

# **PARTIAL REGULATORY IMPACT ASSESSMENT**

## **Choosing Health White Paper**

### **ACTION ON SECONDHAND SMOKE**

#### **INTRODUCTION**

1. The Choosing Health White Paper announces the Government's proposed action on secondhand smoke. This partial RIA sets out options for such action, including some of the potential impacts on business and on health for taking action in this area. The RIA will be further developed following the publication of the White Paper and a full public consultation. This RIA applies to proposals for England.

#### **OBJECTIVE**

2. 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 smoke-free air
  - increase the benefits of smoke-free enclosed public places 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.

#### **BACKGROUND**

3. Smoke-free enclosed public places 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.
4. Worldwide, action has been taken to reduce people's exposure to the risks of secondhand smoke. Ireland undertook a ban on smoking in enclosed public places in March 2004. In America, California has had a state-wide ban since 1998, while New York passed smokefree legislation in 2003. These bans have been effective in protecting people from secondhand smoke. The Journal of the American Medical Association documented a significant improvement in respiratory health among bartenders after the passage of the Californian smoke-free workplace legislation.<sup>1</sup> In New York, cotinine levels (a nicotine by-product which is used to measure levels of second hand smoke) in non-smoking bar and restaurant staff declined by 85%.<sup>2</sup> Montana saw a 40% drop in hospital

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<sup>1</sup> Eisner MD, Smith AK, Blanc PD, Bartenders' respiratory health after establishment of smoke-free bars and taverns JAMA 1998;280:1909-1914

<sup>2</sup> The State of Smoke-Free New York City: A One-Year Review. NYC Department of Finance, NYC Department of Health and Mental hygiene, NYC Department of Small Business Services, NYC Economic Development Corporation. March 2004.

admissions for heart attacks during a 6 month period of smokefree workplaces.<sup>3</sup> In Ireland, almost total compliance with the ban has been reported, with surveys showing that 97% of premises inspected being compliant in respect of the smoking prohibition, and 99% of all smokers who visited a pub either smoking outside or not smoking at all. Almost one in five smokers chose not to smoke at all when out socialising.<sup>4</sup> Across Europe, there are moves towards smokefree places with bans in Norway and Finland this year. The World Health Organisation Framework Convention on Tobacco Control, the first global treaty on public health which has been signed by 168 countries, and which is expected to come into force in early 2005, states in Article 8,

*“Each Party shall adopt and implement in areas of existing national jurisdiction as determined by national law and actively promote at other jurisdictional levels the adoption and implementation of effective legislative, executive, administrative and/or other measures, providing for protection from exposure to tobacco smoke in indoor workplaces, public transport, indoor public places and, as appropriate, other public places”*

## **RISK ASSESSMENT**

5. The **health risks from secondhand smoke** were set out in the 1998 report of the Scientific Committee on Tobacco and Health (SCOTH), which concluded that exposure to secondhand smoke is a cause of among other conditions:

- lung cancer
- ischaemic heart disease
- asthma attacks
- childhood respiratory disease
- and sudden infant death syndrome.

The 1998 report recommended restrictions on smoking in public places and workplaces to protect non-smokers.<sup>5</sup>

6. Since the 1998 report there has been further evidence published. The Committee has reviewed the new evidence in 2004. The Committee's conclusion is that the evidence published since 1998 reinforces and strengthens the conclusions of the SCOTH report at that time. It also draws attention to new evidence of an association between secondhand smoke and reduced lung function. The latest report from SCOTH is published alongside the Choosing Health White Paper.

7. Second-hand 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<sup>6</sup> to succeed. Completely smoke free policies in indoor places will assist those people who want to quit but are deterred by the continuation of smoking in indoor public places. International evidence estimates that completely smoke free policies in workplaces indoor can reduce smoking prevalence by up to 4 percentage points.<sup>7</sup>

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<sup>3</sup> Reduced incidence of admissions for myocardial infarction associated with public smoking ban: before and after study. Richard P. Sargent et al. *BMJ*, doi:10.1136/bmj.38055.715683.55 (published 5 April 2004).

