



**Chartered  
Institute of  
Environmental  
Health**

# **The Smokefree Elements of the Health Improvement and Protection Bill**

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**Response to the  
Department of Health  
consultation**

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September 2005

# 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.

CIEH has over 10,500 members working in government, non-governmental agencies, companies and the armed forces. As well as providing services and information to its members, CIEH 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 Management in Europe.

Any enquiries about this response should be directed in the first instance to

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The Chartered Institute of Environmental Health (CIEH) welcomes this opportunity to comment on the Department of Health consultation on the smokefree elements of the Health Improvement and Protection Bill.

## 1. OUR POLICY ON SMOKING IN PUBLIC PLACES

1.1 We observe that the scientific evidence that environmental tobacco smoke damages the health of third parties is incontrovertible. In recent years this has been confirmed by the Government's Chief Medical Officer for England, Sir Liam Donaldson, (July 2003) as well as by the heads of all Britain's thirteen Royal Colleges of Medicine (November 2003).

1.2 For more than twenty years we have been reflecting our members' concerns about the issue of 'passive smoking'. We acknowledge the rights of employees not to have to work in smokey environments and we support the adoption of smokefree workplaces and public places.

1.3 To that end the General Council of CIEH adopted the following policy in 1999:

The Chartered Institute of Environmental Health believes that:

- there is a significant risk to health from exposure to secondhand tobacco pollution
- unless by their own choice, no-one should be exposed to secondhand tobacco pollution
- all places where people work should be free from secondhand tobacco pollution, and
- ventilation is not a suitable alternative to a no-smoking policy.

1.4 Whilst recognising that action based on co-operation and consensus is always preferable, on the issue of smoking in enclosed public places and workplaces CIEH believes that only a complete prohibition will result in the level of health protection required. CIEH is therefore supporting its members working to ensure high levels of workplace health and safety using existing risk reduction strategies, but we are also pressing for a national ban on smoking in enclosed public places and workplaces.

1.5 CIEH has therefore agreed the following joint statement with Action on Smoking and Health (ASH):

CIEH and ASH believe that the current 'voluntary approach' to smoking restrictions in workplaces and enclosed public spaces is wholly ineffective in tackling the significant public health impacts of involuntary exposure of employees and members of the public to secondhand tobacco pollution. We want to see government leadership in the form of national legislation to end smoking in workplaces and enclosed public places. CIEH and ASH call for the introduction of simple, enforceable legal requirements nationally, as now exist in the Republic of Ireland, operated and enforced at a local level by Councils and their partners.

## 2. OUR RESPONSE TO THE CONSULTATION EXERCISE

2.1 This consultation response will begin by making some introductory comments on our understanding of the intentions of the Government on the issue of prohibiting smoking in workplaces and public places and our overall position. Whilst supporting the broad legislative proposals for prohibiting smoking in workplaces and public places (as set out in Option 2 of the Regulatory Impact Assessment), we wish to offer our recommended approach to the proposals for exemptions and relaxations to ensure that the protection of the worker is placed foremost in such considerations. Finally we provide our responses to the specific questions raised in the consultation document.

### 3. INTRODUCTORY COMMENTS

#### 3.1 The Government's stated objective in proposing 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 smokefree air
- increase the benefits of smokefree 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
- save thousands of lives over the next decade by reducing overall smoking rates

3.2 One of the specific areas of questioning in the original government consultation *Choosing Health? A consultation on action to improve people's health* was the issue that: "One person's choice may spoil the chances of good health for others." This is a basic principle of the public health legislation that environment health practitioners address. The Government has accepted that the case has been made that secondhand tobacco smoke damages the health of workers. It therefore follows that the proposed protective measures should be extended to all workers. To expect environmental health practitioners to do anything less would be against the principles of environmental health professional practice and could be said to be unethical.

