



Chartered
Institute of
Environmental
Health

Smoke-free premises and vehicles

Response to Department of Health consultation on
proposed regulations to be made under powers in the
Health Bill

6 October 2006

The Chartered Institute of Environmental Health

As a **professional body**, we set standards and accredit courses and qualifications for the education of our professional members and other environmental health practitioners.

As a **knowledge centre**, we provide information, evidence and policy advice to local and national government, environmental and public health practitioners, industry and other stakeholders. We publish books and magazines; run educational events and commission research.

As an **awarding body**, we provide qualifications, events, and trainer and candidate support materials on topics relevant to health, wellbeing and safety to develop workplace skills and best practice in volunteers, employees, business managers and business owners.

As a **campaigning organisation**, we work to push environmental health further up the public agenda and to promote improvements in environmental and public health policy.

We are a **registered charity** with over 10,500 members across England, Wales and Northern Ireland.

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1.0 Smoke-free premises and vehicles

The Chartered Institute of Environmental Health welcomes this opportunity to submit this statement to the Department of Health in response to the Consultation on proposed regulations to be made under powers in the Health Act.

1.1 Introduction

We firstly wish to record our appreciation that the Smoke-free Legislation Team at the Department of Health has and is continuing to work closely with the Chartered Institute of Environmental Health (CIEH) and other stakeholders in drafting the regulations and we understand that our advice has already been taken on board in a number of important areas. As a result we believe the proposed requirements will be comprehensive, apply universally and should be capable of being clearly understood. Therefore, it is our expectation that 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 people smoking in contravention of the law. This will substantially reduce the workload on local authorities and should mean that in time the requirements of this legislation will be able to be incorporated into other existing areas of regulatory activity.

However, in the short term there is a substantial amount of work for local authorities both in preparing themselves and businesses for the introduction of the prohibition on smoking and then for implementing the necessary enforcement regimes. Therefore, the delays in identifying and making available to local authorities the necessary funding is to be regretted, since even those local authorities most keen to implement this legislation urgently need to set budgets, make work planning arrangements; secure commitment from elected members; carry out recruitment and train staff.

It is our hope, therefore, that upon completion of this consultation, the Government will be able to make rapid progress for the final adoption of this legislation, the provision of local authority funding and the setting of an early implementation date. On this latter point the CIEH strongly recommends the 31 May 2007 as the implementation date since this is already identified as World No Tobacco Day and can be a useful vehicle for attracting additional publicity.

Finally, the consultation period has allowed the CIEH and its members, who will have the main responsibility for this legislation, to consider in detail the practicalities of the implementation of the smoke-free requirements. We have also benefited greatly from the advice of our associated environmental health professional bodies, the Royal Environmental Health Institute Scotland and the Irish Environmental Health Officers Association, and our environmental health colleagues that have already implemented smoke-free legislation, namely the Republic of Ireland, Scotland and the States of Guernsey. Their experience and their willingness to share it has been invaluable and they will continue to be our stepping stones.

Our Directors in Wales and Northern Ireland are similarly involved in their own consultation exercises and whilst we fully recognise the need for variations in content, we advocate a consistency of approach as this will again facilitate compliance.

1.2 General Comments

The CIEH believes that these proposed regulations will ensure that virtually all places where people work will become smoke-free. This is a situation that we, as an organization, have actively campaigned for throughout more than 20 years. It represents a milestone, not only in public health, but in environmental health practice and occupational health and safety measures.

1.2.1 Health and Safety Executive (HSE)

In relation to the latter point we are disappointed that local authorities are the only enforcement authorities being identified and we believe that it is essential that the Health & Safety Executive be included. Furthermore the Health and Safety Commission should review the priorities for health and safety advice and enforcement. This is necessary in order that actions that can be taken by all health and safety enforcement agencies, including both local authorities and the HSE, in supporting businesses in implementing the legal requirements are appropriately prioritized and incorporated into current and future work programs.

1.2.2 Exemptions for workplaces

Having said that virtually all workplaces will become smoke-free, we are nevertheless concerned that there are proposed exemptions to which the generally acceptable argument for exemption as private residential space does not apply. Specialist tobacconists and places of performance and recording of live entertainment are essentially workplaces and the proposed exemptions cannot be supported on any grounds that include a consideration of protection of workers and members of the public. Indeed, we believe that their inclusion would undermine the basic case for the prohibition of smoking in the workplace and leave the requirements open to legal challenge.