<sup>4</sup> Office of Tobacco Control Smoke-Free Workplace Legislation Implementation Progress Report May 2004

<sup>5</sup> <http://www.archive.official-documents.co.uk/document/doh/tobacco/part-2.htm>

<sup>6</sup> Statistical Bulletin 2003/21: Statistics on smoking: England, 2003 (Department of Health, Office for National Statistics)

<sup>7</sup> West, R: Banning smoking in the Workplace *BMJ* 2002;325:174-175 ( 27 July )

8. In England half of people already say their workplace is completely smokefree, and a further 38% have smoking restricted.<sup>8</sup> The 4 percentage point maximum figure above is presuming moving from no smoking restrictions to a completely smokefree policy. However, 14% of workers work alone or out of doors, and many are already covered by the above policies. Therefore, it is estimated that a move to all indoor public places being entirely smokefree might reduce smoking rates among the general population by 0.7 percentage points. This figure is the estimated reduction delivered due to reductions in smoking as a direct result of people's own place of work becoming completely smokefree.

9. In addition, there will be a reduction in overall smoking due to more places being smokefree outside of the smoker's own workplace. This is more difficult to estimate. For the purposes of the RIA it is estimated that the wider benefit is a reduction in overall prevalence of 1 percentage point. This estimate was based combining evidence as to the current distribution of the workforce by degree of smoking restriction; with evidence as to the effect on smoking cessation of different degrees of smoking restriction. The estimate of the numbers giving up as a result of a ban in public places is based on restrictions in pubs (as the most significant smoking venue). It extrapolates from the workplace ban adjusting for the different period of enforced abstinence and an estimate of the time smokers spend in pubs. Overall, the total benefit, in reduced smoking, of moving from the current situation to completely smokefree indoor public places (including workplaces) is therefore estimated at around 1.7 percentage points fall in smoking prevalence in England. Overall smoking is estimated to cost the NHS around £1.5bn a year, and a reduction in smoking will reduce that burden. (A 1.7 percentage point reduction in smoking rate from 26% would mean an estimated annual saving of £100m to the NHS.) Comments on this calculation are welcomed.

### **Current situation /voluntary route**

10. In 1998, the Government set out a package of measures in the White Paper "Smoking Kills"<sup>9</sup> to reduce the 120,000 deaths caused by smoking every year and increase awareness of the risks of associated with second-hand smoke. At the time the Government made clear that "completely smoke-free enclosed public places are the ideal", but "[did] not think that a universal ban on smoking in all public places is justified while we can make fast and substantial progress in partnership with industry".

11. Since publication of the White Paper in 1998, the Department of Health has taken action to increase awareness of the risks associated with second-hand smoke through the following:

- UK's first ever media and education campaign,
- funding to facilitate the development of a smoke-free cities network and resultant template to help cities move towards smoke-free on a voluntary basis and
- funding of Regional Tobacco Policy Managers who have, as one stream of work, worked to increase local awareness of the risks associated with second-hand smoke and have worked with local players to encourage more smoke-free facilities.

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<sup>8</sup>Lader, D Goddard, E: Smoking-related behaviour and attitudes, 2003, Office for National Statistics Table 6.9

<sup>9</sup>Smoking Kills A White Paper on Tobacco <http://www.archive.official-documents.co.uk/document/cm41/4177/chap-07.htm>

12. *Smoking Kills* also announced a voluntary agreement, lead by the hospitality industry, in which signatories were to commit to “increasing provision of facilities for non-smokers and the availability of clear air”. The detail behind this was later launched formally as the **Public Places Charter**. The Charter provided for written policies for venues to state whether they are smoking or non-smoking, provision of non-smoking areas, air cleaning and ventilation, signs (smoking or no smoking etc), monitoring, staff training and sharing of practice. The industry agreed to have a national industry-led scheme for signage. Alongside the Charter, targets were also set:

- 50% of all pubs (of which there are over 60,000 in the UK) and half the members of the Restaurant Association (which represents over 10,500 group and individual restaurants) should have a formal written smoking policy and signage
- 35% of these premises should restrict smoking to designated and enforced areas and/or have ventilation that meets the agreed standard ('good practice' category).