3.3 The need to address inequalities in health has been a prominent feature of many of the important government measures to improve public health. To that end, health improvement initiatives usually include the need to identify vulnerable groups and those who are in the greatest need and, if necessary, to implement special measures in order to meet those needs. In relation to these proposals, we are concerned that the needs of vulnerable groups and individuals are not being properly addressed. The proposed exemptions for pubs and clubs will leave whole categories of workers at risk, many of whom will be in employment situations where their ability to take steps to safeguard their own health will be severely limited. Bar workers who have asthma and respiratory illness and women workers who are pregnant, or are planning pregnancy, will rightly expect protection under the law equal to that of the office and factory worker.

3.4 "*Amicus humani generis*" is the motto of CIEH which translates as "Friend of the Human Race" and our members support the entitlement of all people to equality of health protection. However, in relation to this proposed legislation, there is a serious ethical issue being raised by our members as to whether it is professionally acceptable to participate in the enforcement of a law which unjustifiably fails to protect whole categories of vulnerable people and could be open to subsequent challenges under Human Rights Legislation.

#### 4. THE APPROACH RECOMMENDED BY CIEH

4.1 The current proposals rely extensively on the use of regulations to determine where and under what circumstances smoking will be prohibited or permitted (there are proposals for such regulations in paragraphs 10, 11, 14, 15, 19, 23 and 24).

4.2 The approach recommended by CIEH is that the architecture of the legislation should be based around a simple straightforward prohibition of smoking in all indoor workplaces and public places.

4.3 For areas where a case can be made for the exercise of discretion or relaxation of the general prohibition, ie where the workplace or public place is not enclosed by four walls and a roof, then the starting point should be a consideration of the need for protection of the worker.

4.4 The discretion or relaxation would then only be granted where either:

- there are practical means, of effecting protection of the worker, or
- there are other measures to safeguard the employee by minimising exposure

and the standard to be applied in both cases would be that of employing the best practical means, which is a concept already in existing law.

4.5 We believe that this model offers a legislative structure that will have long life and is entirely in accordance with the Government's strategies for better regulation and reducing the burdens on business and we commend it to you.

## 5. PROPOSED DEFINITION OF SMOKE OR SMOKING

***Question 1: Does this definition raise any concerns, in particular that non-tobacco cigarettes are not covered?***

- 5.1 CIEH has serious concerns that this definition is open to interpretation, creating scope for doubt and increasing the need for and difficulties of enforcement and the resultant costs to both regulatory bodies and businesses. We wish to propose alternative definitions.**
- 5.2 The proposed definition is understood to be inclusive of all 'smoking' activities including the use of cigarettes, cigars, pipes and hookahs etc. However, the question of whether smoking materials contain tobacco will be a question of fact and could be a matter of dispute and possibly costly investigation and litigation.
- 5.3 Conversely, it is anticipated by CIEH that if the legal requirements are comprehensive and clearly understood then the legislation will be largely self-enforcing with managers of premises, responsible persons and members of the public individually and collectively willing to challenge and confront persons smoking in contravention of the law. To expect people to be able to differentiate between tobacco and non-tobacco products, with sufficient certainty to be able to challenge others, is unreasonable.
- 5.4 In enforcement situations if the smoking materials cannot be readily identified (as with hand-rolled cigarettes) this may necessitate the use of sampling procedures and laboratory analysis which are complex and costly. It will also make it difficult for enforcement officers to follow up on complaints from the public if alleged offenders can claim that they were using non-tobacco products.
- 5.5 Herbal mixtures may not have been demonstrated to cause damage to the health of smokers, but they certainly cause discomfort to others and can, according to Asthma UK, trigger illness for susceptible individuals and could be included on these grounds alone.
- 5.6 CIEH supports a definition that includes: "any lit substance or mixture of substances that reasonably appears to be smoking tobacco or is being used for a similar purpose". In accordance with such a definition, smoking occurs if the person: "is holding or otherwise in possession or control of any lit substance or mixture of substances that reasonably appears to include smoking tobacco or is being used for a similar purpose."