1.2.3 Crown Immunity

We do not accept that there is a case, explicit or implied, for a blanket exemption as regards Crown property since these are invariably workplaces and places to which the public are admitted whether generally or by invitation.

1.2.4 Smoking shelters

One of our major concerns is in relation to the arrangements for the provision and use of structures that are not substantially enclosed (as defined) where they are erected for the specific purpose of providing a shelter for smokers. Whilst the definition of substantially enclosed is acceptable as far as it goes and accords with definitions in other UK countries, our concern is that it is not only the construction but also the location of these shelters that will cause considerable problems for local authorities, trade representatives, businesses and individuals.

The CIEH Policy Officer has visited the Republic of Ireland and Scotland and has seen at first hand the difficulties that have arisen with the erection of such structures, as well as the adaptation of existing main structures, for the same purpose.

Particular problems occur where the location of a shelter, or its close proximity to existing buildings, is such that effective natural ventilation is restricted e.g. enclosed by 'sheltering' walls of courtyards and lighting wells, some of which may be several storeys high. There must be a consistent approach to taking these into account in deciding whether or not a shelter can be approved. If not then there will be a variety of local interpretation that will result in accusations of unfairness, legal challenges and delays in business owners providing a facility which they have decided will assist them in securing compliance either for staff or patrons or both.

In addition, the inclusion 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', is subsequently constructed or located in breach of the requirements, whether intentionally or unintentionally.

To assist building owners and managers in meeting these requirements, and to promote a consistent approach, 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 (e.g. non-flammable and readily cleansable). The Code should deal specifically with the distance that smoking shelters would need to be positioned away from adjacent walls and other structures in order to facilitate effective natural ventilation.

Following the pattern of the Building Regulations, compliance with the Code of Practice would be deemed to secure compliance with the legislative requirement. There should then 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 regulatory officers at both initial approval and subsequent inspection. Any arrangement not prescribed in the Code of Practice would require individual consideration and approval. The local authority should be permitted to levy a fee for this work.

1.2.5 Reflux smoke

Finally it can be anticipated that an effect of this legislation and the associated promotional publicity will increase peoples' concerns about, and sensitivity to, second-hand smoke. Experience in the Republic of Ireland in particular indicates that people's expectations for smoke-free environments will increase. They will therefore be dissatisfied with arrangements that expose them to second-hand smoke in unavoidable open air situations, such as seated areas in stadia, and where it arises from outside of buildings they are occupying, whether it arises from 'smoking shelters', open areas or the highway, and enters their workplaces and homes. 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. However, there are no specific legal remedies currently available to local authorities to deal with such situations.

For this reason we note that public commitments have been made at Ministerial level to review implementation of the smoke-free legislation and publish findings

within three years of implementation. We recommend that the necessary monitoring arrangements commence immediately upon implementation of the legislation in order that possible shortcomings and the need for extensions can be identified early and good practice developed and promoted. The CIEH will be keen to participate in and support the monitoring arrangements.

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

2.1 Definitions of enclosed and substantially enclosed premises

The definitions helpfully include both temporary and permanent structures and incorporate the same parameters as are in force in Scotland. This will help to ensure that there is consistency and common understanding of where it is and is not permissible to smoke, particularly if the same standards are adopted by Wales and Northern Ireland in due course.

We have had numerous opportunities to explain this definition to our members and other audiences and to illustrate it with examples of existing and proposed constructions and we believe that it can be readily understood and will meet all reasonable expectations. We therefore support this definition.

However, we do have concerns about the utilization and positioning of 'not substantially enclosed' structures as 'smoking shelters' as detailed in section 1 above.

2.2 Signage requirements for smoke-free premises

The requirement for signs at entrances is crucial to securing compliance. To that end we are concerned that the wording of the explanation of the proposal is more stringent than the wording in the draft regulation in a particularly important respect. We have observed that even where no smoking signs comply with the requirement to be displayed in entrances they may still not be immediately visible to persons entering and therefore accidental smoking can occur.