13. An independent evaluation in 2003 showed that the key target had not been met, that only 43% of pubs had a formal written smoking policy and appropriate signage in place, although of these 53% were in the 'good practice' category.<sup>10</sup> Nearly half of pubs that were Charter compliant allowed smoking throughout and only a handful were entirely smoke-free. Health ministers in response to the Charter Group stated that they were disappointed with the progress that had been made. Substantial progress in developing new plans for voluntary change has been made by the hospitality industry since that time, but there is still much more that could be done to protect people from secondhand smoke in public places.

### **Benefits of Action on Secondhand Smoke**

14. In general, the health benefits of action to provide protection from SHS include the following. The benefits for individual courses of action are estimated later in this RIA – they will have greater or lesser levels of these benefits.

- reduced illness and mortality from  
lung cancer  
ischaemic heart disease  
asthma attacks  
childhood respiratory disease  
and sudden infant death syndrome.
- gain in life expectancy to smokers giving up as a result of smoke-free workplaces
- gain in life expectancy from reduced smoking uptake

Benefits of lives saved can be converted into monetary terms using standard Government Economist calculations, based on value of life saved in Department for Transport analyses (see Annex A). Estimates of lives saved can be made by comparing the current levels of exposure to secondhand smoke (both in the workplace and in enclosed public places) with the levels in the suggested options and reducing the known risk of mortality accordingly. Lives may also be saved by reductions in smoking rates.

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<sup>10</sup> The Public Places Charter on smoking. Industry progress report. The Charter Group, April 2003

15. Economic and environmental benefits for individuals, society and industry include:

- reduction in NHS expenditure through reduced smoking prevalence (Estimates can be derived from annual cost to the NHS from smoking, reduced by the estimated drop in smoking prevalence)
- reduced costs from sickness absence,
- greater efficiency through reduction in time lost by smoking breaks,<sup>11</sup>
- safety benefits including reduced fire risks,<sup>12</sup>
- reduced cleaning and maintenance costs.<sup>13</sup>
- asthma - Asthma UK report that there are 5.1 million people in UK with asthma and cigarette smoke is the second most common asthma trigger in the workplace. They found that "20% of people with asthma feel excluded from parts of their workplace because other people smoke there. This inhibits their daily life as well as opportunities for promotion and development."<sup>14</sup>

### **Costs of Action on Secondhand Smoke**

16. In general, costs of action to provide protection from secondhand smoke may include the following. The costs for individual courses of action are estimated later in this RIA – they will have greater or lesser levels of these costs. We welcome comments on all of these areas and further consultation will be undertaken to inform this aspect for the final RIA.

- **Implementation Costs**

Dependent on the options chosen, costs to industry will vary.. There has been speculation that there could be a major negative impact on the hospitality industry from bans on smoking in enclosed venues – for example, there have been reports of falling bar sales in Ireland following the ban. However, Irish retail sales data from the Central Statistics Office shows bar sales falls after the ban in line with year on year falls since 2000.<sup>15</sup> In general, there is a lack of international evidence to support a prediction of a drop in sales in the hospitality industry.

- **Enforcement Costs**

Dependent on the option chosen, there may be enforcement costs for central and local government. This would be primarily be undertaken by local environmental health officers.

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<sup>11</sup> Curbing the Epidemic : Governments and the Economics of Tobacco Control. (c) 1999 THE WORLD BANK, WASHINGTON D.C.

<sup>12</sup> Parrott, Godfrey and Raw, Costs of employee smoking in the workplace in Scotland, Tob Control 2000;9:187-192 ( Summer ) – This article estimates that 18% of fire damage is caused by smokers materials along with matches. As well as the direct cost to businesses, insurance premiums are higher to cover this.

