



**Response to the
Consultation on
Smoke-Free
Premises and
Vehicles**

Introduction

Fresh is a dedicated tobacco control office for the North-East of England, supported by a coalition of organisations and partners including PCTs and local authorities. Fresh co-ordinates and analyses tobacco control challenges and delivery across the region.

We have challenging regional tobacco control targets to meet in order to tackle the health inequalities arising from tobacco use, including both from smoking and second-hand smoke. Fresh and its broad coalition have undertaken a great deal of effort to ensure that their voices were heard during the Health Bill consultation and also during the parliamentary process in both the House of Commons and the House of Lords. We are delighted that the Government now intends to implement the Health Act 2006 to ensure smoke-free enclosed workplaces from 2007.

Fresh broadly supports the proposed regulatory framework presented in the consultation document. We have, however, a number of continuing concerns on specific aspects of the regulations and the practicalities of implementation, which we detail below.

This consultation response has been produced following detailed consultation with the members of the Smoke Free North East Advisory Panel, and a regional Smoke-free Regulations Seminar held on 3 August 2006 and attended by over 130 delegates from a range of organisations including primary care, local government, prisons, mental health, hospitality industry, private sector business, public health observatories, universities and regional agencies.

Purpose

We fully support the stated objectives to regulate to:

- reduce the risks to health from exposure to second-hand smoke,
- recognise a person's right to be protected from harm and to enjoy smoke-free air,
- increase the benefits of smoke-free 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, and
- save thousands of lives over the next decade by reducing both exposure to hazardous second-hand smoke and overall smoking rates.

Fresh is also pleased to see that water-pipes, hookahs etc. are to be specifically included, as our assessment is that there is indeed low awareness of the level of hazard these tobacco combustion approaches represent to smokers and non-smokers alike.

Future reviews of smoke-free legislation

We note that public commitments have been made at Ministerial level to review implementation of smoke-free legislation and publish findings within three years of implementation. Given the gaps in the proposals, which are few but nonetheless significant, we would like to propose bringing this forward and setting a completion date in late 2008 so that there is time to respond, including by further regulation if necessary, within the current term of administration.

Smoke-free (General Provisions) Regulations 200X

Definitions of “enclosed” and “substantially enclosed” premises

We support the proposed definition of enclosed premises, although for the purposes of clarity we would suggest that the distinction between ‘enclosed’ and substantially enclosed’ is removed and that any area should be assessed as enclosed or not enclosed for the purposes of these regulations. The rule that at least half of the potential wall must be open is clear, easy to understand, and appears to have worked well in Scotland. We note that no indication of scale is given, and that a number of places or venues that may previously have been regarded as at least partially ‘outdoors’ will be required to be smoke-free as they have more than half of their walls or side coverings in place, for instance many prison exercise yards, and larger sports stadia; we do not see this as in any sense a disadvantage, but would recommend that clear guidance is given to minimise the risk of unintentional non-compliance.

Signage requirements for smoke-free premises and vehicles

We approve of the suggested approach in that it appears intended to ensure adequate signage without imposing unreasonable burdens on employers and businesses that have already become smoke-free and taken adequate measures to make staff and customers fully aware of this. The undertaking by the Department of Health to provide freely available signage is constructive, and we would like to see this made widely available (including to key agencies such as Fresh) at least three months before the implementation date. We would encourage the sharing of clear criteria for any managers of premises that wish to devise their own signs which informs their design and makes them aware that an offence will have been committed if they fail to adhere to the minimum requirements. Given the frequent difficulties caused by people smoking in ostensibly non-smoking hotel rooms, we recommend a specific duty to display a ‘no-smoking’ sign that meets the requirements laid in the regulations in every bedroom not designated as a smoking room, to make it clear to guests that smoking in such a room constitutes an offence. We recommend that an additional condition of new signage should be the prominent inclusion of a national free-of-charge telephone number for reporting infractions, so that confusion between enforcement authorities is minimised; it may also be helpful to include the NHS Stop Smoking Helpline contact details in some cases (as long as the two numbers are distinct), as there is ample evidence that smoke-free workplaces and public places are a trigger for quit attempts.

