

Chief Executive's Office

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Date: 27 September 2005

Chorley
Borough Council

Town Hall
Market Street
Chorley
Lancashire
PR7 1DP

Chief Executive:
Jeffrey W Davies MA LLM

Dear Councillor

A meeting of the Environment Overview & Scrutiny Panel is to be held in the Committee Room, Town Hall, Chorley on Thursday, 6th October, 2005 commencing at 6.30 pm.

AGENDA

1. **Apologies for absence**

2. **Declarations of Any Interests**

Members of the Panel are reminded of their responsibility to declare any personal interest in respect of matters contained in this agenda in accordance with the provisions of the Local Government Act 2000, the Council's Constitution and the Members Code of Conduct. If the personal interest is a prejudicial interest, then the individual Member should not participate in a discussion on the matter and must withdraw from the Council Chamber and not seek to influence a decision on the matter.

3. **Minutes (Pages 1 - 2)**

To confirm as a correct record the minutes of the meeting of the Environment and Scrutiny Panel held on 1 September 2005 (enclosed)

4. **Business Plans for 2005/06 - First Quarter Updates (Pages 3 - 16)**

The Overview and Scrutiny Committee, at its meeting in November, 2004, recommended each Overview and Scrutiny Panel to consider the quarterly updates of the Business Plans for the services and functions falling within their respective areas of responsibility.

Accordingly, the 2005/06 Business Plan updates for the following services are enclosed for consideration.

Planning Services
Environmental Services
Public Space Services

Continued....

5. **Accessibility of Cycling as a Leisure Pursuit (Pages 17 - 18)**

To receive draft recommendations/findings for consideration for inclusion in the final report (enclosed)

6. **Smoking in Public Places - Consultation Document (Pages 19 - 48)**

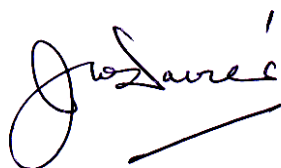
The Overview and Scrutiny Committee at its meeting on 6 September 2005 requested the Panel to submit its views to the Committee on the enclosed Governments Consultation Paper on proposals to introduce a ban on smoking in public places. The Chorley and South Ribble Primary Care Trust had requested the views of the Council.
A draft response is enclosed.

7. **Overview and Scrutiny Work Programme for 2005/06 (Pages 49 - 50)**

A copy of the 2005/06 Work Programme is enclosed for consideration

8. **Any other item(s) that the Chair decides is/are urgent**

Yours sincerely



Chief Executive

Distribution

1. Agenda and reports to all Members of the Environment Overview and Scrutiny Panel (Councillor McGowan (Chair), Councillors D Dickinson, T Gray, Caunce, Heaton, Iddon, R Lees, M Lowe, Livesey and S Smith) for attendance.
2. Agenda and reports to Head of Development and Regeneration, Head of Public Open Space and Head of Environmental Services for attendance.
3. Agenda and reports to Executive Leader (Councillor J Wilson) Deputy Leader (Councillor Edgerley) Leader of Conservative Group (Councillor P Goldsworthy), Leader of Liberal Democrat Group (Councillor K Ball) and Chairman of Overview and Scrutiny Committee (Councillor J Walker) for information.
4. Agenda and reports to all remaining Chief Officers for information.
5. Agenda and reports to all remaining Members of the Council for information.

This information can be made available to you in larger print or on audio tape, or translated into your own language. Please telephone 01257 515118 to access this service.

આ માહિતીનો અનુવાદ આપની પોતાની ભાષામાં કરી શકાય છે. આ સેવા સરળતાથી મેળવવા માટે કૃપા કરી, આ નંબર પર ફોન કરો: 01257 515822

ان معلومات کا ترجمہ آپکی اپنی زبان میں بھی کیا جاسکتا ہے۔ یہ خدمت استعمال کرنے کیلئے براہ مہربانی اس نمبر پر ٹیلیفون
کیجئے: 01257 515823

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ENVIRONMENT OVERVIEW AND SCRUTINY PANEL**1 September 2005**

Present: Councillor McGowan (Chair), Councillor Heaton, R Lees, Livesey and M Lowe.

05.ENV.23 APOLOGIES FOR ABSENCE

Apologies for absence were submitted on behalf of Councillors Counce, David Dickinson and Iddon.

05.ENV.24 DECLARATION OF ANY INTEREST

No Member declared an interest in relation to matters under consideration at the meeting.

05.ENV.25 MINUTES

RESOLVED - That the Minutes of the meeting of the Environmental Overview and Scrutiny Panel held on 9 June 2005 be confirmed as a correct record.

05.ENV.26 ACCESSIBILITY OF CYCLING AS A LEISURE PURSUIT

The Chair introduced Mr Michael Prescott from the 'Cycling Touring Club (CTC) Right to Ride Network' who had been invited to provide evidence within the Inquiry's Term of Reference that would assist the inquiry into the accessibility of cycling as a leisure pursuit.

Mr Prescott's presentation covered the following areas.

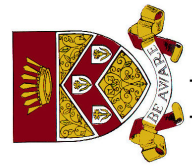
- SUBTRANS and the need for positive motivation to finish the Route 55 through Chorley to complete the link from Preston to Wigan.
- To build on the success of the Commonwealth Games cycling events.
- To build a purpose built off road route, hard enough to encourage visitors, which would increase tourism into Chorley.
- The damage to the countryside caused by off road cyclists using non designated areas and private land.
- As used in France Alps, signage recommending that vehicles pass cyclists at no less than 1.5 metres.
- Since 1968 cyclists using bridleways are expected to 'give-way' to all path users, even when they come up behind a group of walkers who are obstructing their passage.
- To create short circular routes suitable only for families driving out to the country to take their children for a five mile bike ride. These exist in National Parks and some Access areas.
- Conflict with vehicles on the route to off road cycling facilities.

Mr Prescott provided useful evidence which would form the basis of the Panel's recommendations.

RESOLVED - That the Panel considered that enough evidence had been presented to the Panel over the past months to enable recommendations to be formulated and these would be circulated to the next meeting for consideration in the final report.

Chair

B U S I N



BUSINESS PLAN MONITORING STATEMENTS APRIL- JULY 2005

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Note of Clarification

Key Performance Indicators:

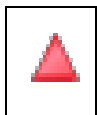
Symbols and Colours are used to provide a quick guide to how Service Units are performing against Key Performance Indicators:



= Green KPI Performance is better than target and the tolerances set for this indicator.



= Blue KPI Performance is on track and within the tolerances set for this indicator.



= Red KPI Performance is worse than target and the tolerances set for this indicator.

For further information on the way in which Performance Symbols are calculated please contact Jenny Rowlands (01257 515248) or Sarah Dobson (01257 515325) in Corporate and Policy Services.

**BUSINESS PLAN MONITORING STATEMENT FOR THE
PLANNING SERVICES UNIT**

FOR THE PERIOD 1 APRIL - 31 JULY 2005

1. KEY MESSAGES

Headline performance on the Development Control targets is good with all exceeded.

The sickness absence of the Development Control Manager may affect our future performance on major planning applications and on the speed of implementation of service developments.

Progress on the new Local Development Frameworks is excellent with current milestones all met.

Building Control is very busy because of a long-term sickness absence and progress on the potential partnership with Preston and South Ribble Councils is slow

	CURRENT POSITION	FORECAST OUTTURN
Number of green KPI's	3	3
Number of blue KPI's	1	3
Number of red KPI's	0	0
Number of KPI's not yet measured	2	0

2. BUDGET UPDATE

The additional Planning Delivery Grant obtained for 2005/6 and the matching expenditure have been brought into the budget.

Income is slightly up on forecast (+£23k).

3. SERVICE DEVELOPMENTS

The expansion of GIS is awaiting the appointment to two vacant posts including a new GIS Officer agreed for 2005/6.

A project to implement on-line submission of planning applications is underway. Progress on enhancements to the development control service awaits the return of the Development Control Manager.