<sup>13</sup> Ref: World Bank Smoke-free workplaces at a glance. 2002.  
<http://www1.worldbank.org/tobacco/AAG%20SmokeFree%20Workplaces.pdf>

<sup>14</sup> <http://www.asthma.org.uk/news/news82.php>

<sup>15</sup> Retail Sales Index Central Statistic Office (Ireland) 20 August 2004 [www.cso.ie](http://www.cso.ie)

- Education and Communication

A level of publicity, education, and communication will be needed, depending on what option is chosen. For example it is normal also to set up a helpline support the implementation and enforcement of smokefree legislation, as well as making the public fully aware of the changes. This will be considered further as part of the consultation. Costs for this partial RIA are estimated based experience of current Department of Health tobacco education and awareness campaigns.

- Losses to the Exchequer from Tax

As action on secondhand smoke is likely to mean that some smokers will quit or smoke less, there may be a loss to the exchequer from taxes on cigarettes. This can be measured using the reduction in the amount smoked per day by continuing smokers, and the tax per cigarette.

- Loss of Profit to the Tobacco Industry

As action on secondhand smoke is likely to mean that some smokers will quit or smoke less, the tobacco industry may see a loss of profits. This is unlikely to exceed 10% of the tax loss, but further work will be needed to estimate these figures more accurately. We welcome comments on this estimate from stakeholders.

- Unintended Consequences

There may be unintended consequences of action, including costs to local authorities or businesses in cleaning up/providing disposal for cigarette butts in outdoor public places, and possible increases in antisocial behaviour from smokers drinking on the streets or at home, rather than in licensed premises. Although the police are not expected to have responsibility for enforcement, consideration is needed as to how they might be affected, for example in cases where smokers refuse to leave a smokefree area. These are recognised, but the costs are likely to be relatively small, and therefore figures are not included in the cost/benefit table. We welcome comments from stakeholders on these and other unintended consequences.

- Production Losses and Consumer Surplus Losses

Some costs can be expected from smokers who were previously allowed to smoke at work and continue to smoke taking smoking breaks. (see para 33 (p) for a definition of consumer surplus losses).

17. This partial RIA has identified issues that will need further analysis and consultation for the full RIA we welcome views and comments. The White Paper makes clear that the Government will consult widely in drawing up any detailed legislation. See table at para 33 for current estimates of costs measured against each of the four options. More detail on the specific options and the costs, benefits, and risks of each are set out below.

## **THE OPTIONS**

**Four options have been identified:**

- |                   |  |
|-------------------|--|
| <b>Option 1 –</b> | <b>Continue with a voluntary approach</b>  |
| <b>Option 2 –</b> | <b>National legislation to make all indoor public places completely smokefree (without exemptions)</b>     |
| <b>Option 3 -</b> | <b>Legislation giving local authorities new powers to control secondhand smoke in indoor public places</b> |
| <b>Option 4 -</b> | <b>National legislation to make all indoor public places completely smokefree (with exemptions)</b>        |

**Further detail is set out below, along with a table of estimated costs and benefits.**

### **Option 1 - Continue with a voluntary approach**

18. Option 1 is to continue a voluntary approach to reducing secondhand smoke. Employers and businesses would be encouraged to take steps to make more places smokefree, and the dangers of secondhand smoke would continue to be communicated in media campaigns, but there would be no statutory requirement for smokefree places, or enforcement of them.

#### **Benefits of Option 1**

19. Given the history of voluntary change the option of doing nothing would seem likely to result in only limited progress (especially in the hospitality sector, as seen with the lack of progress towards the Government's stated ideal through the voluntary approach taken since 1998). The benefits will be as set out above, but we could expect these to be much limited in comparison with the other three options. 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. For other indoor public places, largely the hospitality industry, for illustrative purposes it is assumed that half the customers would be protected from secondhand smoke, but that smokers would be accommodated, and therefore none would stop or cut down. Accordingly, the cost and benefits of Option 1 have been estimated as half those in Option 2. (see table) This is an estimate for the purposes of the partial RIA and we would be happy to receive comments on this.

20. In September 2004, following a series of meetings with Government ministers, and in response to the White Paper consultation, a group within the hospitality industry launched an initiative for further voluntary action to provide for:

- 35% of the trading space in their pubs and bars to become no smoking by December 2005, moving progressively to 80% by 2009;
- 50% of pubs' food consumption areas to become no smoking by December 2005; and
- no smoking 'at the bar' and 'back of house' (including cellar and food preparation areas) by December 2005

#### **Risks of Option 1**

21. This initiative does not cover the whole of the hospitality industry, initially it was five large companies covering approximately one third of pubs. This has since been expanded to 40%. 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. This would mean possibly little or no demonstrably increased protection from secondhand smoke; and no reason to believe that smoking rates would decrease significantly.