Our recommendation for the wording of this regulation is therefore as follows:

"In each entrance to a smoke-free premises there shall be displayed in a prominent position and visible at all times to persons entering the premises at least one A5 sign made of durable materials that - "

This requirement should extend to any entrance that is not exclusively providing access to private residential accommodation or in use only as a fire exit.

In order to avoid signs in the entrances becoming damaged and defaced they should be required to be of durable material.

2.3 Signage requirements for smoke-free vehicles

The requirement is sufficiently detailed, in that a sign will be required in every compartment, including the driver's compartment. It is also appropriately pragmatic in that existing signs can continue in use and compliance with Scottish requirements will be deemed to satisfy these requirements and this should be extended to other countries within the UK when their requirements are known.

However, we consider that appropriate signage will be of assistance to drivers of public transport vehicles including taxis and minicabs in securing passenger compliance and that their signs should therefore carry the analogous words to those in smoke-free premises: *"No smoking. It is against the law to smoke in this vehicle."*

Such vehicles are subject to periodic approval by licensing authorities and therefore there is a facility for the progressive introduction of the approved signage as a condition of licence approval and renewal.

In order to avoid becoming damaged and defaced the signs for all vehicles should be required to be affixed to the interior of the vehicle. Our recommendation for the wording of this regulation is therefore that it should include the following:

“ in a prominent position inside the vehicle and visible at all times”

2.4 Duties to comply with signage requirements and to prevent smoking in smoke-free vehicles

It is right that the operators, drivers and persons of vehicles who are responsible for public order or safety should have a duty to prevent smoking just as they have a responsibility to take action to safeguard health and safety of passengers in any other circumstance.

However, it is recognized that there are practical difficulties in relation to some public transport vehicles, especially single-person operated vehicles, where either the operator is unable to observe all passengers all of the time, or is prevented from intervening because of the logistics of operating the vehicle or for reasons of personal safety. The provisions in relation to defences should not be able to be employed by those having overall management responsibilities for the vehicle and its operation so as to obviate the need for action for the detection of offences and preventative action where smoking in contravention of the law is known to be taking place. Such action would include the installation of detection and recording equipment and alarms.

2.5 Compliance and enforcement

We support the expectation that: “Enforcement inspections will be based on risk and, where possible, combined with other regulatory inspections to reduce burdens on business.” We wish to point out that such arrangements also reduce the burdens on enforcement authorities. Indeed this is how most other local authority regulatory work is carried out and is an argument for including the Health & Safety Executive as an enforcement authority since their officers are also in a position to incorporate this work into their existing activities.

2.6 Enforcement authorities

The Department of Health has provided clarification that they intend that the enforcement authorities will comprise all local authorities. In addition we understand that representations have been made to them for the inclusion of certain port authorities.

The DH have stated that they envisage that in two-tier areas it will generally be the district council that will carry out most of the enforcement activity, but that this will be a matter for discussion/negotiation between the district and county. The CIEH believes that in reality these duties will be exercised primarily by the district councils, with involvement from their relevant county councils only where and when requested as appropriate, for example as part of other joint enforcement arrangements already in place.

2.6.1 Health & Safety Executive

There are a large number of premises for which local authorities currently have no responsibilities in connection with occupational health and safety, or for any other routine enforcement measures, and such premises are largely the responsibility of the HSE. It is widely considered by our membership to be completely unacceptable that the responsibility for all such premises should be passed to local authorities. Not only will this increase the local authority workload and necessitate the enlargement of their premises database simply for this singular area of activity, but also because it is contrary to the Government's own goal for better regulation as expressed by the Hampton Review. Similarly, the CIEH has been actively supporting the Department of Trade and Industry project in establishing the Local Better Regulation Office, which is considering amongst other matters, the opportunities for cross-boundary working by national regulators. We consider that the introduction of local authority enforcement functions on what have been traditionally identified as HSE premises will create unnecessary confusion for businesses at a time when the Government's wish is for clarity and streamlining of regulatory activities.

If local authorities are to be the only enforcement agency then we wish to see and comment upon the detailed arrangements on how compliance will be achieved and monitored in HSE enforced premises such as prisons and Ministry of Defence sites, as well as NHS estates and, indeed, local authorities themselves.