4. PERFORMANCE AGAINST UNIT KEY PERFORMANCE INDICATORS

Indicator Description	Performance 2004/05	Target 2005/06	Performance at 31/7/05	Comments

109a (% of major planning applications decided in less than 13 weeks)	60	60	87	109a performance will reduce as old decisions come through the system
109b (% of minor planning applications decided in less than 8 weeks)	65	65	70	
109c (% of other applications decided in less than 8 weeks)	80	80	89	
200a/b (An up to date development plan or new LDS milestones met)	YES	YES	YES	
BC4 (Building Plans determined by statutory targets)	100	100	95	

5. CONCLUSION

Good performance progress but achieving service developments is the key issue.



Signature:

HEAD OF PLANNING SERVICES

**BUSINESS PLAN MONITORING STATEMENT FOR THE
PUBLIC SPACE SERVICES UNIT**

FOR THE PERIOD APRIL TO JULY 2005

1. KEY MESSAGES

This has been a very busy time, complicated by moving the Engineering Services Group to Bengal Street. All aspects of the Unit's work have been improved over the corresponding period in the previous year and many initiatives are now well advanced.

- New offices and depot reorganization
- Improved working arrangements on one site
- Establishment of projects team – progress on CBC and LCC capital schemes
- Boundary signs installed
- Ongoing development of Parkwise
- Development of IT projects in hand
- Construction of Cemetery extension
- Purchase of improved grounds maintenance – meeting all targets
- Purchase of improved sweeper and gully emptier improved service
- Use of sub contractors for tree works - requests down by 80%
- Cut and collect to specified housing grounds
- Improved floral displays
- All pitches in playable condition
- Highways terms and conditions negotiations completed
- N.V.Q. training further developed for Highways
- Safety management system under development

	CURRENT POSITION	FORECAST OUTTURN
Number of green KPI's	0	2
Number of blue KPI's	0	0
Number of red KPI's	0	0
Number of KPI's not yet measured	4	2

The Unit has adopted one indicator yet to be agreed with an outside body. A second indicator requires IT systems yet to be put in place by the Unit.

The remaining indicators will be available in the next monitoring statement.

2. **BUDGET UPDATE****SERVICE LEVEL BUDGET MONITORING 2005/2006**

PUBLIC SPACE SERVICES		£'000
July 2005		
ORIGINAL CASH BUDGET		1,331
Add Adjustments for In year cash movements		
Slippage from 2004/2005		
Other		
ADJUSTED CASH BUDGET		1,331
Less Corporate Savings		
Contribution to Corporate savings targets		
		<hr/>
CURRENT CASH BUDGET		1,331
FORECAST		
EXPENDITURE		
Expenditure under(-) or over (+) current cash budget		
DSO Chemical Disposal	2	
Purchase of Furniture	5	
Street Cleansing client budget	<u>(17)</u>	(10)
INCOME		
Income under (+)/ over (-) achieved		
Car Parking Fees under profile	<u>12</u>	12
FORECAST CASH OUTTURN 2005/2006		1,333

Key Assumptions

>Bengal St Depot "move" costs to be transferred from the Depot cost centre

>Young Persons Development Programme to be funded from savings on Street Cleansing client budget.

Key Issues/Variables

>Salary costs are within budget due to savings on all vacant posts. Servicegroup vacant posts will be filled ASAP. This will lead to an overspend if the Engineering agency staff costs are not reduced.

Key Actions

None.

3. SERVICE DEVELOPMENTS

The amount of work in hand is extensive, as indicated by the list of Key Messages. It is intended to continue to enhance service standards through the summer and to plan further improvements for the budget round.

The next quarter will see further significant progress in capital scheme delivery and in the implementation of customer and inventory related IT systems.

4. PERFORMANCE AGAINST UNIT KEY PERFORMANCE INDICATORS

APRIL - JULY

Indicator Description	Performance 2004/05	Target 2005/06	Performance at 31 July 05	Comments
Percentage of citizens satisfied with the cleanliness standard in their area	63% 2003/04	69%	Survey due later in year	
The proportion of relevant land and highways as defined under EPA 1990 Part iv section 86 (expressed as a percentage) that is assessed as having	14%	12%		Reported by another Unit.

combined deposits of litter and detritus (eg sand, silt and other debris) across four categories of cleanliness (Clean, Light, Significant, Heavy). Result shown as number of transects inspected where combined litter and detritus result less than Grade B in the Code of Practice on Litter and Refuse.				
Percentage of citizens satisfied with parks and open spaces	79% 2003/04	77%	81.7%	
Percentage of play areas inspected and serviceable.	100%	100%	100%	
Percentage of play areas with specific access/equipment for disabled persons.	4%	4%	4%	
Percentage of sports pitches in a playable state.	100%	100%	100%	
Number of outstanding	138	30	40*	* To date of report

outstanding tree works tasks.				
Percentage of requests for service completed within deadline.				New indicator. Systems not yet in place.
Percentage of requests for service with repeat complaints				New indicator. Systems not yet in place.
Percentage of hypodermic needles removed within two hours.	100%	100%	100%	
Percentage of potholes in footway more than 25mm deep made safe within two hours.	100%	100%	100%	
Percentage of potholes in carriageway more than 75mm deep made safe within two hours.	100%	100%	100%	
Length of road with pedestrian or traffic calming measures.	4.7km	8.4km	10.0km	New indicator – replaces “Road accident casualties killed or seriously injured.”
Temporary road closures				No longer measurable at District level.
Car park ticket sales	1,061,092		480,057*	* To date of report
Car park ticket income	£684,900	£793,920	£324,974*	* To date of report

Public space condition/presentation (under discussion with outside agencies)				New indicator – under discussion with outside agency.
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5. CONCLUSION

The Unit is continuing to make progress against its business plan targets. Service improvements are in place. Some supporting systems are delayed until later in the year.

Signature: _____

KEITH ALLEN
HEAD OF PUBLIC SPACE SERVICES

Environmental Services BVPIs Monthly						
BVPIs	Perf - 2 Month Prev	Target - 2 Month Prev	Perf - 1 Month Prev	Target - 1 Month Prev	YTD Perf	YTD Target
BV082ai.05 % H'hold Waste	14.88	15.00	18.20	15.00	18.20	
BV082bi.05 % H'hold Waste	30.23	20.00	26.23	20.00	26.23	
Environmental Services BVPIs Quarterly						
BVPIs	Perf - 2 Qtrs Prev	Target - 2 Qtrs Prev	Perf - 1 Qtr Prev	Target - 1 Qtr Prev	YTD Perf	YTD Target
BV084a.05 Household Waste	?	?	?	415.00	?	
BV084b.05 H'hold Waste % change	?	?	1.50	?	1.50	
BV086 Cost of waste collection /	44.37	37.87	46.00	42.85	46.00	
BV090a Satisfaction - Refuse	92.00	92.00	?	92.00		
BV090b Satisfaction - Recycling	79.00	80.00	?	80.00		
BV090c Satisfaction - Civic Amenity	?	?	?	?		
BV091a.05 % res's kerbside	?	?	?	95.00		
BV091b.05 % res's 2+ k'side	?	?	?	95.00		
BV218a.05 Abandoned vehicles-	?	?	?	85.00	?	
BV218b.05 Abandoned vehicles-	?	?	?	85.00		
Environmental Services BVPIs Annual						
BVPIs	Year End Perf	Year End Target	Year End Perf v/s Target			
BV082aii.05 Tonnes H'hold Waste	?		?	?		
BV082bii.05 Tonnes H'hold Waste	?		?	?		
BV166a Checklist - EH	?	100.00	?			
BV216a.05 Identifying contaminated	?		?	?		
BV216b.05 Info. on contaminated	?		?	?		
BV217.05 Pollution control	?	90.00	?			