#### Costs of Option 1

22. The costs to government in implementation and enforcement as this would be voluntary change (although the voluntary approach may benefit from ongoing media campaigns funded by the Department of Health). Again, we have estimated the other costs (for example loss of tobacco revenues from any fall in tobacco sales) at half those of Option 2. Cost to business will be dependent on how much action is taken voluntarily, including any initial cost of going smokefree, and cost/benefits of the effect of doing so.

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

23. Option 2 would be to legislate to make all indoor public places across the country completely smokefree. No exemptions would be made for the hospitality industry or others.

#### Benefits of Option 2

24. National legislation would provide protection from the health risks of secondhand smoke and would lead to considerable benefit over and above existing restrictions, with a value comfortably in excess of £2 billion annually, (including savings for the NHS and through increased productivity for industry). Of the four options, this option offers highest levels of the benefits set out in paragraph 14, including the highest reductions in prevalence, deaths from secondhand smoke, cleaning and fire risk, and increases in productivity.

#### Risks of Option 2

25. The main risk of Option 2 is that a total national ban may not reflect public opinion completely, and may therefore be more controversial and more difficult to enforce. Surveys consistently show 86% of people in favour of restrictions and similar high levels of support for a complete ban in most public places.

26. For pubs, the figures are around 56% for restrictions in pubs and 20% for “no smoking allowed anywhere” in pubs when asked to choose between three other options: mostly smokefree with smoking area; mostly smoking with smokefree area; and smoking allowed throughout.<sup>16</sup> However, experience from Ireland and other jurisdictions has not identified a significant enforcement problem.

27. A ban without exceptions would also not take account of those places which are primarily where someone lives on a day-to-day basis, for example hospices, prisons, or long stay residential care. Other countries around the world, which have a ban, have some exceptions of this type. There are also

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<sup>16</sup>Lader, D Goddard E: Smoking-related behaviour and attitudes, 2003, Office for National Statistics Table 6.13 and 6.21

grey areas which will need consideration for any of Options 2-4. For example, very small businesses where every worker smokes, or whether people would have to stop smoking in their home when it temporarily becomes a workplace for an interior decorator. We welcome comments on these and other atypical examples.

We also welcome views on any concerns over what may constitute a 'workplace', and how best to define 'enclosed'.

### Costs of Option 2

28. There would be a minimal cost to industry to implement Option 2 (for example in providing 'no smoking' signage) but there would be a cost to government to enforce the legislation. In Ireland, 40 dedicated environmental health officers (EHOs) for tobacco control were recruited over 2-3 years, supported by the existing EHO workforce of 400 officers (note: the 40 posts were not solely for smokefree legislation). A small number of prosecutions have followed, however the legislation has largely been self-regulating and there has been a tail-off in enforcement costs (as seen in other jurisdictions) as demonstrated by monthly calls to the Irish compliance line. For illustrative purposes, if this were mirrored in the England, which has around 12 times Ireland's population, we could estimate that up to 500 officers might be needed, at a cost of around £20m a year, given that their employment costs would be £40k each. This cost would fall back within a few months of the legislation coming into effect, in the longer term annual enforcement costs would be expected to become minimal. In Ireland the 40 recruited EHOs also had wider tobacco duties including enforcing underage sales. Further consultation is needed to more accurately estimate the costs of enforcement. Coverage in the press has speculated that the pub sector would suffer from reduced profits, but the available published evidence does not support this (see also paragraph 16).<sup>17</sup> Nevertheless this is a real concern for the hospitality trade, and comments and evidence are welcomed.

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

29. Option 3 is to legislate to give local authorities the power to make local legislation on smokefree places. Local authorities would have the choice to regulate in their area based on local consultation and tailoring the regulation to local needs. They could also choose not to legislate at all.