Even if it is decided that the HSE will not be an enforcement authority, there remain major responsibilities for the HSE and its officers in relation to the introduction of this legislation. The HSE 'Fit3' Strategic Delivery Programme (Fit For Work, Fit For Life, Fit For Tomorrow) has three main blocks which are aligned with the three components of its 'Revitalising Health and Safety' targets and its Public Service Agreement targets, namely injury reduction, ill-health reduction and reduction in days lost. One of the aims is to deliver reductions in the incidence of work-related ill-health - major initiatives include targeted interventions to reduce the incidence of occupational asthma and to reduce the incidence of days lost due to work-related ill-health. Both of these priorities, and many other areas of the HSE programme, need of necessarily to address the issues of smoking in the workplace and more generally.

For these reasons, HSE officers should be required to actively promote smoke-free work environments, proactively prepare businesses which are responsible for the introduction of the smoke-free legislation and support businesses in achieving compliance: for example by checking that appropriate policies have been adopted; that signage is in place; and that 'smoking rooms' are being taken out of use.

Along with the DH and the HSE, the CIEH is a signatory to the Department of Work and Pensions Charter on health, work and well-being in the workplace which is a key part of the DWP strategy for involvement in the wider issues of health in the workplace with an emphasis on rehabilitation and return to work. Workplace smoking and reductions in smoking overall will be key elements in improving the health, work and well-being of working age people.

2.6.2 Police Service

In addition we recommend that Police Services should be included as enforcement authorities in order that their officers are able to take action, either independently or in support of local authority staff, particularly in relation to vehicles in transit, licensed premises and on-street situations (e.g. bus stops) where the immediate issuing of a fixed penalty notice is more efficient and effective than reporting an offence for subsequent processing by another agency.

2.6.3 New Burdens Doctrine

The consultation document states that the Government will reimburse local authorities under the New Burdens Doctrine for any extra costs in enforcing the law and indeed assurances to that effect were being given at Ministerial level even during the passage of the Health Bill.

To this end the CIEH is working with LACORS to assist the LGA in identifying and quantifying the necessary costs in delivering compliance with the proposed legislation and also in addressing the unavoidable and undesirable issues associated with the introduction of the prohibition on smoking including an increase in smoking related litter, increase in noise and disturbance on the streets, demand for outside smoking shelters and covered drinking areas.

The CIEH wishes to emphasise that any presumption that, because a high level of voluntary compliance has been readily achieved in other countries, the costs to local authorities will therefore be minimal, is to fundamentally misunderstand the amount of work involved in securing compliance with new legislation. The existing workforce will need to be trained and kept up to date and in many cases supplemented by secondments and new posts. The work involved includes informing and advising all employers, identifying and visiting the high risk premises including outside normal local authority office hours, warning, cautioning and ultimately taking enforcement action in respect of infringements, which could in exceptional circumstances include mounting covert surveillance with other agencies.

This represents a substantial additional workload and the New Burdens Doctrine provides that this cannot be funded by reducing existing local authority services. There are however obviously economies that can be made by using existing staff and incorporating some activities into existing planned and programmed work. For example it could be recognised that many local authorities will need to deploy their existing staff away from current duties in relation to the inspection of food and other business premises at least in the short-term in order to prepare as many premises as possible in advance and to deliver the high profile saturation coverage that will be required in the run up and immediate implementation period after the introduction of the legislation. This has been the effective methodology in the Republic of Ireland and in parts of Scotland.

The CIEH therefore recommends that consideration is given to a relaxation of the business related inspection targets for local authorities, set by the Food Standards Agency in particular, in recognition that the finite resources available for this work are being deployed in the short term on achieving this major landmark improvement in public health.

We are aware that discussions are underway with the Local Government Association on this issue. However we must register the dissatisfaction of our members, particularly those at chief officer level, who have found it impossible to secure budget provision for the year 2007-08 to reflect the additional duties that will arise from this legislation. The almost universal call is for any and all such funding to be 'ring-fenced' in order that it can be correctly claimed at departmental level. We realise that this arrangement is unlikely and we would recommend that the financial provision is at the very least identifiable 'above the line' and not simply subsumed within the Revenue Support Grant where it may well be utilised for other purposes. The Department is also recommended to make it clear to local authorities that they will be expected to account for the purposes to which the funding was put.