Duties to comply with signage requirements for smoke-free vehicles

We agree with the proposal that regulations should require the operator of a smoke-free vehicle to have the same duties to display no smoking signs that conform with legislative requirements as a person who is concerned with the management of smoke-free premises.

Duties to prevent smoking in smoke-free vehicles

We accept that in some cases the immediate operator (i.e., in most cases, the driver) of a public transport vehicle may be reasonably unaware whether someone is smoking, particularly if they are in a separate compartment to where the offence takes place. Nevertheless we believe that it is reasonable to expect the operating company (since the draft regulations define ‘operator’ as any person with management responsibilities for the

vehicle) to take its responsibilities to provide a smoke-free environment seriously and we would like to see these organisations encouraged to add smoking where prohibited to the list of offences and unacceptable behaviours tackled via surveillance (including by CCTV) and local response, including refusal of carriage to offenders if necessary, as well as being made aware of their statutory responsibilities under the Act.

In order to provide clarity we would not recommend retaining the proposed exception for compartments that have a roof which has been stowed away. Given that smoke can still drift from open-topped compartments into other areas of the vehicle, and that many vehicles now have folding roofs that can be deployed and retracted quickly, there is a serious risk of unnecessary confusion in practice (for instance, passengers may understandably be confused about whether smoking is permitted on all or part of an open-topped tour bus). In order to avoid detracting from the sound principles of the regulations and the Act we would recommend that, for clarity, all vehicles used for work purposes or carriage of the public should be smoke-free. If an exception is granted, however, it should apply only where there is no roof (whether or not deployed), at least 50% of the walls are uncovered, and there are self-closing doors to isolate the open compartment from other compartments.

Compliance and enforcement

We fully support the intention to encourage willing compliance with the legislation wherever possible, as long as there is a realistic prospect of firm and rapid enforcement action should it be required in other cases.

The wording of the consultation document on the matter of responsible bodies for enforcement initially gave rise to considerable confusion, and the subsequent clarification issued by the Department of Health was helpful. There is no question that Environmental Health teams have the appropriate skills and knowledge to secure compliance, and district/borough councils and unitary authorities should therefore be listed as the prime enforcement authorities. County councils may well have a constructive supporting role to play, but are unlikely to be in a position to undertake substantive enforcement duties and this should be made clear in the wording of the regulations. Nevertheless, we fully support the principle that other designated professional groups should be able to contribute to securing compliance, including trading standards officers, community safety officers and others and recommend that Councils decide locally on which groups or agencies may enhance implementation in this manner.

We note that negotiations are under way between the Local Government Association and the Department as regards reimbursement for envisaged enforcement costs under the New Burdens Doctrine. We appreciate that this process involves an element of bargaining and thus may not be concluded instantly, but we would nevertheless urge a settlement to be rapidly arrived at and published. We are aware of a number of local authorities that will need to have made considerable progress as to setting 2007/8 budgets and tasking before the close of the current consultation period, and it is likely to be crucial to optimum delivery that funding levels are confirmed by September. We would also encourage the Government to take appropriate measures to ensure that additional investment in the successful implementation of smoke-free premises and vehicles is spent as intended, and recommend that clear guidance be issued alongside the release of funds.

In terms of transfer of enforcement functions, we suggest that the 'home authority' principle should apply where premises or vehicles could be seen as within the purview of more than

one enforcement authority. We also note that a number of workplaces, including prisons and Ministry of Defence estates, are normally the preserve of the Health and Safety Executive (HSE); as it would not be in the spirit of the Act to exclude people working in or visiting such premises from protection from second-hand-smoke, we would like to see the role of the HSE laid out more clearly in the regulations and/or supporting guidance. Empowering the HSE may also be helpful should any local authority encounter difficulties in enforcing the law within its own premises and vehicles. We would advise that it would be helpful to give guidance on what role the Police may have; our suggestion is that they should not be one of the main enforcement agencies, but it should be clear to all that they may be called upon should resistance to enforcement of the law result in public order offences.