### Benefits and Costs of Option 3

30. Consideration of the option of allowing local authorities the power to implement a ban within their own boundaries is not that different in terms of impact from a national ban, with or without exceptions. It is reasonable to assume that impact would eventually extend to the vast majority of the population. Many large city authorities across England have already declared their intention to go smoke-free if empowered to do so. In those countries such as the USA, Canada, Australia where local laws/ordinances have been introduced, the pattern has been one of growing momentum with city after city adopting a ban until entire states / provinces have adopted a complete ban. For example, in California, the first local ordinance was introduced in 1988. By 1995 there were 286 cities with smoke-free provisions,

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<sup>17</sup>Scollo, M. et al. Review of the quality of studies on the economic effects of smoke-free policies on the hospitality industry. Tobacco Control 2003; 12: 13-20 <http://tc.bmjournals.com/cgi/content/full/12/1/13>

and state-wide legislation produced a comprehensive ban in 1998, ten years after the first local ordinance.<sup>18</sup> Therefore, this option may be considered as having no greater or less impact than national legislation, if the entire country eventually adopted smokefree legislation. In the cost/benefit table, implementation costs for Option 3 are given as 'unknown', as we do not know what requirements local authorities might put in place.

#### Risks of Option 3

31. This Option would certainly be a longer term and more unpredictable route. In practical terms, the costs and benefits would not be known until the response from all local authorities was known. The main risk is that 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 have made clear they favour least – and have stated (though not quantified) there will be costs involved for national chains in ensuring multiple different sets of local legislation, potentially with different exceptions, are adhered to. Further, businesses in the leisure industry with premises on the border of a local authority which had smokefree legislation might lose smoking customers to businesses in the adjacent local authority. We welcome comments from stakeholders on what the likely risks, benefits, and costs of this option might be, including enforcement costs, and what action local authorities would be likely to take.

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

32. Option 4 would be similar to Option 2, including certain exceptions to mirror public opinion. The White Paper proposes a possible set of enclosed public places affected and exceptions as below. As the White Paper states these will be included in a formal consultation, but we welcome comments from stakeholders at this stage on the exceptions:

**All enclosed public places and workplaces (other than licensed premises which are dealt with below) will be smokefree;**

**Licensed premises will be treated as follows:**

- **all restaurants will be smokefree**
- **all pubs and bars preparing and serving food will be smokefree**
- **other pubs and bars will be free to choose whether to allow smoking or to be smokefree**
- **in membership clubs the members will be free to choose whether to allow smoking or to be smokefree**
- **smoking in the bar area will be prohibited everywhere.**

**Special arrangements will be looked at for certain establishments, such as hospices, prisons and long stay residential care that are where someone lives on a day-to-day basis.**

#### Benefits of Option 4

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<sup>18</sup> The California Tobacco Control Program: A Model for Change. Presentation by Colleen Stevens March 2003

33. This Option is likely to provide the benefits set out in para 14 above, at a level below that of Option 2, but at a much greater level than in Option 1. The loss of benefit in comparison with Option 2 will be likely to be in non-workplace enclosed places (for example pubs). We welcome comments from stakeholders on what the impact on smaller businesses may be. Again, as smokers would be accommodated, we cannot predict the degree to which smokers' behaviour would change as a result of the exemptions in licensed premises. Therefore the benefits from reductions in deaths due to customers giving up are estimated, at this stage, as between zero and the full benefits in Option 2, though it is unlikely that the actual benefit will be at the extremes of this range. Overall there would be a reduction in secondhand smoke and, for the purposes of this partial RIA, it has been estimated that more than 90% of the protection for employers from option 2 would be delivered. This is an estimate for the purposes of the partial RIA and we welcome comments from stakeholders on this.