The CIEH wishes to acknowledge that it has been contracted by the DH to support the training of staff responsible for service planning and for operational implementation of this legislation, which is in many ways novel and challenging for the environmental health workforce.

2.6.4 Transfer of enforcement functions

The regulations will enable transfer of enforcement functions between authorities, for example where more than one enforcement authority is investigating the same person for breaches of smoke-free legislation.

In terms of transfer of enforcement functions, we recommend that the 'home authority' and or 'lead authority' principles should apply where premises or vehicles could be seen as within the purview of more than one enforcement authority.

2.7 Form of fixed penalty notices

The possibility should be explored of constructing a generic Fixed Penalty Notice covering the several offences that relevant enforcement officers are required to deal with including littering and dog fouling.

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

3.1 Exemptions

We are obviously pleased that the Health Act makes no provision for exemptions for licensed premises or membership clubs; however it is the experience of our members that there remains considerable misunderstanding on this point that will need to be comprehensively addressed before the introduction of the legislation.

3.2 Private accommodation

We note that it is not intended to require private residential space per se to be smoke-free unless it is open to the public or used as a place of work and the CIEH accepts the principle that in all such circumstances the person who lives in the premises can decide themselves whether people are allowed to smoke in the premises.

We welcome the specific requirement for communal areas and common parts to be smoke-free and we are aware that this is an area that has not always been adequately covered by legislation applying to other jurisdictions.

Smoke-free legislation will not apply to work undertaken in part of a private home to provide personal care for a person living there, to assist with domestic work, to maintain the structure or fabric of the home, or to provide a service there. In the absence of a legal requirement for an individual not to smoke in their own home if a tradesman, nanny, cleaner or carer is present, employers of people providing such services (or the individual provider) will need to make their own arrangements about smoking when domestic work is in progress or residential visits are made. We would expect public services including local authorities and health services to adopt and promote model policy in this respect, recognizing the rights and expectations of all workers not to have their health affected by exposure to other people's smoke. To this end we wish to commend the guidance already issued by the Royal College of Nursing.

The advice of the Government to employers who do not adopt effective policies in this area should be that they risk legal action under health and safety legislation (and possibly human rights legislation) if their employees' health suffers as a result.

3.3 Accommodation for guests and club members

It is the practice of some hotels to fit opening restrictors on windows in upper storeys for the prevention of falls. These restrictors prevent the windows from being fully opened.

The CIEH considers that the provision of effective ventilation to the external air is essential in rooms where smoking is to be allowed to take place

- to allow the occupant to ventilate the room and thereby minimize exposure to themselves and other occupants of the room
- to allow domestic staff and cleaners to ventilate the room before carrying out work
- to reduce the amount of second-hand smoke that can escape from the room and invade the common parts of the premises.

Therefore rooms should only be permitted to be designated as not smoke-free if the windows are capable of being fully opened by guests and staff and are in all other respects effectively ventilated in accordance with all other legal requirements.

We fully recognise that opening windows in upper storeys can present hazards to staff and guests where they may be able to easily fall out of those windows. The necessary risk assessments for rooms to be designated as not smoke-free will therefore need to include a consideration of cill heights and safety devices to exposure to such a risk and possibly the decision that a room is not suitable for occupation by small children.

Where the exemption from smoke-free requirements for hotel bedrooms is being claimed, then the regulations should ensure that room designations cannot be easily or frequently changed as complaints can be anticipated from people who have requested smoke-free accommodation and are allocated a room in which smoking has earlier been allowed. There should therefore be a requirement that hotel rooms that are to be designated as not smoke-free should be notified to the local authority in writing as well as any proposed changes to those designations and that a record of such notifications is retained at the premises in question and made available for inspection by any visiting regulatory officer.

It can be anticipated that complaints will be made if occupants believe incorrectly that smoking is taking place in rooms in contravention of the law. Therefore the requirement for designated rooms to be clearly marked should be extended to require that a sign is displayed on the outer face of the entrance door to the designated room in a prominent position and visible at all times, in order that it can be seen by all residents.

