 354= least deprived (hart 4.70)

-. Mortality from lung cancer (ICD10 C33-C34); indirectly standardised ratios (SMR), 2001-02 pooled, all ages (Standard rates are England & Wales annual age-specific mortality rates 2001-02). **England & Wales =

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Choosing Health: - Consultation on the Smoke free Elements of the Health Promotion and Protection Bill

The District of Easington supports the introduction of legislation to ban smoking in public places as this will help deliver our objective to build healthy communities. In broad terms we favour a ban without exceptions to afford protection to the widest range of employees and community groups and to minimise health inequalities.

This consultation document asks for comments on a number of questions and the Council's Executive's position on this is as follows: -

Question 1; *Does the definition of smoking proposed raise any concerns, in particular that non-tobacco cigarettes are not covered?*

Proposed response; Whilst the smoking of herbal cigarettes is not considered a significant contribution to ill health in the District the exclusion of these materials from the ban will put an onus on enforcement officers to prove that a tobacco product was being smoked in the event of any offences being witnessed which will be costly and often impractical.

Question 2; *Views are invited on the proposed definition of enclosed space? Is it clear enough to avoid loopholes?*

Proposed response; The definition is considered sufficient to allow application of the legislation to be applied fairly. Some premises may require further clarification such as open warehouses.

Question 3; *Views are invited on the proposal to introduce regulation making powers to apply the legislation to non-enclosed places such as sport stadia, bus shelters etc.*

Proposed response; The risk to health from passive smoking in such places would need to be demonstrated and the number and size of locations would significantly affect the resource implications.

Question 4; *Views are invited on the proposal to give premises licensed for the sale of alcohol a longer period to become either smoke free or smoking premises.*

Proposed response; Premises which sell alcohol often pose the highest risk to staff and customers from passive smoking and do not warrant an extended period to conform with the legislation.

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Question 5; *Views are invited on the merits and practicability on the proposal to exempt licensed premises that do not prepare and serve food from this legislation? This would allow smoking to continue in 'drinking pubs'. Is the choosing health estimate that 10 to 30% of pubs choosing smoking likely to be borne out?*

Proposed response; Local research has shown that up to 80% of the licensed pubs and clubs in Easington District may be exempt and that a disproportionately high number of exempt premises would be within our most deprived communities. This will result in a significant number of non-smoking employees and customers being exposed to passive smoke in deprived communities where employment choices and ability to travel are most limited. The proposal to exempt non-food pubs would have an impact on health inequality within this District.

If exemptions were to be introduced providing a list of permitted snacks allowed in smoking pubs would make enforcing the controls easier.

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Question 6; *Views are invited on the proposal to exempt a list of residential premises and vehicles such as bedrooms in hotels etc. adult hospices, residential care homes.*

Proposed response; This proposal should only apply to situations where employees are not required to work significant periods in these exempt areas.

Question 7; *Views are invited on the proposal to exempt membership clubs where members will be free to choose whether to allow smoking or not by annual ballot.*

Proposed response; As with question 5 the proposal to favour option 4 over option 2 will leave a significant number of non-smoking employees and customers/club members exposed to passive smoke and 80% of these premises are within our most deprived areas. The proposal to exempt private membership clubs would have an impact on health inequality within this District.

Enforcing on the requirement for an annual ballot may be complicated if officers require evidence that it was undertaken in accordance with best practice for example involving advertising, clear questions etc.

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Question 8; *Will the introduction of this legislation present any practical difficulties in your workplace (i.e. Council Buildings)?*

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Proposed response; Currently smoking is only permitted in a limited number of locations within our workplace and so a total ban would not create significant practical difficulties.

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Question 9; *Views are invited on the proposal to require smoke free areas to be designated by no smoking signs, the size and format of which will be set out in regulations.*

Proposed response; This Council agrees with the proposal to set out the size and distribution of signs.