## 6. PROPOSED DEFINITION OF ENCLOSED

***Question 2: Views are invited on this approach to defining "enclosed". Does it give the owners of likely premises and enforcement authorities a sufficiently clear definition? If not, how might it be improved? Are there concerns that loopholes are being created?***

- 6.1 CIEH has serious concerns about the proposed definitions which do not in our view adequately address the practical situations that will be encountered and are open to interpretation, creating scope for doubt and increasing the need for and difficulties of enforcement and the resultant costs to both regulatory bodies and businesses. We wish to propose alternative definitions.**
- 6.2 There are two categories of structures that will not be fully enclosed.
- 6.3 The first category are workplaces which are constructed in a manner so as not to be fully enclosed, eg a stall in an open-air market or an open-sided warehouse, and where it can be anticipated that the level of natural ventilation will reduce the hazards arising from secondhand smoke to that of smoking in the open-air.

- 6.4 The second category are shelters erected at the discretion of the building owner or occupier for the specific purpose of providing a refuge for people to smoke, whether staff or customers, at workplaces, public places, licensed premises and hospitality establishments.
- 6.5 For the first category the proposed allowance of not exceeding 70 percent of the total notional roof and wall area as described is acceptable. However, for the second category it is not.**
- 6.6 The initial point to make is that the purpose of the shelter is solely to provide protection against inclement weather whilst smokers smoke, and not to create outdoor 'rooms' which effectively extend the business premises. Therefore, the allowance of not exceeding 70 percent of the total notional roof and wall area is more than is necessary for the purpose of providing shelter for short periods of use by individuals. CIEH would prefer an allowance of no more than 30 percent on the basis that this will provide an adequate overhead shelter from the elements. It will also better facilitate natural ventilation, thereby minimising the risks from secondhand smoke to the users and those employees who need to carry out work activities necessary for the continuation of the main business eg the delivery of food and drink purchases and collection of drinking and eating receptacles.
- 6.7 If the 70 percent allowance is also to be applied to 'smoking shelters' (ie if the CIEH recommendation for a reduction to 30 percent is not accepted) then further restrictions will need to be applied. The inclusion in this dispensation of movable and temporary structures will mean that owners can frequently reconfigure and relocate their smoking shelters. This may mean that an arrangement which originally met the requirement for 'not substantially enclosed', subsequently is constructed or located in breach of the requirements, whether intentionally or unintentionally. There should therefore be a requirement for the submission of plans, which specify the location, and calculations which specify the configuration of the wall and roofing elements so as to avoid the need for complicated on-site measurements by enforcement officers at both initial approval and subsequent inspection. The local authority should be permitted to levy a fee for this work.
- 6.8 To assist building owners and managers in meeting these requirements we recommend that a Code of Practice is drawn up, in consultation with trade representatives and key stakeholders, to provide model constructions and acceptable construction materials (eg non-flammable and readily cleansable). Following the pattern of the Building Regulations compliance with the Code of Practice would be deemed to secure compliance with the legislative requirement and any arrangement not prescribed in the Code of Practice would require individual consideration and approval and this would necessitate the payment of a fee.
- 6.9 The CIEH Policy Officer has visited the Republic of Ireland and has seen at first hand the difficulties that have arisen with the erection of structures, external to the main building, for the specific purpose of providing a shelter for smokers. Particular problems occur where an 'outdoor' shelter is sited in close proximity to the main building, or where the location of an 'outdoor' shelter is such that effective natural ventilation is restricted eg enclosed by high walls of courtyards and lighting wells. In such circumstances the enforcement officer should have discretion to require the provision of self-closing mechanisms to adjacent doors; the provision of intervening ventilated lobby access to the main building; permanent securing of adjacent windows and their substitution with a system of artificial ventilation.
7. OTHER PUBLIC PLACES AND WORKPLACES THAT MIGHT FALL OUTSIDE THE DEFINITION OF "ENCLOSED" WHICH MIGHT BE SMOKEFREE