Form of penalty notices

The proposed form of notices appears appropriate and reasonably worded. Further design work may make clarity better still. We note that use of fixed penalty notices for current offences varies between local authorities, and that correctly identifying perpetrators may be challenging in some circumstances (for instance in licensed premises); we therefore see adequate training as essential to ensure fair and equitable enforcement.

Smoke-free (Exemptions and Vehicles) Regulations 200X

Exemptions

We are delighted that there will be no exceptions for licensed premises or membership clubs; this embraces the principle that no-one should be exposed to second-hand tobacco smoke as a result of their work.

We agree with the proposal that any part of a residential building that is used by or shared with any person as their place of work should be smoke-free. The example of measures required to protect cleaners, for example, raises some questions as to the definition of what is or is not a workplace. In some cases, for example in fully serviced apartments or larger houses with domestic staff, almost all areas are conceivably a workplace and should therefore be smoke-free; we are of course satisfied that this should be the case, but envisage that not all inhabitants of such accommodation will be fully cognisant of the applicability of legislation to them unless the final regulations, supporting guidance and public communications make this clear.

We accept that the Government wishes not to give the appearance of acting to regulate the behaviour of householders within their own private dwellings. Nevertheless, the proposal that a workplace need not be smoke-free if the work is being carried out in a private dwelling implies that the workplace health and safety of personal carers, cooks, cleaners, and visiting household maintenance personnel is of lower importance than other workers in England. The expectation that individual agreements between service provider and recipient will suffice appears unduly optimistic; whilst this may achieve appropriate workplace protection where a service is in short supply, in lower-paid or less skilled forms of work such as cleaning the employee has substantially less bargaining power and may be faced with a choice between an unsafe working environment and unemployment if there is

not a clear expectation that smoking should cease while they are present. Although the concerns around enforcement, and the public presentation of the purpose of the regulations, are understandable, we would prefer to see a simple principle upheld in these regulations – when someone is working, no-one may smoke in the room. If private dwellings are omitted from the regulations, employers should be made fully aware that they remain at risk of legal action under health and safety legislation (and possibly human rights legislation) if their employees' health suffers as a result. It would also be advisable to issue clear guidance on smoke-free home visits for all professions, in the manner that the Royal College of Nurses has already provided for its members.

We do not accept that there is a case, explicit or implied, for a blanket exemption as regards Crown property.

Short-term / holiday lets

The proposal that self-contained accommodation for temporary or holiday use should not be required by regulations to be smoke-free is likely to present significant practical challenges. Short-let accommodation is generally owned and/or managed in order to generate business income, and is therefore necessarily regularly a workplace (particularly for cleaning and maintenance purposes). The experience of many holiday-makers, as well as site managers, is that regrettably a significant minority of smokers ignore or fail to comply with requests not to smoke in such premises. As this is a frequent source of customer complaints it is likely that removing such accommodation from the list of exemptions would not only provide simpler compliance and better health protection but also actively assist the English tourism industry.

Hotel bedrooms

The proposal to allow some hotel rooms (or similar) to be designated as smoking rooms appears reasonable at first face, given the requirements to clearly label such rooms as presenting a hazard to guests and require self-closing doors and measures to reduce smoke leakage to other rooms. However, given that hotel rooms are frequently workplaces for a variety of staff (including but not limited to cleaners), that compliance with existing voluntary smoke-free rooming arrangements is regrettably often poor, and that the argument that a hotel room is a 'private residence' is open to challenge, we are not persuaded that there is a case for exceptions in hotels.