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EN Unit Key Performance Indicators Monthly								
Unit Key Performance Indicators	Perf - 2 Month Prev	Target - 2 Month Prev	Perf -1 Month Prev	Target - 1 Month Prev	YTD Perf	YTD Target	YTD Perf v/s Target	Year Target
EN001.05 % Fly tipping removed 2	86.00	75.00	89.00	75.00	89.00	75.00	★	
EN002 Graffiti removed Env Serv	100.00	100.00	100.00	100.00	95.75	100.00	●	
EN004 Racist/offensve graffiti 2WD	86.00	100.00	100.00	100.00	96.50	100.00	●	
ER BV 12 sickness absence	0.00	2.22	0.00	2.97	0.00	2.97	★	
⊕ CBC008.05 % waste	45.11	35.00	44.43	35.00	44.43	35.00	★	
EN Unit Key Performance Indicators Six Monthly								
	Perf - 6 Month Prev	Target - 6 Months Prev	Current Perf	Current Target	YTD Perf	YTD Target	YTD Perf v/s Target	Year Target
EN006 No. of flyposters in the	70.00	15.00	12.00	15.00	12.00	15.00	●	

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ENVIRONMENT OVERVIEW AND SCRUTINY PANEL – 6 OCTOBER 2005**DRAFT FINDINGS/RECOMMENDATIONS OF CYCLING AS LEISURE PURSUIT**

1. Education. A Code of Conduct to focus on the rights and responsibilities of all user groups in order to reduce ambiguities concerning issues such as right of way, passing etiquette, the increased use of bells, control of dogs and the recommended speeds that should be adopted for safety and courtesy. User to be tolerant of other users.
2. Shared use routes should have information panels at the access points detailing Code of Conduct and a contact point to whom comments, complaints and conflicts can be reported.
3. Width and maintenance routes by route owners should be developed with user groups on culture of thoughtful and tolerant use. Code of Conduct to focus on the rights and responsibilities of all user groups in order to reduce ambiguities.
4. To acknowledge there to be a difference and to understand the impact of 'actual and perceived' conflict. Conflict can be complex and is emotive. To progress an inquiry on these lines would be time consuming and would not achieve a successful outcome in relation to the Council's top priorities.
5. Research has shown there to be perceived conflict - particularly intrusiveness and hostility - was anxiety and fear about personal safety. This feeling was intensified by a number of factors including crowding, cyclists travelling at speed, meeting groups (especially young people) and encountering poor environmental conditions that reduced sight lines and visibility. In the extreme, these perceptions can lead to people avoiding shared use routes.
6. Research has found that conflict is very infrequent, is generally slight and is mainly concerned with intrusion. Conflict, where it occurs can be caused by people (such as the behaviour of others) or the environment (such as inadequate maintenance of the route). That route users should accommodate others by changing their speed and pattern of travel; cyclists to slow down, while walkers move in a straight line and speed up.
7. That research had found that when people gather together to talk about conflict they talk it up and their recollection of how many others they meet while on the route escalates. Their perception of conflict were much higher than that actually experienced.
8. Poor environment conditions that reduce sight lines and visibility.
9. There was a need to improve signage, both off road and the Sustrans route 55 through Chorley as well as developing the route through Chorley to join up the route from Preston to Wigan.
10. There had been found to be a general lack of publicity.
11. To take the opportunity to trade on the success of the Commonwealth Games cycling events and build a purpose built off road route, hard enough to encourage visitors which would increase tourism into Chorley.
12. To create short circular routes suitable only for families driving out to the country to take their children for a five mile ride. These exist in National Parks and some Access areas.

User Groups: People on foot, cyclists, horse riders, anglers (paths alongside canals and waterways etc.

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*Consultation on the Smokefree
Elements of the Health
Improvement and Protection
Bill*

This is a summary of the Government's consultation paper on workplace smoking restrictions, including guidance from your area's Smoke-Free Alliance (these partnerships are also sometimes known as tobacco control alliances). Each part of the consultation document summary is followed by a brief **analysis** in blue. **Recommendations** for action by potential respondents are then given in red bold. This is just a guide, and you are of course free to shape your response to the questions as you feel is appropriate.

It is advisable that before responding you read the full guidance given here and access the complete text at www.dh.gov.uk/consultations/liveconsultations if possible.

You may also find it helpful to discuss likely local consequences with us at the Smoke-Free Alliance— contact details at the end of this guide.

The consultation relates to the proposals in the Choosing Health white paper, to introduce a ban on smoking in workplaces with the exception of some residential environments, private clubs, and non-food-serving pubs. The consultation runs from 20 June to 5 September 2005 and applies only to England.

Analysis

The consultation formally relates to the Choosing Health proposals for a partial ban, but our analysis is that the Government is willing to listen to responses that may encourage more comprehensive action. However, they will need to have substantial detailed evidence to support any public change of direction, and it is vital that all relevant organisations respond in detail. Many local authorities and PCTs will be members of smoke-free alliances or similar multi-agency groups that will submit joint responses, but it is important that statutory bodies respond individually too – both quality and quantity are necessary.

Recommendation

In drafting your response, please bear in mind that the key goal is to provide reasons for a strengthened approach. These need to be adequately evidenced, but preferably

Consultation on the Smokefree Elements of the Health Improvement and Protection Bill -
a guide to responding from the Smoke-Free Alliance

**also readily quotable. Please don't miss the opportunity to respond to the Partial
Regulatory Impact Assessment as well as the set 16 questions.**

Consultation on the Smokefree Elements of the Health Improvement and Protection Bill - a guide to responding from the Smoke-Free Alliance

Proposed definition of smoke or smoking

“Smoke’ means smoke tobacco or any substance or mixture which includes it; and a person is taken to be smoking if the person is holding or otherwise in possession or control of lit tobacco or any lit substance or mixture which includes tobacco.”

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

Analysis
This is a largely helpful definition as it will include cigarettes, pipes, cigars, hookahs etc. There may, however, be the potential for confusion as regards ‘herbal’ cigarettes that may not contain tobacco.
Recommendation
This proposal should be accepted, although it may be sensible to request the definition be broadened to any lit product that <i>reasonably appears</i> to be tobacco.

Proposed definition of enclosed

A place is to be regarded as ‘enclosed’ if it is fully enclosed (completely enclosed on all sides by solid floor-to-ceiling walls, windows, or solid floor-to-ceiling partitions with an exception for doors and passageways), or is substantially enclosed, that is at least partially covered by a roof and has walls such that the total area of the roof and wall surfaces exceeds 70 per cent of the total notional roof and wall area.

It is proposed that both “roof ” and “wall” will include any structure, whether fixed or movable, permanent or temporary. It is proposed that the “total notional roof and wall area” will be the sum of what would be the total area of the wall surfaces if the walls were continuous (any gap in the walls being filled by a surface of the minimum area required for the purpose) and the walls were of a uniform height equal to the lowest height of the roof.

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?

Analysis
A precise definition is likely to be helpful in avoiding some of the approaches attempted by some premises in order to avoid the ban in Ireland. However, responses as to whether the 70% rule is sufficiently clear would be helpful – if enforcement officers have to carry out complex calculations, this may not provide the clarity required.
Recommendation
The proposal should be welcomed, if necessary with any additional suggestions as to whether the 70% rule is adequate.

**Consultation on the Smokefree Elements of the Health Improvement and Protection Bill -
a guide to responding from the Smoke-Free Alliance**

Consultation on the Smokefree Elements of the Health Improvement and Protection Bill -
a guide to responding from the Smoke-Free Alliance

Other public places and workplaces that might fall outside the definition of "enclosed" which might be smokefree

It is proposed to create regulation-making powers to allow the legislation to apply in places which may not fall strictly within the definition of "enclosed" in the legislation but where there is risk of harm from secondhand smoke due to the inevitable close grouping together of people. Examples might be sports stadia and other outdoor areas such as bus shelters, entrances or exits to public buildings or workplaces.

Question 3: Views are invited on this proposal

Analysis

This goes substantially beyond the priority issues of indoor exposure to second-hand smoke and is therefore likely to be strongly challenged by tobacco industry lobbyists. However, it has merit in ensuring that possible additional exposure to a known hazard is minimised, and of course in assisting those attempting to quit smoking. This also supports work towards smoke-free workplaces already under way in many local authority and NHS settings

Recommendation

It is worthwhile voicing support for this proposed additional protective measure, referencing the degree to which it would assist clients of Stop Smoking Services where there are examples of this.

Exceptions – All licensed premises (receive a longer lead-in time)

It is proposed that premises licensed for the sale and consumption of alcohol should be given longer to either become smokefree or to become smoking premises. To qualify for this extended period, a premises will need to be licensed for the sale and consumption of alcohol under the Licensing Act 2003 when the relevant section of the legislation comes into effect.

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.