***Question 3: Views are invited on this proposal***

- 7.1 **CIEH is of the view that the proposals are unnecessarily complicated and open to interpretation, creating scope for doubt and increasing the need for and difficulties of enforcement and the resultant costs to both regulatory bodies and businesses. We wish to recommend the adoption of the straightforward risk-based approach.**
- 7.2 The main concern of CIEH is the protection of workers within enclosed workplaces and public places and we accept that smoking in the open-air is substantially less hazardous than in enclosed areas. However, there is an inconsistency in the Government's approach in that if the case is accepted for the need to afford protection from secondhand smoke in open areas then this surely begs the question why protection for indoor areas does not include all pubs and clubs where workers are known to be at a greater risk.
- 7.3 Whilst we support the proposals for affording protection where there is close grouping of people in outdoor situations, it needs to be recognised that enforcement will be difficult in locations where there is neither on-site supervision nor managerial responsibility – an isolated bus shelter is therefore a different proposition to a bus terminus or a railway station.
- 7.4 CIEH supports the proposals for prohibiting smoking at entrances and exits to public buildings, health and educational establishments and believes that the operators of such premises should set an example, and that their staff should accept their responsibility to act as role models. We have seen demonstrations of a range of equipment that will both detect smoke and also the use of ignition materials at entrances to buildings and in remote open-air situations.
8. EXCEPTIONS – ALL LICENSED PREMISES (RECEIVE A LONGER LEAD-IN TIME)

***Question 4: Views are invited on this proposal. Are there any potential difficulties with using the Licensing Act 2003 that consultees would want to raise? Comments on the principle of a longer lead-in time for all licensed premises are also welcome.***

- 8.1 **CIEH wishes to make the strongest possible objections to these proposals for phasing in the implementation of the legislative requirements for different categories of businesses to become smokefree. The position of CIEH throughout this consultation response is that requiring all workplaces and public places to become smokefree at the same time will maximise the levels of voluntary compliance, reduce the need for enforcement activities and minimise costs to regulators and businesses.**
- 8.2 The fundamental position of CIEH is that all workers should be afforded an equal level of protection and there can be no justification for licensed premises to be given a longer period, especially as their workers are exposed to the greatest risk.
- 8.3 Apart from the equality of treatment issue, there are positive advantages for the Government in requiring all workplaces to become smokefree at the same time. This will allow national media campaigns to provide simple straightforward messages that have universal application ie all indoor premises will become smokefree at the same date and time. This will positively encourage voluntary compliance because people will know that they cannot smoke in any indoor workplace and public place and it will encourage members of the public to have confidence in challenging smoking indoors whenever they observe it taking place. This in turn will reduce the burden on the enforcement agencies both to give specific advice about which premises are affected and in dealing with complaints of alleged and suspected breaches.

9. EXCEPTIONS – ALL LICENSED PREMISES THAT DO NOT PREPARE AND SERVE FOOD – DEFINITION OF “PREPARE AND SERVE FOOD”

***Question 5: Views are invited on the merits and practicability of this proposal. If a specific list is preferred, are there any things you would and would not want on such a list, recognising the current wish to, in essence, allow smoking only to continue in “drinking pubs”? Are there any major concerns about the impact on licensed businesses that will have to choose between food and smoking? Is the Choosing Health estimate of 10–30 percent of pubs choosing smoking likely to be borne out?***