If such exceptions are granted, however, it would be appropriate to require that any designated smoking bedroom may not be serviced by staff (including cleaning, room service or maintenance call-outs) while the guest is smoking, and that windows can be opened fully. In order to ensure a 'level playing-field' for hotel businesses there may also be merit in setting a maximum to the proportion of rooms that may be designated as smoking, although to assist the hotel industry to prepare we would encourage rapid clarification on this point.

Dormitories

We support the principle that smoking will not be allowed in dormitories or other rooms within a premises that are made available for more than one person to share. For clarity, we suggest that such rooms should be smoke-free whether or not they are currently occupied by more than one person.

Care homes

This is a sensitive area as care homes are clearly residential environments, and will in many cases be tenanted by former residents of owner-occupied dwellings. Nevertheless, a fundamental principle of the Act is that workers should not be exposed to second-hand tobacco smoke. As workers in some care homes will have responsibility to respond to alert calls wherever they emanate from – which may include an individual or communal smoking room – there continues to be a risk of exposure. However, as this is an emotive and complex issue a temporary and clearly limited exception, while further research into best practice in such environments is carried out, may be a desirable compromise. This should, however, be re-examined when the regulations are reviewed as Ministers have undertaken to ensure, and care homes should be encouraged and assisted to become completely smoke-free if they wish.

Hospices

We appreciate that, as is the case with care homes, this is a sensitive issue, but workers in hospices are nevertheless arguably entitled to the same degree of protection from second-hand smoke as in any other enclosed workplaces. The assumption that staff and patients of such facilities would be generally unwilling or unable to accept smoke-free environments does not appear to be well-founded. Our preference would therefore not be for unclear or blanket exceptions in such circumstances. However, a temporary and clearly limited exception, while further research into best practice in such environments is carried out, may be a desirable compromise. If exceptions are granted it is crucial that any supporting guidance makes it clear that use of the exception is optional and that hospices are still free to require completely smoke-free premises if they wish. The definition of hospice should also be determined as this may currently be open to local interpretation and resulting confusion; Fresh has already been approached by local community hospitals that have terminally ill patients on long stay wards, asking if they will also be granted an exemption.

Mental health facilities

Mental health professionals within the region inform us that drawing a distinction between short-stay and long-stay patients is likely to be extremely difficult, if not impossible, in many premises, and we note that nationally close to half of all psychiatric inpatients currently stay for longer than 6 months. Given that the NHS as a whole is required to be smoke-free by the end of 2006, anything less than very clear regulations are likely to generate confusion and cause difficulties rather than solve them.

Exemption from the requirement to be smoke-free risks excluding mental health patients from mainstream health improvement provision and further exacerbating the inequalities that this group already experiences. We are not persuaded that there is a compelling human rights justification for allowing such an exception, as a basic principle is that an individual's exercise of freedom of choice should not imperil or endanger the rights of others, including the right to smoke-free air in enclosed premises. International experience shows that clear, consistently applied smoke-free policies applied across all healthcare settings are effective and not associated with increases in aggressive behaviour.

We therefore concur with the Commons Health Select Committee's recommendation that mental health facilities should not be granted blanket exceptions, and that NHS mental

health premises should continue to be expected to be smoke-free indoors by the end of 2006.

However, if the Government is determined to allow such exceptions, it is crucial that any supporting guidance makes it clear that use of the exception is optional and that mental healthcare providers are still able to provide completely smoke-free premises, in line with NHS expectations. Some Trusts in the North East are already in the process of adopting comprehensive smoke-free policies and are understandably concerned should there be any suggestion that their policies may be reversed or undermined upon the implementation of the legislation.

Prisons

Prisons can become smoke-free environments without serious disorder arising as a result, and indeed the international experience does not provide examples of negative consequences as a result of removing privileges to smoke from prisons.