Analysis

This is evidently a response to pressure from some in the hospitality industry (or those co-opted by the tobacco industry) to 'go easy' on pubs. Experience from abroad has shown that a significant lead-in period of up to a year is indeed important. However, there is no evidence that licensed premises need a longer lead-in time than other businesses in reality, and this proposal would simply delay the point at which workers in these premises are protected. As the implementation of the new Licensing Act has not been without difficulties itself, it would seem unwise to tie an unrelated measure to it.

Recommendation

This proposal should be rejected, pointing out the unnecessary additional complexity of relying upon a second piece of legislation (i.e. other than the Health Improvement and Protection Bill/Act), the heightened administrative burden of enforcement (as

Consultation on the Smokefree Elements of the Health Improvement and Protection Bill -
a guide to responding from the Smoke-Free Alliance

licences would have to be checked before identifying infractions after the end of the general lead-in period), and the unreasonable delay in protecting workers in the hospitality industry.

Exceptions – All licensed premises that do not prepare and serve food – definition of “prepare and serve food”

In *Choosing Health* an assessment was published of what proportion of pubs might fall into the category of “do not prepare food”. This was based on a survey of existing risk assessments for food safety carried out by Local Authorities. Pubs categorised as low risk, and therefore unlikely to do more than sell pre-packaged ambient shelf-stable snacks, are likely to be assessed as low risk following the Food Standards Agency Code of Practice.

This exception is a novel approach in terms of smokefree legislation internationally, and therefore this consultation puts forward two possible routes for legislation. At present the favoured route is to specify a list of permitted foods for smoking licensed premises. Consultation is under way with the hospitality industry on what might be included in such a list. The intention is that the list of snacks should be capable of being varied from time to time, in consultation with the hospitality industry, to accommodate legitimate variations where it can be demonstrated that there is no attempt to increase the proportion of pubs where smoking is allowed. The regulations would enable snacks to be defined by reference to their ingredients, weight, size or other characteristics.

An alternative route might be to have a broad definition of foods, approximating that in the Food Standards Agency Code of Practice, that are low risk, e.g. “fruit, vegetables and other ambient shelf-stable products”. However, this may leave significant room for uncertainty and different interpretations in different parts of the country.

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 per cent of pubs choosing smoking likely to be borne out?

Analysis

This is, in effect, an open invitation to highlight the illogical nature of diminishing a health and safety measure on the basis of whether or not food is served. Terms such as ‘pre-packaged ambient shelf-stable snacks’ are very obviously *not* clear or easily understood by publicans and customers alike, and reliance upon yet more detailed regulations would inevitably make enforcement highly impractical, probably by errors of ignorance as much as deliberate evasion.

Recommendation

These proposals should be rejected in detail, highlighting the impractical nature of the concepts and the obvious foreseeable difficulties in implementation. It is also worth including information as to the impact upon those pubs which will feel under

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pressure to choose between food and smoking in your area, as this appears likely to be particularly onerous for smaller or independent establishments but real case studies would be usefully quotable. 'Wet-pub' mapping exercises have in most case shown that the 10-30% estimate of pubs likely to choose smoking (as opposed to choosing health) is optimistically low, particularly in the most deprived or lowest-income areas, and it is also sensible to include such data for your area where available.

Exceptions – Residential premises

It is proposed that regulations may exempt the following premises from the smokefree legislation, since they act as an individual's dwelling or are clearly private space:

- any place occupied as residential premises or as living accommodation – this includes a house, apartment, flat or a bedroom or living area let or being used as a person's principal place of residence (for example, bedrooms in a hotel, bed and breakfast or hostel which are designated for the use of a particular person or group of persons by the proprietor)
- halls of residence (only in bedrooms)
- adult hospices
- long-stay adult residential care homes
- psychiatric hospitals and units
- prisons or other places of detention
- detention rooms in police premises designated by, or on behalf of, a chief constable
- private vehicles (which may be defined by the regulations to include vehicles which are privately owned or hired for specified or minimum periods)
- a place where only a single self-employed person is working
- a vehicle that is used for work purposes by only ever one person
- oil and gas platforms
- the separate living area of a seafarer.

For some of these exemptions, for instance psychiatric hospitals and units, exploratory work will be needed to see how these can move to become smokefree in the longer term. Work by the HDA in conjunction with NHS Trusts has shown how progress can be made to minimise exposure to secondhand smoke in psychiatric settings.

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

Analysis

This is a step in the right direction, attempting to enshrine the basic idea that smoking should only be permitted in private places. However, as presented it does not prevent all workers from involuntary exposure – staff in care homes, mental health facilities and prisons may not be adequately protected, and there is a loophole as regards domestic staff or workers providing home care services. The unqualified inclusion of oil and gas platforms is extraordinary given the obvious fire risks. The inclusion of vehicles may be contrary to the development of comprehensive workplace smoke-free policies already in development by local authorities and

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the NHS if it is seen to apply to private vehicles being used for business purposes. Some hall of residence bedrooms may still be shared, in which involuntary exposure is still a possibility.

Recommendation

The principle of the proposal should be welcomed, but suggestions for improved and clearer wording be offered. In order to protect domestic staff and other workers whose workplace may be another person's home – such as home helps, social services staff and visiting nurses – it may also be appropriate to suggest exempting only parts of private living areas not generally used or worked in by any other person.

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Exceptions – Membership clubs

It is proposed to exempt membership clubs, where the members will be free to choose whether to allow smoking or not. These clubs, such as the Royal British Legion, working men's clubs, cricket and rugby clubs, will be those defined as Registered Clubs or Qualifying Clubs under the Licensing Act 2003.

It is proposed, subject to consultation, to require Qualifying Clubs to undertake an annual ballot, in the course of their normal processes, on whether or not to permit smoking. This reflects the proposal in the White Paper that the members should be free to choose the smoking status of the club.

Question 7: Views are invited on the proposal.

Analysis

This is apparently aimed at working men's clubs in order to reduce the political impact of resistance in some high-smoking prevalence areas. As with the suggested food/non-food division, the constitutional nature of the workplace is irrelevant in considering a health and safety measure. The requirement for an annual ballot seems unwieldy, and unlikely to provide a fair route for staff requiring protection as they may not have a vote. Perhaps most importantly, experience overseas has shown that comprehensive bans become ever more popular following implementation, establishing the normality of smoke-free workplaces and public places.

Recommendation

This proposal should be rejected, highlighting the impractical nature of the annual ballot requirement, the failure to protect staff in membership clubs, and the good grounds for confidence that resistance will be limited and transitory (New York City and Ireland being examples of where fears of a public backlash were not realised).

Exceptions – Practical implications

We would be interested in your views on how this legislation is likely to impact on your place of work.

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

Analysis

This question appears aimed primarily at garnering public responses, and is again an open opportunity to point out how the inconsistencies and loopholes inherent in the current proposals will make implementation expensive and unreliable. Quotable examples of the difficulties likely to result in any workplace are worth highlighting.

Recommendation

It is advisable for all respondent to detail the practical difficulties in their own workplace, but also encouraging members of the public (for instance bar staff) to respond to this questions specifically where possible.

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Signage

It is proposed that smokefree areas should be designated by no-smoking signs, with powers in regulations to prescribe the size and content of the signs.

It is proposed, in line with the proposals being put forward in Scotland, to require a no-smoking notice that should measure at least 280mm by 200mm (A4), displaying the international no-smoking symbol and stating that it is illegal to smoke on the premises. It is also proposed to include information on the maximum fine for smoking in smokefree premises and a phone number for people to call if they have concerns that the smokefree law is being broken on the premises. It shall be the responsibility of the owner, manager or other person in charge to ensure that the no-smoking status of the premises is clearly highlighted by appropriate notices.

Question 9: Views are invited on the proposal.

Analysis

This proposal has been influenced by the successful experiences in New York City and Ireland, where clear signage of just the nature described has proved helpful in making smoke-free status of all workplaces clear, and allowing workers such as bar staff to point out the notices rather than have to tackle anyone lighting-up inside in a 'personal' manner

Recommendation

It is recommended that this proposal be welcomed.

Offences and penalties

It is proposed to have three types of offence:

- i) not displaying the prescribed no-smoking notice in a smokefree premises
- ii) failing to act to prevent smoking in a smokefree premises
- iii) knowingly smoking in a smokefree premises.