- 9.1 **CIEH wishes to make the strongest possible objections to these proposals to exempt premises where food is not prepared or served. It is in our opinion, not a ‘novel approach’, but an entirely illogical and unjustifiable approach and contrary to the essential principles of public health legislation that protection measures against hazards to health are extended to all members of the population likely to be affected. Furthermore, rejecting these exemptions and instead requiring all workplaces and public places to become smokefree at the same time will maximise the levels of voluntary compliance, reduce the need for enforcement activities and minimise costs to regulators and businesses.**
- 9.2 The basis of our objection is that the linking of smoking to food consumption is illogical and spurious in public health terms. There can be no justification for such an exemption on health grounds, indeed the counter argument is true in that bar workers are at the greatest risk from occupational exposure to secondhand smoke and it would be perverse to leave those workers unprotected.
- 9.3 Our robust position is now being supported by that recently taken by the Health and Safety Executive (HSE) and the Health and Safety Commission (HSC). We wish to direct your attention to the HSC report (HSC/05/100) dated 26th July 2005: *HSC’s Response to Department of Health’s (DH) Consultation Document (CD) on the Smokefree Elements of the Health Improvement and Protection Bill*. The HSE and HSC are advocating for the prohibition on smoking to extend to all licensed premises and private clubs on the basis that both the science and existing health and safety legislation support the case.
- 9.4 At a practical level, the Government’s identification of the need for regulations to define ‘snacks’ reinforces the argument that the descriptor of ‘pre-packaged ambient shelf stable snacks’ will not be easily understood and this will substantially increase the need for regulatory advice. The intention to revise the list of snacks from time to time will mean that members of the public will be unlikely to be able to report non-compliance and this will add to the need for investigations by the enforcement agencies and the regulatory bodies.
- 9.5 It can also be maintained that these provisions will not stop food being eaten on licensed premises. In some premises the food sales have been franchised out so that the ‘pub’ business and the ‘food’ business are operated entirely separately. There are pubs already in existence that encourage patrons to ‘bring your own food’ (emulating some elements of the restaurant trade that allow patrons to ‘bring your own bottle’). In other premises patrons are allowed to provide their own food for particular social events such as darts matches etc. Take-away menus from nearby restaurants are displayed in other licensed premises where the staff place telephone orders on behalf of customers and also facilitate the delivery of these meals and their consumption on the licensed premises. We can also expect to see a proliferation of burger and other hot foods vans and an increase in on-street consumption of fast food.

9.6 It has been widely reported in both New York and the Republic of Ireland that a key ingredient of their success has been the universal application of the prohibition on smoking in indoor workplaces and public places and the resultant level trading environment for the hospitality trade.

## 10. EXCEPTIONS – RESIDENTIAL PREMISES

***Question 6: Views are invited on the above list of exceptions, especially in respect of human rights aspects.***

**10.1 CIEH is of the view that the proposals are unnecessarily complicated and open to interpretation, creating scope for doubt and increasing the need for and difficulties of enforcement and the resultant costs to both regulatory bodies and businesses. We wish to recommend the adoption of the straightforward risk-based approach.**

10.2 The legislation should be framed around two key principles: firstly that no-one should be required to work where other people are allowed to smoke; and secondly that the only place a person has a right to smoke is in their private abode and when they are not receiving services or treatments.

10.3 Exemptions, where they are to be agreed, should be specifically for the room used as the private residence and should not include any communal areas.

10.4 Where services and treatments are to be provided in a room used as a private residence it should be the duty of the employer to safeguard the health of the employee as far as is reasonably practicable by preventing or minimising their exposure to secondhand smoke eg by prohibiting smoking whilst the employee is in attendance, ventilating the room and if appropriate issuing and requiring the wearing of personal protective equipment.

## 11. EXCEPTIONS – MEMBERSHIP CLUBS

***Question 7: Views are invited on the proposal.***

**11.1 CIEH wishes to make the strongest possible objections to these proposals to exempt private members clubs and views this proposal as an attempt to placate vested interests. There is no justification for such an exemption on health grounds, and again the counter argument is true in that bar and other workers in such premises are at the greatest risk from occupational exposure to secondhand smoke and it would be perverse to leave those workers unprotected. Furthermore, rejecting these exemptions and instead requiring all workplaces and public places to become smokefree at the same time will maximise the levels of voluntary compliance, reduce the need for enforcement activities and minimise costs to regulators and businesses.**

11.2 The proposal for annual ballots is an unacceptable method of determining requirements for the protection of workers' health. Furthermore, what would be the position of workers who took up their employment at a time when the premises were smokefree and there was subsequently a vote to allow smoking.

11.3 Such premises are also attractive to families with young children and their exposure to secondhand smoke should be of concern to the Government.