As the current proposals stand, there is nothing to prevent a hotel or hostel from designating all of its rooms as not smoke-free. Indeed there have been some indications that there are some small establishments that intend to do. The CIEH considers that such an arrangement would not be in the spirit of the legislation and that there should be a limit on the proportion of rooms that can be so designated. The limit should stipulate that at any one time the majority of rooms are required to be smoke-free.

The provisions in relation to defences should not be able to be employed by those having overall management responsibilities for such accommodation and its operation so as to obviate the need for action for the detection of offences and preventive action where smoking in contravention of the law is known to be taking place. Such action would include the provision of additional no smoking signage, installation of detection equipment and alarms.

Holiday homes and mobile homes for hire should be clearly stated as either smoke-free or not smoke-free in any advertising material, booking forms and at the facility itself.

3.4 Other residential accommodation

The CIEH is aware that there are proposals for limited exemptions from smoke-free requirements that can apply in relation to:

- care homes as defined
- hospices as defined
- mental health units providing long-term accommodation, and

- prisons

We have been involved in the detailed consideration and debate by the organisations most directly affected. Those organisations are making their own detailed submissions to this consultation and therefore we do not intend to make separate representations on these matters.

However, we draw attention to our submission under the heading of “Specified conditions for premises with designated rooms for smoking.”

3.5 Performers

The provision here intends to allow smoking to take place in that part of the premises in which persons are participating as performers, or in a performance of a specified description, if the artistic integrity of the performance makes smoking appropriate.

The intention is presumably.

In our opinion the decision cannot be based simply on ‘artistic’ criteria, but will also need to take into account the requirements to protect other performers and workers as well as any audience and members of the public. In those circumstances a self-regulation is considered to be inappropriate since incorrect decisions which result in unacceptable exposure of people will only be discovered and reported after the event. Proof of an offence would be difficult to obtain and might even require recreation of the original conditions.

The CIEH has received strong representation from its members that this provision is therefore unworkable. There is also serious doubt over what constitutes an ‘artistic performance’, who is a bona fide performer and what criteria can be employed in deciding whether smoking is appropriate?

It is felt that the enforcement of this provision is more than a straightforward enforcement judgement and is not a matter on which the local authority would feel confident to make decisions without independent expertise not readily available to it. Furthermore, for the reasons stated, any decision to report an offence or prosecute will be open to legal challenge with the resultant delays and costs for both the applicant and the public purse.

We note that the requirement for smoke-free theatrical performance has successfully withstood challenges in Scotland and we therefore recommend that this exemption should not be permitted in England.

3.6 Specialist tobacconists

The CIEH is strongly opposed to the granting of an exemption for specialist tobacconists. We have not heard any arguments that convince us that smoking on such premises is any more essential to their business than is smoking in licensed premises and members clubs. Those proposed exemptions have been successfully challenged and rejected on the basis that they would leave vulnerable categories of workers at risk, who are in employment situations where their ability to take steps to safeguard their own health will be severely limited.

If such premises are granted an exemption they will be the only retail premises where smoking is allowed despite the fact that employees, and members of the public on these premises, will be likely to have the greatest level of occupational exposure to the very same secondhand smoke that this legislation intends to prohibit. This is unjustifiable on any grounds and will surely be open to legal challenges.

We also do not believe that the argument that the exemption is justified on the basis that there are only small numbers of such premises currently in existence, indeed in health and safety terms the numbers of premises is completely irrelevant. Furthermore, their existence could create an anomaly that will be exploited by other retailers of tobacco products.

If this exemption is to be agreed then we wish to draw attention to our submission under the heading of "Specified conditions for premises with designated rooms for smoking."

3.7 Designated rooms in offshore installations

We accept the need for the provision of designated rooms in offshore installations where people may not safely be able to smoke in the open air and we consider this to be in accordance with the principles of occupational health and safety.

However, we draw attention to our submission under the heading of "Specified conditions for premises with designated rooms for smoking."

3.8 Designated rooms in research and testing facilities

The proposed limited exceptions for specified research and testing facilities appear appropriate.

However, this provision should require the specific approval of the enforcement authority and approval should be conditional upon the implementation of either:

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

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

3.9 Specified conditions for premises with designated rooms for smoking

Firstly, we wish to point out that workers who have asthma and respiratory illness and women workers who are pregnant, or are planning pregnancy, rightly expect protection under the law equal to that of other workers.