In 2005 Fresh established the North East Prisons Working Group to oversee the development of smoke-free policies and effective cessation support for prisoners. Prison officers in the North East have made it clear to us that they are unwilling to be accorded lower levels of protection from second-hand tobacco smoke than other workers in England. They have also pointed out the practical difficulties of permitting smoking in cells; cells are frequently workplaces (for instance, during regular security searches), and with the current prison population running at close to total capacity there is no realistic prospect of being able to offer individual smoking cells to all prisoners who may wish to have one. Local branches of the Prison Officers' Association have observed the discrimination their counterparts in the Republic of Ireland have experienced due to the exemption of prisons from smoke-free legislation and evidently wish to receive support to make the introduction of smoke-free premises straightforward, rather than exceptions.

There are serious cost implications to prisons in meeting the requirements for any exceptions. Using the estimate of £50 per door as given in the Partial Regulatory Impact Assessment, and assuming that cells are shared by two prisoners, the current Usable Operational Capacity in England and Wales (as at 4 August 2006) would indicate a cost of at least £1,993,850 just to equip cell doors with self-closing mechanisms. The likelihood that the public, and indeed the news media, would readily tolerate expenditure of nearly £2million of tax revenue in order to facilitate smoking by offenders must be very low.

The National Offender Management Service is being developed on the understanding that continuity of conditions and regime is most likely to adequately reduce the likelihood of offending and to maximise uptake of educational and welfare services by offenders. Given that offenders are likely to experience smoke-free environments in most police custody suites and courts, the 'front-end' of the detention system, there is obvious merit in ensuring that smoke-free provision is continued throughout the custodial period. It is also likely to be the case that, once the majority of workplaces are smoke-free, familiarity with a smoke-free environment as the norm will maximise the chances of re-employment for offenders upon release, which is known to be one of the prime variables in re-offending risk.

Given the above our recommendation must be that there should not be exceptions from the workplace regulations for prisons, and that all enclosed areas in prisons, whatever their designated purpose, should be smoke-free.

Performers

Given the availability of a range of stage 'props' for the purpose, and the successful implementation of smoke-free theatres in Scotland, the proposed exception for performers should they doubt the adequacy of their acting skills to simulate smoking is evidently unfounded, although we appreciate that its origins lie other than with the Department of Health. An attempt to arrive at a regulatory definition of what a concept as nebulous as 'artistic integrity' consists of, and how it pertains to the introduction of toxic respirable combustion products into the atmosphere, would only compound the folly of this potential anomaly's original inclusion in the Act.

However, we are concerned that such a loophole may well be open to abuse; envisage, for example, an 'amateur theatrical' performance involving 'audience participation' that happens to take place in a pub back room. There is also a serious issue as regards protecting children, who may currently be exposed to second-hand smoke during performances either in the audience or as performers themselves; for instance, one 'musical' currently showing in London includes children in every scene and smoking by accompanying actors for around ninety minutes of the two-hour performance. We note that no such exception exists in Scotland, none is planned in Northern Ireland, and Wales is free to strike any such exception from its regulations, and that there is therefore a risk of England becoming a less attractive destination for theatre-goers than the rest of the UK if this exception stands. Our recommendation would therefore not be to use the power in the Act to grant any such exemption. However, if it is felt that such an exception must be allowed, we suggest that regulations require that it may only apply where:

- the performer in question is demonstrably an entertainment professional (i.e. a registered Equity member);
- smoking occurs in a genuine performance or recording, not any rehearsal, audition or screen test;
- no children or persons under eighteen years of age are present at any point during the performance or recording, either on stage/set or in the audience;
- the management of the premises in which the performance is to take place informs the relevant local authority and their public liability insurers in writing at least six weeks prior to the performance or recording, and;
- tickets and advertising include a clearly visible warning that the performance will include exposure to second-hand tobacco smoke.