11.4 Finally there is the very real risk of damage to the customer base of other licensed premises and the need for a level trading environment has been clearly expressed by the trade representatives.

## 12. EXCEPTIONS – PRACTICAL IMPLICATIONS

***Question 8: Will the introduction of this legislation present any practical difficulties in your workplace?***

- 12.1 CIEH believes that the greater the number of businesses that can be encouraged and supported to adopt and implement smokefree policies, the less practical difficulties that will arise when the proposed legislation is introduced. CIEH is therefore providing leadership and guidance for both its members and their employers in taking action in advance of the anticipated legislation. CIEH does not accept that lengthy lead-in periods of more than a year, or several years, are necessary or desirable. Furthermore, requiring all workplaces and public places to become completely smokefree at the same time will maximise the levels of voluntary compliance, reduce the need for enforcement activities and minimise costs to regulators and businesses.**
- 12.2 With the reasonable lead-in periods, of up to say 12 months, there is plenty of opportunity for employees to determine how they will adjust, reduce or cease their smoking activities in order to meet their employers' requirements. To that end there are extensive support services available both locally (smoking cessation support) and nationally (Quit lines etc).
- 12.3 As a support to business, CIEH is providing training for environmental health practitioners in encouraging and supporting local employers to adopt and implement smokefree policies in advance of the anticipated legislation. This training is based on its 'toolkit' (see below) and has been developed in consultation with the National Collaborating Centre for Tobacco Control and has been delivered in partnership with the DH Regional Directors for Tobacco Control Policy.
- 12.4 CIEH believes that the introduction of prohibitions on smoking should always be accompanied by information and support for staff. CIEH has produced, in association with ASH, a toolkit for use by local authorities and their partners - *the Achieving Smoke Freedom Toolkit – A guide for local decision makers*. The toolkit outlines ways in which local authorities can act, either alone or in partnership, to bring about local environmental smoke reduction or removal schemes, using the power to promote wellbeing and to promote health and reduce health inequalities. It advocates that support is provided for staff in coming to terms with the employers' prohibition on smoking in the workplace. CIEH has also endorsed the National Clean Air Award, administered by the Roy Castle Lung Cancer Foundation, as this also requires that such support is available to staff.

## 13. SIGNAGE

***Question 9: Views are invited on the proposal.***

- 13.1 CIEH recognises the importance of clear and conspicuous signage and wishes to make practical proposals for its use so as to maximise voluntary compliance and assist businesses in complying with the legal requirements for smokefree premises.**
- 13.2 Standardised signage is supported and should refer to the legal requirement so as to reinforce compliance. In the Republic of Ireland the complaint phone line is a national number and has made a significant contribution in securing compliance. It is not stated in the consultation document whether the phone number is intended to be national or local. The phone number to be used should be free of charge.

13.3 Signs should be of a durable material and there should be a requirement for them to be appropriately and conspicuously positioned so that they can be clearly seen by staff and customers, including at all entrances and in positions where staff can indicate them to customers and visitors. In relation to licensed premises and the hospitality sector, signs should be required to be displayed adjacent to bar and other service areas, so that staff can readily point to them.

#### 14. OFFENCES AND PENALTIES

***Question 10: Views are invited on the level of penalties and the general approach on the three types of offence (this section should be read in conjunction with the next section on defences), and whether there should be higher penalties for repeat offences.***

**14.1 CIEH wishes to object to the low level of fines and also to register major concerns regarding the proposed enforcement arrangements which it views as contrary to existing government policy and, in some respects, as unworkable.**

14.2 The level of fines is considered too low given the nature of the hazard to health. There should also be consistency in levels of fines across the UK.

14.3 Local authority staff in general, and environmental health practitioners in particular, are not familiar with imposing fixed penalties and such an activity will pose real risks to their safety and our members have expressed their unwillingness to undertake such a duty without the appropriate safeguards for their personal safety. Our members are also concerned that the inclusion of a power to spot-fine will raise unreasonable expectations about their ability to deal with offences, which will not be met.