In detail, the proposed offences and proposed penalties are:

(a) A person found guilty of not displaying warning notices in and on no-smoking premises is to be guilty of an offence.

- It is intended that initially the regulations prescribe a fine of up to level 1 (at present £200) for an offence of not displaying warning notices in and on no-smoking premises.

(b) The manager, or any other person who is in charge of smokefree premises at the time at which tobacco is smoked in them, and the licensee in the case of premises which are licensed to sell alcohol, will be guilty of an offence if they fail to prevent smoking in the premises, except where the special defence set out below applies.

- It is intended that the regulations will prescribe a fine of up to level 1 (at present £200) for a first conviction of the offence of failing to prevent smoking in no-smoking premises.

(c) If a person smokes a tobacco product in a smokefree premises in contravention of a prescribed no-smoking sign, he or she is to be guilty of an offence.

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- It is intended that initially the regulations will prescribe a fine of £50 (fixed penalty notice) for an offence of smoking in no-smoking premises, but the Bill should contain the power to prescribe fines up to level 1. It is also intended that there will be an opportunity to have the case tried by a Court if there is a dispute.

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.

Analysis

These fine levels appear remarkably modest, given the seriousness of the hazard that involuntary exposure to second-hand smoke represents. A £50 fine puts polluting the workplace on a par with minor misdemeanours such as dropping litter; in Ireland, a €3000 fine applies, which provides a higher level of deterrent. In New York City an ascending scale of fines for employers that fail to prevent smoking enables the level of penalty to escalate for repeat offenders – the possibility that this may be considered in England is implicit in the suggestion of a level 1 fine for a 'first offence'.

Recommendation

Where respondents have experience of existing fines regimes that may inform this area of policy development it would be helpful to include relevant insights in responses. The lack of a clear sliding scale for penalties, and the low level of fines for offenders, could both usefully be challenged – - for instance, by suggesting a clearly expressed ascending scale of penalties, with fines at a similar level to Ireland for repeat offenders and possibly licence suspension or revocation for serious repeat infringements by licensed premises operators.

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Defences

It is proposed that there are specific defences which are to apply only to the offence of failing to prevent smoking and displaying no-smoking signage. These may provide a defence to the offence of failing to prevent smoking in no-smoking premises where a defendant produces evidence that:

- (a) he or she was not aware, and could not reasonably be expected to have been aware, that the contravention was occurring; or
- (b) he or she requested the person smoking to stop smoking and informed the person that the person was committing an offence.

It is intended that the defence in (a) above will also apply to the offence of failing to display a no-smoking sign.

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

Analysis

These are standard defences, and largely unremarkable as proposals. They could, however, be improved upon; if a reporting line for infractions were established (advertised on the compulsory notices) defence B could be modified to apply only if the defendant had told the smoker to stop, informed them that they were committing an offence AND reported this to the proper authorities.

Recommendation

These defences should be accepted in principle, but pressure for a requirement to report offences (via the telephone number on no-smoking notices as proposed above) would be worthwhile.

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Enforcement

Enforcement will be a matter for the appropriate local authority enforcement officers. Exactly how this responsibility is split between the different groups (for example, food safety officers, trading standards officers, technical officers and environmental health officers) will depend on how the local enforcement authorities are structured at the time the proposed legislation comes into effect.

It is proposed that the legislation should give a general power to the appropriate enforcement officer. The proposal is that the appropriate officers will have the power to:

- (a) inspect premises (see paragraph below); and
- (b) bring prosecutions for any offence under the legislation, including repeat offences.

It is intended that enforcement officers (in many cases this will be environmental health officers who have similar powers/responsibilities in sections 29 to 32 of the Food Safety Act 1990)⁶ should have the power to enter premises for the purposes of enforcing the Act and, when on premises for that purpose, to take samples for analysis. Such samples may be needed, for example, to establish that a substance smoked is or includes tobacco, or to determine whether snacks are of a kind which is permitted in a smoking area.

Choosing Health confirms the Government's commitment to the New Burdens Doctrine, and states that it will reimburse local authorities for any extra costs they face as a result of the policies in the White Paper. Discussions have already commenced with the Local Government Association (LGA) on questions around enforcement and likely costs.

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.

Analysis

This proposal is open as to the likely practical burdens upon local authority officers, particularly EHOs. There is an implicit rejection of a need for a national body, such as the Office of Tobacco Control in Ireland, to oversee efforts. Enforcement will clearly be more time-consuming and difficult at a local level if the exemptions proposed at present apply, and the unnecessary additional cost to the state of implementing a partial ban rather than a comprehensive one is a key argument.

Recommendation

It would be helpful for local authorities to respond in detail as to the likely cost of enforcing a partial ban, how this compares to the possible cost of enforcing a comprehensive (and thus more easily understood) ban, and the levels of reimbursement that may be sought from central government in either circumstances.

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Smoking at the bar

It is proposed that, in exempted licensed premises, smoking at the bar would not be allowed, although there is no evidence that this would provide any health benefit for those in the premises. A possible route might be to define bar areas and stipulate the distance (1 metre) from the bar where smoking would not be allowed, or to allow the industry to continue to promote this policy without legislation.

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

Analysis

This idea comes at the suggestion of the tobacco industry, its main function being to delay meaningful action to make pubs and bars smoke-free by such visible token measures. As the consultation points out, such a measure would not furnish any proven health benefit. It has no scientific merit – if people are smoking in the room, bar staff will be exposed to higher than necessary levels of tobacco smoke pollutants whether the source is one metre from the bar, two metres or five. However, should a partial ban continue to be proposed, the scientific case may provide a means to improve matters, as the only way to genuinely protect staff will be to define the bar area as the contained space that bar staff work in – i.e. smoking should only take place in a separate room with a self-closing door and no re-circulation of air to the bar area.

Recommendation

Respondents could usefully highlight the considerable evidence that second-hand smoke pollutants are present at a higher level throughout a room in which people are smoking, the obvious fact that smoke drifts, and the reality that such a token gesture would not actually protect the health of workers. Pressure to make worker protection meaningful in a partial ban environment, detailing the specific measures necessary as above, would be useful in maximising health gains for bar workers and encouraging publicans to take the lower-cost route of voluntarily introducing a smoke-free environment if a comprehensive ban is not required by legislation. Practical issues as to the enforcement practicalities for environmental health officers could usefully be included here.

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Timetable

A timetable is proposed for this legislation as follows:

- By the end of 2007, all enclosed public places and workplaces, other than licensed premises (and those specifically exempted), will, subject to legislation, be smokefree.
- By the end of 2008 arrangements for licensed premises will be in place.

Choosing Health therefore sets out an absolute end point, but does not rule out that these policies will be in place before this point. Indeed, practice from other northern European countries has been that the middle of winter is not necessarily the best time to begin asking smokers to go outside.

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.

Analysis

Experience from abroad certainly has shown that winter is not the best time to introduce an indoor smoking ban – but it has also shown that there is not necessarily a need to give licensed premises (i.e. drinking venues) a significantly later implementation point than any other workplace. There is good reason to plan a lead-in period of up to a year before implementation, but delaying the start date further may achieve little more, whilst prolonging exposure to the hazards of second-hand smoke. The tobacco industry – possibly lobbying via ostensibly hospitality industry proxies – will press for delays, as every additional month of additional time will represent a postponement of an expected decrease in tobacco sales once restrictions are in force. An earlier start, however, would give more time for the public to adjust to – and, if international experience is a precedent, grow to like – smoking restrictions before the next General Election.

Recommendation

Respondents could usefully suggest a one-year lead-in period, ending in spring, summer or early autumn. Bringing the implementation date forward to mid-2008 is the very least that should be asked for – if the legislation can be carried through Parliamentary process and Assent by mid-2006 it may even be reasonable to suggest bringing the start date forward further to mid 2007 for all workplaces. It is worthwhile pointing out that delay beyond the year that may be required to prepare the public for the change may achieve nothing positive, whilst prolonging health hazards and causing confusion and uncertainty for the hospitality industry, who are increasingly aware that a 'level playing field' is the most stable basis upon which pub trade can flourish and fairly compete.