Specialist tobacconists

We are not persuaded that there is a genuine case for an exception for any tobacco retail premises. Specialist tobacconists selling premium-rated cigarettes and hand-rolled cigars trade in high-priced products that customers arguably would not reasonably expect to sample in advance, any more than one would expect specialist vintners to offer liberal samples of vintage champagne or long-matured whisky. There is a persistent demand for these niche products that a modest change to permissible conduct in retail premises appears unlikely to seriously affect, as the continued consumption of Cuban cigars in the US despite an official import embargo demonstrates. Although there may be only a few specialist tobacconists in business at present, providing a loophole invites attempts to abuse the opportunity and attempt to reclassify hospitality premises as specialist tobacco retailers, as has occurred in some US states. Should specialist tobacconists be cited within indoor shopping malls there is also an obvious risk of second-hand smoke drifting into other

enclosed workplaces. We therefore recommend that specialist tobacconists' premises are not exempted and that the regulations apply as in all other retail workplaces.

Offshore platforms

From a health and safety perspective the obvious best choice is for all smokable tobacco products and related ignition sources to be prohibited anywhere on offshore oil and gas platforms. However, if the offshore fuel extraction industry wishes to provide some indoor smoking provision we would recommend the approach that the consultation paper currently proposes for hotel rooms, whereby residential rooms only (not communal areas) may be designated as smoking rooms, these rooms must be clearly indicated as smoking bedrooms/quarters by signage, and there must be self-closing doors and no re-circulation of air into smoke-free areas.

Research and testing facilities

The proposed limited exceptions for specified research and testing facilities appear appropriate and reasonable, provided that they are tightly defined to prevent tobacco firms from designating rooms that would otherwise be smoke-free for other purposes, such as market research activities.

Specific conditions for exempted premises

- a. **designation of rooms that are not smoke-free:** we recommend that as well as retaining a clear record of which rooms have been thus designated, the local authority must be informed in writing before any room can be thus designated, and again if there are changes to designation (apart from changing to completely smoke-free premises). In order to avoid this becoming an additional burden upon enforcing authorities, we would not recommend a duty to take specific action upon receipt of such notification, but the requirement to submit such details would discourage arbitrary changes from non-smoking to smoking rooms.
- b. **rooms designated for smoking must be clearly marked as a room in which smoking is permitted:** we support the proposal that designated rooms are to be clearly marked as a room in which smoking is permitted, and that the Department of Health will make signage that meets requirements available to businesses, although this should not be actively promoted.
- c. **rooms designated for smoking must not have any door which opens on to smoke-free parts of premises that is not mechanically closed immediately after use:** we support this proposal as a sensible basic requirement.
- d. **designated rooms in accommodation for guests and other residential accommodation:** we have already detailed our doubts as to the necessity or wisdom of many of such exceptions. Nevertheless, we certainly support the principle that wherever exceptions are granted it must be made clear to all concerned that they apply only for guests or residents and that staff must not smoke in enclosed workplaces.
- e. **designated communal smoking rooms in other residential accommodation and in offshore installations:** as we have already made clear, we do not agree that there is a case to allow smoking in enclosed communal area in any but highly exceptional circumstances. Nevertheless, should such exceptions remain in the regulations the minimum safeguards should be to ensure that the smoking room is not the only communal room, and that any communal smoking room must be used solely for smoking and must not

serve any other purpose; it may thus be necessary to stipulate that a designated smoking room, if permitted, must contain no treatment or entertainment facilities.

Smoke-free vehicles

Rental vehicles: As a significant proportion, in many cases the majority, of rentals are for business purposes rental vehicles are effectively shared workplaces. We therefore see no grounds for these not to be smoke-free.

Private vehicles: The requirement for any private vehicle used for work by more than one person to be smoke-free is obviously appropriate. The condition that a vehicle must be smoke-free if used for the transport of 'members of the public' of course conceivably includes almost any person who is not a prisoner or a serving member of the armed forces; as this may be unclear, centring as it does upon arcane debate as to what does or does not constitute 'work', we would suggest instead regulations that prohibit smoking in a vehicle when any other person is in the compartment. Providing clarity on this matter at an early stage would be recommended in order to maximise compliance.

Public transport: We fully agree that all public transport in, departing from, or arriving within England, and indeed the rest of the UK, should be fully smoke-free.