Question 10; *Views are invited on the level of penalties and general approach to offences.*

Proposed response; This Council agrees with the proposals and supports higher penalties for repeated offences or continued failure to display signs. The legislation should place an emphasis on management of premises to ensure that the smoke free policy is properly implemented; that contraventions are detected and dealt with; and that controls are maintained and improved to prevent further contraventions. Where managers fail to prevent smoking on their premises there should be an ascending scale of fines, together with the ultimate deterrent of withdrawal of the licence to sell alcohol.

Question 11; *Views are invited on the defences of failing to prevent smoking and displaying no smoking signs.*

Proposed response; This Council agrees with a defence against failing to prevent smoking but feels that guidance should set out a standard level of intervention that is required by building occupiers to conform with the requirement to prevent smoking in their premises. A defence against providing signage is not considered appropriate, as this legislation will be well publicised nationally, locally and within trade organisations and ignorance of this requirement will not be a valid excuse. This defence will affect enforcement impact in that each premise will be able to argue the defence and hence any prosecution is only likely to be successful following a written warning.

Guidance may require the owner of a business to have a written policy that identifies the responsibilities of managers and staff and the procedures to be followed in securing compliance. If this were the case then where repeat offences are reported to the enforcement officers the written policy and its application can be reviewed and improved to ensure that contraventions are detected e.g. by the deployment of additional staff and the installation of detectors and alarms.

The manager should be required to keep records of all incidents of non-compliance in order to demonstrate diligence. Due diligence should include

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taking steps to have persons willfully contravening the prohibition on smoking removed from the premises.

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Question 12; *Views are invited on the proposed enforcement arrangements and potential resource implications.*

Proposed response; The proposed enforcement arrangements are considered satisfactory subject to the comments in 11 above. The introduction of the enforcement regime will be resource intensive for local authorities however the choice of a national scheme rather than local scheme (option 3) will minimise this. Additional staffing resources will be required.

It should be noted that for District Councils in particular the enforcement covers a considerably greater number of premises.

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Question 13; *Views are invited on how best to regulate a no smoking at the bar policy in exempted licensed premises.*

Proposed response; This issue will be challenging for enforcement officers in that it requires exempted non-food pubs and licensed clubs to be included in inspection rotas and also requires enforcement officers to demonstrate that a person smoking is at or within 1 metre of the bar which has practical difficulties. This could be resolved by requiring exempt licensed premises to submit their intentions to control smoking at the bar as part of their license applications and for these arrangements to be a condition of license.

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Question 14; *Views are invited on the best time for the law to come into effect.*

Proposed response; The proposed times are considered acceptable, however introducing all of these changes at the same time would have the benefit of avoiding public confusion on this matter.

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Question 15; *Views are invited on the level of risk this policy may present to the drive to reduce binge drinking and on how any such risks can be mitigated.*

Proposed response; This Council considers that the introduction of option 4, rather than option 2, is more likely to lead to some pubs choosing to become smoking pubs rather than food pubs. Where food is provided on a small scale there may be greater potential income for pubs that allow smoking on their premises. However the Licensing Act 2003 controls give wider powers aimed at controlling binge drinking which may compensate for this to some degree. Choosing option 2 i.e. smoking ban with out exemptions would remove this risk.

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Question 16;*It has been suggested that the proposal in the white paper will result in smoking pubs and clubs being concentrated in poorer communities. The consequence of this is that the health benefits, in reduced exposure to second hand smoke and in reduced smoking prevalence, will be less in these communities, thereby exacerbating health inequalities. Views and evidence on this issue are invited.*

Proposed response; There is a correlation between deprivation and the proportion of exempt (i.e. smoking) pubs and clubs in an area. Easington ranks number six in the County on multiple deprivation and correspondingly has a very high proportion (81%) of exempt premises.

When the non-exempt pubs/clubs are considered three quarters (74%) are located in the few areas in the District not in the 30% most deprived. This should come as no surprise, as profit margins for preparing and selling food are less in deprived areas.