14.4 In any case, we believe that the power to impose spot fines will be ineffective unless it is linked to police powers to require the production of identification, detain and if necessary arrest offenders. The risks to enforcement staff will be particularly great in open-air situations where such powers might be better exercised by the police service personnel themselves.

14.5 In our view the emphasis needs to be on management of premises to ensure that the smokefree 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.

#### 15. DEFENCES

***Question 11: Views are invited on defences set out here.***

**15.1 CIEH broadly agrees with the proposed defences and commends the arrangements in the Republic of Ireland which have been seen to work well, are appropriate for England and should therefore be adopted.**

15.2 The arrangements in the Republic of Ireland 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 eg by the deployment of additional staff and the installation of detectors and alarms.

15.3 The manager should be required to keep records of all incidents of non-compliance in order to demonstrate diligence. Due diligence should include taking steps to have persons wilfully contravening the prohibition on smoking removed from the premises.

## 16. ENFORCEMENT

***Question 12: Views are invited on the approach outlined above. Comments are particularly welcome on how resource-intensive enforcement authorities might expect the enforcement work to be.***

**16.1 CIEH wishes to register major concerns regarding the proposed enforcement arrangements which it views as contrary to existing government policies in respect of 'better regulation' and reducing the regulatory burdens on business.**

16.2 It is intended that the 'appropriate enforcement officer' will be officers of the local authority, including their environmental health officers, and this will considerably add to the numbers of premises that the local authority staff will be responsible for.

16.3 CIEH is concerned that this proposal is against the principles of better regulation and that a wider range of enforcement officers should be identified. In particular, officers of the HSE are not included and this will lead to duplication of inspections, in those premises where the HSE is the responsible body, and possible confusion by complainants and business owners.

16.4 CIEH supports the case that has been made for the establishment of a National Office of Tobacco Control that could oversee the implementation of the law. Such a body would ensure consistency of application of requirements and set competence standards for enforcement staff. However, in accordance with the principles of the Hampton Review, the establishment of such a body should incorporate a 'sunset clause' to limit its life so that, when arrangements are working well, the role and function could be handed over to an existing agency.

16.5 CIEH is aware that discussions have already commenced with the Local Government Association on questions around enforcement and likely costs and that work is being undertaken by LACORS to obtain estimates of the likely additional resources required by local authorities for the necessary enforcement activities. The point has been strongly made elsewhere in this submission that enforcement will be greatly simplified by a universal ban implemented in all workplaces and public places at the same time as this will positively encourage voluntary compliance and public challenging and reporting of non-compliance.

## 17. SMOKING AT THE BAR

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

**17.1 CIEH wishes to make the strongest possible objections to these proposals in respect of no-smoking at the bar in exempted licensed premises. The consultation document states that this measure will not furnish any proven health benefit and the proposal is, in our opinion, therefore completely unacceptable and could be said to make a mockery of the Government's stated intention to reduce the risk to health from exposure to secondhand smoke. Furthermore, disallowing all exemptions and instead requiring all workplaces and public places to become entirely smokefree at the same time will maximise the levels of voluntary compliance, reduce the need for enforcement activities and minimise costs to regulators and businesses.**