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Unintended consequences for binge-drinking

Choosing Health stated: “Some have pointed to a risk inherent in this proposal that pubs may decide to stop serving food instead of imposing a smoking ban; and that this may have an adverse impact on our drive to tackle binge-drinking. We believe that the profitability of providing food will be sufficient to outweigh any perverse incentive for pub owners to choose to switch. However, we will consult widely with all those engaged in combating irresponsible drinking to ensure the risk is mitigated, and will monitor outcomes.”

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.

Analysis

This is one of the Achilles' heels of the partial ban proposals – it would indeed be 'perverse' for legislation to effectively discourage the provision of food in pubs whilst the intention to tackle binge-drinking naturally favours the spread of the type of pubs where people can sit down and eat and drink in moderation. The profitability of food – or the profitability of smoke-free environments – are already encouraging some publicans to provide some non-smoking premises in more affluent areas, but they are very few at present, and generally not present in areas of low incomes. There is thus a link to health inequalities – if binge-drinking and anti-social behaviour is occurring at high levels in populations experiencing higher health inequalities, which are also populations experiencing higher smoking prevalence where the pressure to switch from food to smoking will be the greatest, the effect could be serious and the optimistic assessment in *Choosing Health* unreasonable.

Recommendation

Local authorities and law enforcement bodies can usefully respond to this with detailed examples of the likely impact in their area, possibly by raising the issue with the relevant Crime and Disorder Reduction Partnership. Where 'wet-pub' mapping exercises are carried out, it would be useful to compare the results with mapping of drink-related disorder.

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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.

Analysis

This is an open invitation to make the case for a comprehensive ban on the basis of meaningfully addressing health inequalities.

Recommendation

If your area includes communities known to experience health inequalities (for instance, if a regeneration area or Spearhead PCT patch, although this is not exclusive) it is well worth conducting a 'wet-pub' mapping exercise to plot potential exempted licensed premises – you are likely to see figures well above 10-30% in these areas, which will be valuable evidence to submit in its own right, and even stronger if you have resources to map in non-deprived areas for comparison. Northamptonshire smoke-free alliances have experience of this approach, and ASH also have a model available – both are willing to advise local respondents.

In presenting local data, it is worth considering actual maps or visual presentations, rather than numerical reports alone – these have been found to have additional impact in consultation responses in the past.

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Partial Regulatory Impact Assessment

The partial RIA was originally published alongside the White Paper in November 2004. Responses on the key questions in this partial RIA are welcomed.

Analysis

The PRIA was available on the DH website from November 2004, but not actively publicised or promoted – this is therefore the first that many potential respondents will have seen of it. The PRIA sets out the reasons for the proposed legislation – and why the proposals are not comprehensive.

Recommendation

Unlike the questions above, responding to the PRIA is an opportunity to emphasise the inadequacy of the partial ban proposals in principle as well as practice. It is important that this material is not overlooked in consultation responses.

Objective

The Government's objective 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.

Smokefree enclosed public places and workplaces would include those to which members of the public have access in the course of their daily business and leisure. They would include trains, buses, taxis, shops, schools, healthcare facilities, sports centres, offices, factories, cinemas, pubs, restaurants and clubs. Where a public place is also a workplace, action taken would not replace the existing duty of care under the Health and Safety at Work etc Act 1974.

The health risks of secondhand smoke have been reported by SCOTH in 1998 and 2003. Secondhand smoke in indoor places not only harms non-smokers, but also harms smokers and makes it difficult for the 7 out of 10 smokers who want to quit to succeed.

Smoking Kills (1998) led to the Public Places Charter – this set targets for voluntary smoking restrictions, which by 2003 had not been met, to the disappointment of Ministers.

Option 1 – Continue with a voluntary approach

Likely to result in only limited progress. If we assume that indoor workplaces without bans are those least willing to apply them, we could estimate that only half will voluntarily choose a ban. A hospitality industry has launched an initiative for further voluntary action, but this does not cover the majority of the industry. Even if completely successful, there would still be significant exposure to secondhand smoke for people in the premises and no guarantee of anyone being able to find a smokefree pub or bar. The costs to Government are considered to be zero.

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Option 2 – National legislation to make all indoor public places and workplaces completely smokefree (without exemptions)

No exemptions would be made for the hospitality industry or others. Of the four options, this option offers the highest levels of benefits, including the highest reductions in prevalence, deaths from secondhand smoke, cleaning and fire risk, and increases in productivity. The main risk is that a total national ban may not reflect public opinion completely, and may therefore be more controversial and more difficult to enforce. However, experience from Ireland and other jurisdictions has not identified a significant enforcement problem. There would be a cost to Government to enforce the legislation, estimated at around £20m a year initially, although expected to fall to a minimal level subsequently. The available evidence does not support speculation that hospitality trade profits would suffer.

Option 3 – Legislation giving local authorities new powers to control secondhand smoke in indoor places

This would be a longer term and more unpredictable route. Costs and benefits would not be known until the response from all local authorities was known. This may result in a confused system across the country, and there is every possibility that some local authorities may not make use of the legislation at all. This option is also the route that the hospitality industry favour least.

Option 4 – National legislation to make all indoor public places and workplaces completely smokefree (with exemptions)

All enclosed public places and workplaces will be smokefree. This is likely to provide benefits set at a level below that of Option 2, but at a much greater level than Option 1. The loss of benefit in comparison with Option 2 is likely to be in non-workplace enclosed places (for example pubs). The benefits from reductions in deaths due to customers giving up are estimated, at this stage, to be between zero and the full benefits in Option 2. Overall there would be a reduction in secondhand smoke; an estimate for the purposes of the partial RIA is that more than half the deaths from secondhand smoke would be averted. A risk of this proposal is that food-led licensed premises, pubs in particular, may make a choice to give up serving food in favour of allowing smoking, thereby reversing the recent trend towards pubs being more than simply a place to drink alcohol. The different provisions for different businesses may be more complicated to enforce. Costs are estimated to be higher than for Option 2, as the enforcement decisions are likely to be more complicated (with more exemptions).

Analysis

Option 1 achieves nothing, Option 3 is confused and inconsistent, Option 2 would provide the highest level of health benefits at a modest cost, and Option 4 would achieve lower health benefits at a higher costs. The PRIA is correct on all points, including the reminder that other jurisdictions have not found a comprehensive ban difficult to enforce, which illustrates the illogicality of proceeding with a partial ban.

Recommendation

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When responding, you could helpfully point out how the greater health benefits of Option 2 will contribute to public health in your area, as well as highlighting again how the greater enforcement burden and complexity will disrupt businesses, as well as other fields of environmental health activity, in your area.

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Net sum of all costs and benefits

Benefits	Option 1 Voluntary action	Option 2 Full ban in all enclosed public places and workplaces	Option 3 Local powers	Option 4 Ban with exceptions
Annual benefits £m				
a) Averted deaths from secondhand smoke Employees Customers	4 75	21 350	0-21 0-350	21 150-250
b) Averted deaths from smokers giving up Employees Customers	800 -	1600 180	0-1600 0-180	1600 0-180
c) Averted deaths from reduced uptake of smoking	275	550	0-550	550
d) NHS expenditure 20 saved through reduced smoking prevalence		100	0-100	40-100
e) Reduced sickness absence	14-28	70-140	0-140	28-140
f) Production gains (from reduced exposure to secondhand smoke)	68-136	340-680	0-680	306-612
g) Safety benefits (damage, fire, injuries, etc)	13	63	0-63	57-63
h) Reduced cleaning and maintenance costs	20	100	0-100	90-100
Total benefits	1289-1371	3374-3784	0-3784	2842-3616
Annual costs £m				
i) Implementation (changes to signage, alterations to premises, etc)	-	-(minimal)	unknown	-(minimal)
j) Enforcement	-	20	0-20+	20+
k) Education/ communication	-	1	Unknown - dependent on local decisions	1
l) Revenue losses to Exchequer from falling cigarette sales (employees) (customers)	570 -	1145 150	0-1145 0-150	1145 0-150
m) Losses to the tobacco industry	57	129	0-129	114-129
n) Unintended consequences (mess on streets, etc)	-	-	-	-
o) Production losses (smoking breaks)	215	430	430	430
p) Consumers' surplus losses to continuing smokers	80	155	155	155
Total costs	922	2030	0-2029	1844-2030
Net benefit	367-449	1344-1754	0-1755	998-1586

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Competition assessment

A competition assessment has been undertaken; outside the hospitality sector, no significant competition issues were identified. The biggest impact of action on secondhand smoke will be for the hospitality sector and, within the sector, for those businesses that have made least progress in becoming smokefree (for example, cinemas are almost universally smokefree, whereas smokefree pubs are very rare).