Work vehicles: In order to ensure clarity and minimise the risk of unintentional non-compliance we recommend a clearer principle; any vehicle used as a workplace must be smoke-free, regardless of the degree to which it is enclosed or how or when it is shared with others.

Water-borne craft: We recommend that any water-borne craft not to be made smoke-free under the powers of the Merchant Shipping Act 1995 should be explicitly included in the regulations, at least in British territorial waters. We would like to see specific details as to when and how the Department for Transport will act in order to ensure consistency. We would also suggest that there would be particular merit in clarifying the position as to vessels sailing between two states with smoke-free laws, for instance the ferries from Newcastle to Norway, services from the south coast to Guernsey, or indeed the Swansea-Cork ferry that will soon sail from smoke-free Wales to smoke-free Ireland but is Polish-registered and is currently only required to be smoke-free while in Irish territorial waters.

Aircraft: We concur with the assessment that current regulations are effective with regard to commercial aircraft on scheduled flights. We are less certain that compliance is total in private, or privately chartered aircraft, which are also workplaces in many cases. For the purpose of clarity we would therefore suggest consideration of extending the regulations to all aircraft flying within, to, or from UK airspace, albeit with similar discretion as for other vehicles as regards signage. In order to avoid any misunderstandings as to the application of workplace regulations we recommend that enclosed areas of airports, including 'airside' areas beyond passport control, are specifically included in the requirements to be smoke-free.

Enclosed vehicles: The proposed exception for convertibles may create a perverse incentive to procure convertibles as taxis or private hire vehicles in order to circumvent the expectations of the Act. There is likely to be confusion about when such an exception does or not apply given the range of different roofs and coverings in use. For the purposes of clarity we therefore recommend that any such exception be struck out. However, if an

exception is granted it should apply only where there is no roof (whether or not deployed) and at least 50% of the walls are uncovered.

Additional smoke-free places

We concur with the implied assessment that enclosed workplaces are the priority at present. Nevertheless, the intention not to use regulation-making powers set out in the Health Act to specify any additional places to be smoke-free appears a regrettable missed opportunity. In terms of shopping precincts, railway stations and sports grounds particularly, inclusion would be helpful in providing a consistent message on the hazards and undesirability of second-hand smoke, and improving public understanding which would strengthen compliance with the smoke-free provisions of the Act as a whole, as well as constituting a positive response to increasingly strong public support for restrictions upon smoking in such places.

We note that in many cases there is likely to be an argument that the regulations apply anyway, since no scale limitation has thus far been applied to the 50% wall coverage rule. The complexity of establishing where restrictions are or are not obligatory without additional smoke-free public places being included is well illustrated by the circumstances of a typical railway station, in which passengers pass through entrance halls, underpasses, covered bridges, partially covered platforms, and finally enter the carriage; under the proposed system restrictions may change from 'on' or 'off' six times. Sports grounds also present serious challenges, given that customers will move between enclosed and partially enclosed areas without clear delineation (concourse, entry, seating areas, toilets etc.) and that smoke, and smokers, are likely to drift as result. The scope for confusion should these public places be left out is such that it would evidently be in the Government's interests to ensure a clear and easily understood situation. In the case of larger sports stadia, it appears likely in the North East that an acceptable level of compliance may be effectively unattainable except where operators wish to provide completely smoke-free grounds voluntarily; it would therefore evidently be better policy for the law to support, rather than detract from, efforts to introduce completely smoke-free sports venues.

Should additional smoke-free public places be omitted from the regulations we would at least like to see a specific undertaking to re-assess this decision as part of the subsequent review that Ministers have undertaken to commission following implementation of these regulations.

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

Intended levels of penalties

We are broadly content with the nature of penalties proposed, which rightly place the greatest burden on the owners, managers and operators of smoke-free premises. On the understanding that there will be a comprehensive mass media communications campaign to ensure that the law is widely understood, this is quite reasonable. Nevertheless, we would encourage the upward harmonisation of penalties to ensure that fine levels are more consistent across the UK.