Therefore wherever a proposed exemption will permit smoking in an enclosed area that is not a person's private residential space (i.e. in a designated room) there should be additional requirements to protect workers from exposure to secondhand smoke, by effectively isolating the room in which smoking is to take place from any workroom or public space. These requirements should be based upon best practice and make use of the available technology. To that end they could be drawn up by the Department of Health in association with the CIEH, HSE and representative bodies for the trades and businesses affected and published in the form of an agreed Code of Practice.

Compliance with the Code of Practice could then be taken into account in deciding whether an employer had properly exercised their duty of care in relation to protection of the health of their employees.

Matters which could usefully be addressed in the Code of Practice would include:

- Specifications for ventilation with requirements covering
 - mechanical systems with maintenance indicators and recorders
 - recirculation of air
 - openings to other areas
 - room access via intervening ventilated lobby
 - air quality standard or air changes/hour
- Use of room and arrangements for cleaning and servicing

The CIEH would be keen to participate in the development of such a Code of Practice and would wish to make available the advice of its members with expertise in the relevant areas.

3.10 Smoke-free Vehicles

The various requirements are supported.

In the case of vehicles for hire, these should be described in any advertising material and booking forms as either smoke-free or not smoke-free and the normal signage requirements for commercial vehicles should apply.

However, there is a more straight-forward approach and an opportunity for 'joined-up' legislation by recognizing that smoking whilst driving is unsafe and that smoking in an enclosed vehicle is hazardous to the health of all occupants and should therefore be prohibited.

3.11 Water-borne craft

We recommend that the requirements to be made by the Secretary of State for Transport in respect of any water-borne craft should be implemented at the same time as this legislation and that the requirements should be consistent.

3.12 Aircraft

The requirements are supported.

3.13 Enclosed vehicles

The requirements are supported.

3.14 Additional smoke-free places

The primary concern of the CIEH has been to secure the prohibition of smoking in indoor areas. However, the proposed definition of 'substantially enclosed' will mean that some 'outdoor' structures such as bus shelters will be required to be designated as no-smoking, and others will not. This will undoubtedly result in confusion and will raise the legitimate question: why if smoking is prohibited under some bus shelters is it not prohibited in all and on all platforms and in facilities such as sports stadia - where both

spectators and staff are forced to queue, stand or sit in close proximity to other people and would therefore be exposed to their secondhand smoke?

There are also many places such as shopping arcades, transport termini and sports grounds where the arrangements of the buildings and structures mean that there is considerable scope for confusion as to where the prohibitions on smoking will apply. The confusion will not be entirely resolved even where the operator of the site (or operators acting in concert) agree a corporate policy to prohibit smoking over the complete site, since smoking in some areas will lead to an offence being committed requiring enforcement action by authorised officers and in others it will only constitute a breach of 'house rules' which can be dealt with by in-house staff.

It is believed that there is popular support for making the majority of public facilities smoke-free even where they are not within the definition of enclosed or substantially enclosed, as indicated by the number of smoke-free establishments and venues voluntarily adopting smoke-free policies.

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

4.1 Intended levels of penalties

We support the proposed level of fines.

In our view the emphasis needs to be on the 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.

The arrangements in the Republic of Ireland which have delivered such a high level of compliance require the person in control of a premises or business to have a policy that identifies the responsibilities of managers and staff and the procedures to be followed in securing compliance. If this were the case in England then, where repeat offences are reported to the enforcement officers, the policy and its application can be reviewed and improved to ensure that contraventions are detected e.g. by the deployment of additional staff, increased signage and the installation of detectors and alarms.

The policy should require that the person in control keeps 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.

In addition to the payment of fines, where a person holding a licence to sell alcohol persistently fails to take all reasonable steps to secure compliance with this legislation and as a result members of their staff and the public are exposed to health risks, then the question arises as to whether this is a fit and proper person to hold such a licence.

The CIEH recommends that, in addition to the payment of fines, environmental health authorities (as responsible authorities) should be able to request the review of a Premises Licence (Licensing Act 2003 & Gambling Act 2005) and Club Premises Certificate (LA03), principally to change the designated premises supervisor if that person has been convicted of an offence under the Health Act 2005 or received a Fixed Penalty Notice.