- Option 1 is a continuation of existing policy and does not give rise to any issues.
- Option 2 provides for a level playing field to business with no increased entry costs (indeed it will decrease entry costs to the pub sector, as expensive ventilation currently used will no longer need to be installed or maintained).
- Option 3 may result in impact on competition between businesses in different jurisdictions, which may result in smokers moving from a legally required smokefree public place in one local authority, to a smoking public place in the neighbouring local authority. There is potential for higher entry costs if an LA were to decide to require specified ventilation in local legislation.
- Option 4 will result in a decision for licensed public places whether to serve food or not. As with Option 2, and for similar reasons, this route may decrease rather than increase barriers to entry in premises that will be smokefree. Views are welcomed on competition aspects of this option.

Analysis

Option 1 creates a competitive advantage for the small number of existing smoke-free pubs, but the effect in terms of creating smoke-free places is inadequate. Option 3 creates the least level playing field possible. Option 2 creates a completely level playing field and will evidently be the lowest-cost for businesses to enforce, but to make similar claims about Option 4 appears groundlessly optimistic.

Recommendation

Views are requested as to the competition weaknesses of Option 4, rather than hard economic data. It would be helpful to highlight your concerns about the deleterious effect of a partial ban upon hospitality businesses in your area, whether or not you have financial evidence to complement these views.

Rural proofing

We have considered the impact of these measures in relation to rural areas, and consider that they will not have a different or disproportionate impact on people living in rural areas. It has been suggested that rural pubs might be disproportionately affected; however we have no evidence at present to support this. We welcome further comments from stakeholders on this issue.

Analysis

This has been pointed out because some smaller rural pubs have only one or two rooms and low turnover, so creating separate smoking rooms and installing expensive (although ineffective) ventilation systems would be architecturally and financially impossible – if rural pubs thus lost trade to larger-scale urban facilities as a result this could threaten their financial viability. Pubs are the only regularly available community facility in many small rural communities, so a partial ban should arguably not pass the 'rural proofing' test – however, the PRIA asks for evidence.

Recommendation

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Where this affects pubs in your area, evidence (anecdotal or otherwise) could usefully be included in your response.

Enforcement and sanctions

Further consultation will be necessary on the full details of the licensing and enforcement arrangements. This may simply involve redirection of existing local enforcement work for some of the options, or it may be a much greater change involving action to enforce the proposed legislation. We welcome comments from stakeholders on this issue and on appropriate sanctions. Below are some hypothetical scenarios for each option and the estimated cost of enforcement. We would be grateful for stakeholder views on these and the cost to individual organisations. Views on the level of fines and the scale of enforcement this are also welcomed.

Option 1

Continue with current enforcement.

Hypothetical scenario 1

The market and business/employers will decide the level of protection and therefore there will be no enforcement costs.

Total estimate £0m

Option 2

Based on Ireland's experience, it might need 500 officers at a cost of £20m for a year, dropping substantially after the start.

Hypothetical scenario 2

Enforcement/Environmental Health Officers will be employed to enforce new legislation. Estimated total cost £20m. If there is a circumstance where the law has been broken then the EHOs will be contacted to take the appropriate action. This action will include the cost of prosecution. Evidence from Ireland is that the number of prosecutions remains very low. If EHOs cannot be contacted and the circumstance escalates to a public order issue then it is likely that the police will be called upon. We welcome comments on the cost of this.

Total estimate £20m plus any courts/legal aid, plus possible police costs

Option 3

Depending on what local authorities choose, the need for enforcement could be anything up to that identified for Option 2 or 4.

Hypothetical scenario 3

Extreme case scenarios would be if each local authority decided to ban smoking in public places (Option 2) or if they decided to do nothing and encourage voluntary action (Option 1). However, the costs will depend on the level of enforcement decided by each LA. We welcome comments on this. These costs would include EHO costs, any prosecution/appeal costs to courts and legal aid, plus possible police enforcement costs.

Total estimate £0 – 20m plus any courts/legal aid, plus possible police costs

Option 4

At least that required for Option 2.

Hypothetical scenario 4

There are a number of scenarios for this option. It is envisaged that enforcement costs to cater for all the scenarios will include the following: Enforcement/Environmental Health Officer employment and training costs – £20m. Again, any prosecution/appeal costs to courts and legal aid, plus possible police enforcement costs. We welcome in particular views on prosecution and police costs. Total estimate

£20m plus any courts/legal aid, plus possible police costs

Analysis

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Due to the complexity and likelihood of misinterpretation, a partial ban is certain to be more expensive to enforce successfully.

Recommendation

Estimates of differential local costs for Options 2 and 4 could usefully be included in responses.

Consultation on the Smokefree Elements of the Health Improvement and Protection Bill -
a guide to responding from the Smoke-Free Alliance

Public opinion

Secondhand smoke was the single biggest issue raised in the *Choosing Health?* Public consultation. Over half of submissions were in favour of a national ban on smoking in public places or workplaces. There is increasing public support for smoking restrictions or smokefree legislation to cover indoor public places and workplaces, but polls indicate that the measure of support varies according to types of premises. For most workplaces and public places support for restrictions is generally 80 per cent or more. However, pubs stand apart from all other indoor places, and even other parts of the hospitality sector, as being a special case in the mind of the public.

Analysis

Pubs are no different from any other workplaces in most aspects of health and safety, and here too the difference is one of perception rather than fact. Many public consultation exercises have been weakened by asking the public about preconceptions, rather than framing the question constructively; if asked simply about where smoking should be restricted – workplaces or pubs too? – this sets up a false dichotomy and fails to remind people that pubs are also workplaces. If and when a comprehensive approach is agreed, this misunderstanding can be tackled through targeted communications programmes, as carried out successfully in many other parts of the world.

Recommendation

It is worth reiterating in responses that uninformed opinion is of questionable value in considering technically validated health and safety measures, and that public acceptance can and will grow as a result of planned communications activity if the Government chooses to act – indeed, smoke-free measures internationally have tended to become more popular once implemented. Where resources allow it may be possible to carry out small-scale local opinion studies to ask members of the public whether bar staff should be protected from the health hazards of second-hand smoke as well as other workers, and if such work is carried during the consultation period the results could usefully be included in responses.

Consultation on the Smokefree Elements of the Health Improvement and Protection Bill - a guide to responding from the Smoke-Free Alliance

Summary and recommendation

Option 4 is the preferred option, as it offers the highest level of benefits possible, taking into account the need for appropriate exceptions from a ban on smoking in enclosed public places and workplaces that reflect public opinion (see table below for a summary of the four options). Taking forward Option 4 will be subject to consultation and the feedback received from a wide range of stakeholders.

Option 1	Option 2	Option 3	Option 4
Least restrictive and costly but may not make significant progress	Most effective but may be seen by the public as too restrictive, as no exemptions are identified	Potentially equally as effective as Option 2, but with no guarantee of action, no way of predicting what type of action would be taken, and no guarantee of a timescale for action	The preferred option – although likely to be less effective in reducing smoking and protecting from secondhand ban, exceptions a more complex and costly approach which tries to reflect public opinion
£m net benefit 367–449	£m net benefit 1344–1754	£m net benefit 0–1755	£m net benefit 977–1651

Analysis
 Option 4 was the option preferred by the previous Secretary of State for Health for reasons of expediency – it was considered unhelpful to let a potential ban become a General Election issue. Apart from the misapprehension about public opinion, the PRIA makes it clear that Option 4 is in no sense preferable to Option 2, which is superior in all respects; a comprehensive workplace restriction would be easier to understand, easier to enforce, lower cost to the Government, local authorities and employers, in the medium to long term more popular, and capable of delivering the greatest health benefits. Option 2 is the only logical avenue for national action – but the Government may not feel able to recognise this and change course without an overwhelming response to this consultation exercise in support of comprehensive restrictions.