- 17.2 The bar area is where bar staff work, including serving drinks, collecting glasses and clearing tables and empties. Smoke drifts – everyone recognises this as a distinguishing feature of secondhand smoke, which is why separate smoking and non-smoking areas are seen to be ineffective and are not being permitted under the proposed legislation. Therefore the proposal for identifying an area, and marking it in some manner that customers can be expected to observe, a measured distance away from the bar counter, is spurious.
- 17.3 The promotion of ventilation as an alternative to ending smoking in workplaces and enclosed public places is also an expensive, ineffective and unnecessarily complicated option. It is important to note that the Government's own scientific evidence identifies that there is no safe level of exposure to secondhand tobacco smoke. Ventilation and similar equipment cannot eliminate all smoke and therefore it can only reduce but not eliminate the risk. It would be difficult, if not impossible, to prescribe ventilation standards appropriate for all premises as particular situations vary enormously and therefore bespoke systems will be required. Even basic systems are not cheap and costs even for small establishments will be 6-figure sums; added to which maintenance costs are not inconsiderable and failure to maintain quickly reduces their effectiveness.
- 17.4 The generally available ventilation systems are designed for comfort, not safety. Air filtration or air ionising equipment can only remove visible particles; it is not intended to remove the invisible and toxic gases contained in secondhand tobacco smoke. It would require much higher ventilation rates than most commercial systems offer to reduce health risks measurably and even these would not be fully effective. Such systems would be very expensive and noisy and would cause discomfort, and are therefore unlikely to be installed in commercial premises.
- 17.5 CIEH also understands that there may be requests from trade representatives for 'smoking rooms' which would be rooms set aside for the specific purpose of patrons to smoke and that neither eating nor drinking would be allowed. The smokey atmosphere that would develop in such rooms would mean that there would need to be a prohibition on workers entering them for any purpose, including cleaning, until they had been effectively ventilated. Clearly, only the larger establishments would be able to set aside a room for such purpose, thereby disadvantaging the smaller establishments. If such a proposal is to receive consideration by the Government, then there would need to be a very careful assessment of the necessary standards for such rooms including provision of ventilation, limiting capacity and separation from work areas by the creation of an intervening ventilated lobby access. Such arrangements would also add considerably to the inspection and enforcement requirements.

## 18. TIMETABLE

***Question 14: Views are invited on the best time for the law to come into effect. Does the end of December provide any particular challenges or opportunities? Enforcement authorities, employers and the hospitality industry may want especially to respond on this point.***

- 18.1 CIEH wishes to make the strongest possible objections to these proposals for phasing in the implementation of the legislative requirements for different categories of businesses to become smokefree. The position of CIEH throughout this consultation response is that requiring all workplaces and public places to become smokefree at the same time will maximise the levels of voluntary compliance, reduce the need for enforcement activities and minimise costs to regulators and businesses.**

- 18.2 The fundamental position of CIEH is that all workers should be afforded an equal level of protection and there can be no justification for licensed premises to be given a longer period, especially as their workers are exposed to the greatest risk.
- 18.3 We have previously stated that, apart from the equality of treatment issue, there are positive advantages for the Government in requiring all workplaces to become smokefree at the same time. This will allow national media campaigns to provide simple straightforward messages that have universal application ie all indoor workplaces and public places will become smokefree at the same date and time.
- 18.4 This will positively encourage voluntary compliance because people will know that they cannot smoke in any workplace or public place at any time after the operative date and it will encourage members of the public to have confidence in challenging others wherever they observe smoking taking place contrary to the law. This in turn will reduce the burden on the enforcement agencies both to give specific advice about which premises are affected and in dealing with complaints of suspected and alleged breaches.
- 18.5 It would be sensible to time the introduction of the prohibition on smoking in indoor workplaces outside of the winter months.

## 19. UNINTENDED CONSEQUENCES FOR BINGE-DRINKING

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

CIEH does not wish to make representations on this issue.

## 20. GENERAL POINTS

***Question 16: It has been suggested that the proposals in the White Paper detailed here 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 secondhand smoke and in reduced smoking prevalence, will be less in these communities than in better-off communities, thereby exacerbating health inequalities. Views and evidence on this issue are invited.***

- 20.1 CIEH has participated in the gathering of evidence that indicates that the proposed exemptions from the smokefree requirements for certain pubs and clubs would be concentrated in poorer communities and we are therefore of the opinion that these proposals would exacerbate health inequalities.
- 20.2 CIEH has supported the British Medical Association (BMA) in their survey and published report *Booze, Fags and Food*, that showed that in some areas over 80 percent of pubs are non-food pubs and that these are concentrated in the north of the country. It is being accepted by Department of Health staff that an effect of this exemption will be to increase inequalities in health and this should be a major concern for the Government as it could undermine the fundamental principles of the *Choosing Health* initiative.