Recommendation
Please take the time to respond to the consultation questions and PRIA in as much detail as possible, or at least identifying the 'killer facts' in your area. Every informed response that strengthens the case for comprehensive restrictions and illustrates the additional burdens and missed opportunities that a partial ban would represent is of real value.

Consultation on the Smokefree Elements of the Health Improvement and Protection Bill -
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Useful supporting information for drafting consultation responses

There is copious material freely available at www.ash.org.uk, and a website specially established to inform consultees at www.smokefreeaction.org.uk

A summary of key arguments for reference:

Second hand smoke

- SCOTH (Scientific Committee on Tobacco and Health), Nov 2004, found that exposure to second hand smoke (SHS) in non-smokers increased the risk of lung cancer by 24% and heart disease by 25%. The report confirmed that SHS 'represents a substantial public health hazard' (www.advisorybodies.doh.gov.uk/scoth/)
- Prof. Jamrozik's report, 'Estimate of deaths attributable to passive smoking among UK adults', published in the BMJ in April 2005, found that 11,000 people die each year due to exposure to SHS. This breaks down to 30 people each day. Also found that one worker each week dies from SHS exposure in the hospitality industry.
<http://bmj.bmjournals.com>
- The dangers of second hand smoke have been confirmed by the Government's Chief Medical Officer, Sir Liam Donaldson, as well as by the heads of all of Britain's thirteen Royal Colleges of Medicine.
- The US Environmental Protection Agency (EPA) has classified environmental tobacco smoke as a Class A (known human) carcinogen, alongside asbestos and benzene.
- Tobacco smoke contains 4,000 chemicals and 60 known carcinogens.
- In Ireland, post-ban, levels of carbon monoxide in non-smoking bar workers have decreased by 45%.

The ventilation argument

- Ventilation and similar systems cannot eliminate all the dangerous elements of cigarette smoke. They remove the visible smoke but not the cancer-causing particulates which are invisible to the human eye and too small to be caught by the filter.
- Tobacco industry giant Philip Morris has previously admitted on its company website that ventilation is 'not shown to address the health effects of second hand smoke'.
- The ventilation argument is also used to address the issue of the 'comfort' of non-smokers. This draws attention away from the health concerns: while it is true that non-smokers often avoid pubs because they dislike the smoke, the reason for smoke free legislation is to protect people's health.
- Ventilation systems are expensive for businesses and ineffective in removing the risks from SHS. Smoke free workplaces are the only safe option.

The 'smoker's right to smoke' argument

- Smokers should not be free to endanger the health of those around them. The right of non-smokers to breathe clean air must take priority over the perceived right of smokers to smoke.

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- The issue isn't about *whether* smokers can smoke, but about *where* and *when* it is appropriate for them to smoke so that they do not harm the health of others.
- Smoking in enclosed public places causes direct harm to other people. A law which prevents this is reasonable and fair.
- The Americans coined the phrase 'your right to smoke ends at my nose'.

Ease of enforcement

- In Ireland, where a total ban has been in place for a year, compliance has been very high: 94% of hospitality workplaces inspected were smoke free.
- Smoking restrictions are already in place in many areas in this country, for example on the London Underground. These restrictions are routinely observed without heavy enforcement, because the great majority of people are law abiding.

Popularity with the public

- In Ireland, post-ban, 93% of people think the smoke free law is a good idea, including 80% of smokers.
- In _____shire, _____% of people who took part in the Big Smoke Debate wanted smoke free public places. _____% wanted legislation to this effect. _____% wanted totally smoke free pubs.

Concerns that a smoking ban will move smoking to the home

- There is no evidence to support this.
- Many smokers give up altogether when smoke free legislation is introduced.
- Smokers and non-smokers become more aware of the risks of smoking around others, and children in particular, when smoke free legislation is introduced.
- In California, the percentage of children living in smoke free homes rose from 38% in 1992 to 82% per cent in 1999. California went smoke free in 1995.

_____Smoke-Free Alliance is available to assist you in responding if you would like practical assistance, opportunities to discuss the most persuasive approaches, or support in drafting a response. Please contact us as below:

NUMBERS & CONTACT DETAILS

Dear Secretary of State,

The Choosing Health in Chorley and South Ribble group (an alliance between Chorley & South Ribble PCT, Chorley Borough Council and South Ribble Borough Council) welcome the proposed legislation to introduce Smoke Free public places and workplaces but express concern regarding the proposed exemptions for this legislation.

We believe that second hand smoke in the workplace and enclosed public places poses a serious health risk to both employees and members of the public. No one, be they a smoker or a non-smoker should be forced to breathe in someone else's tobacco smoke.

Chorley and South Ribble are completely committed to reducing deaths attributed to cancer and coronary heart disease as well as deaths and debilitating conditions formed as a result of second hand smoke. Outlined in the strategies for both Local Strategic Partnerships is a strong commitment to workplace health along with a commitment to a Smoke Free Chorley & South Ribble. The proposed exemptions outlined in the smoke free legislation undermine this commitment.

Our concerns are that these exemptions will make legislation difficult to enforce and therefore unworkable and that inequalities in health will be more evident in some of the more deprived wards of Chorley and South Ribble. We also consider that clear and comprehensive legislation will help to reduce the number of young people starting to smoke.

All workers deserve protection. With recent international research concluding that more than one bar worker dies each week in this country from the exposure to second hand smoke, it is imperative that we make every effort to reduce this risk.

We therefore as a group urge you adopt Option 2 in the consultation document on smoke free legislation and that you introduce national legislation to make all public places and workplaces smoke free (without exemptions) thereby protecting all residents of Chorley & South Ribble.

Your Sincerely,

Chorley & South Ribble PCT.

Chorley Borough Council

South Ribble Borough Council

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OVERVIEW AND SCRUTINY WORK PROGRAMME – 2005/06

Function/topic	Assigned to	J	A	S	O	N	D	J	F	M	A	M	J
1. Holding the Executive to Account	OSC												
Annual Budget/Council House Rents								3					
Annual Budget Consultation						3		3					
Provisional full year Performance Indicator										3			
Business Plan and Performance Indicator Updates	ESP				✓			✓	✓	✓	✓		✓
	Com SP				✓			✓	✓	✓	✓		✓
	Cust SP				✓			✓	✓	✓	✓		✓
	OSC				✓			✓	✓	✓	✓		✓
BVPP (Corporate Plan overall performance)		✓											
Monitoring of Sickness Absence (6 monthly update)							✓						✓
Housing Maintenance Budget							3						
Corporate Building Maintenance & Repair Service (6 monthly update)					3						3		
2. Policy Development and Review													
Other to be identified													
3. External Scrutiny/Community Concern Full Scrutiny Inquiry													
Public Participation/Communication	ComSP												
LCC's arrangement for the Scrutiny of health function – Periodic Review	CustSP				3								
Accessibility of Cycling as a Leisure Pursuit	ESP												
Parkwise Scheme	CustSP												
4. Monitoring of Inquiries													
Housing Maintenance Appointments System	CustSP			✓						✓			
Flooding, Flood Prevention and Contingency Plan/Proposals	ESP						✓						✓
Chorley Markets - Occupancy of Stalls & Associated Matters	CustSP			✓						✓			
Juvenile Nuisance	ComSP												
Grass Cutting	ESP						✓						✓
Provision of Youth Activities in Chorley	ComSP							3					
One-Stop Shop	CustSP							3					
5. Other													
O & S Training Programme	OSC			3						✓			
OSC - Overview and Scrutiny Committee Panel ComSP - Community Overview and Scrutiny Panel		ESP - Environment Overview and Scrutiny CustSP - Customer Overview and Scrutiny Panel											

Overview and Scrutiny Topics/Issues to be Programmed

Ref	Topic/Issue Title	Date Included	Priority Score	Source	Brief Description
	<p><u>Full Scrutiny Inquiries</u></p> <p>Priority List</p> <p>IEG Measurement of Council's progress (Cust SP)</p> <p>Reserve List</p> <p><u>Policy Development/Review</u></p> <p>Priority List</p> <p>Reserve List</p>	<p>26/06/03</p>	<p>4 and 4</p>	<p>Overview and Scrutiny Committee A</p>	<p>Referred to Customer O & S Panel</p>