#### Risks of Option 4

34. 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, therefore reversing the recent trend towards pubs being more than simply a place to drink alcohol. At present it is estimated that 10% to 30% of pubs might fall into the category of not "preparing and serving food". Also the different provisions for different businesses may be more complicated to enforce. More consultation is needed to better understand these risks. It may be that more pub decide to go for food on economic grounds. The benefits estimated for Option 4 are smaller with regard to economic and environmental benefits, because the exceptions to a total ban will largely affect the hospitality industry where people are exposed to secondhand smoke. Therefore, as Option 4 will have lower impact on exposure to secondhand smoke than Option 2, for the purposes of this partial RIA they are estimated at 40% of the total ban benefits. Views are welcomed on this and other assumptions.

#### Costs of Option 4

35. Costs will include costs to enforce the legislation as with Options 2 and 3. However these costs are estimated to be higher than for Option 2 as the enforcement decisions are likely to be more complicated (with more exemptions). Therefore costs for Option 4 have been estimated at £20m+, and we would be happy to have comments from stakeholders on this issue.

### **NET SUM OF ALL COSTS AND BENEFITS**

37. The table below gives a cost/benefit analysis of the four options. These are estimated and will be subject to revision after further work and consultation as set out in the White Paper. The benefits for Options 1, 3, and 4 have been derived from Option 2, the full ban. Option 3 has the capability of equalling Option 2's effects, but with the possibility, though unlikely, of no impact at all. Options 1 and 4 should be taken as an illustration based on current knowledge and will need to be considered further following formal consultation.

**Cost/Benefits of Action on Secondhand Smoke (see Annex A for notes on the derivation of the figures, and paragraphs 15-16 for other general information.)**

These costs are estimates based on the information we have at present. Where costs are from previous research, we have not updated them to current prices. The table is to be used as a guide rather than a definitive costing of the options. We would be happy to have comments on these benefits and costs from stakeholders.

<b>BENEFITS</b>	<b>Option 1 Voluntary action</b>	<b>Option 2 Full ban in all enclosed public places</b>	<b>Option 3 Local powers</b>	<b>Option 4 Ban with exceptions</b>
<b>Annual benefits £m</b>				
<u>Health benefits</u>				
a) Averted deaths from secondhand smoke Employees Customers <sup>19</sup>	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
<u>Economic and environmental benefits</u>				
d) NHS expenditure saved through reduced smoking prevalence	20	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
<b>Total Benefits</b>	<b>1289-1371</b>	<b>3374-3784</b>	<b>0-3784</b>	<b>2842-3616</b>

<sup>19</sup> Employees are those benefitting from smokefree policies at their workplace. Customers are people making use of smokefree enclosed public places.

<b>COSTS</b>	<b>Option 1 Voluntary action</b>	<b>Option 2 Full ban in all enclosed public places</b>	<b>Option 3 Local powers</b>	<b>Option 4 Ban with exceptions</b>
<b>Annual Costs £m</b>				
i) <u>Implementation</u> (changes to signage, alterations to premises etc) (Workplaces) (Public places)	-	- (minimal)	unknown	- (minimal)
j) <u>Enforcement</u>	-	20	0-20+	20+
k) <u>Education/communication</u>	-	1	Unknown – dependent on local decisions	1
l) <u>Revenue losses to Exchequer</u> from falling cigarette sales (employees) (customers)	570 -	1145 150	0-1145 0-150	1145 0-150
m) <u>Losses to the tobacco industry</u>	57	129	0-129	114-129
n) <u>Unintended Consequences (mess on streets etc.)</u>	-	-	-	-
o) <u>Production losses (smoking breaks)</u>	215	430	430	430
p) <u>Consumers' surplus losses to continuing smokers</u>	80	155	155	155
<b>Total Costs</b>	922	2030	0-2029	1844-2030
<b>Net benefit</b>	367-449	1344-1754	0-1755	998-1586

### **EQUITY AND FAIRNESS INCLUDING RACE EQUALITY ASSESSMENT**

37. We have considered whether these measures will have any disproportionate impacts including in the context of race equality issues. On any particular group and do not consider that these measures will disadvantage any group. Evidence shows that smoking prevalence is particularly high among poorer people and in deprived areas. We are committed to doing all we can to reduce prevalence of smoking in these groups and areas, to protect people from the health risks of exposure to secondhand smoke and reduce the likelihood of taking up the a habit that may bring premature death or serious illness. As action will affect all groups equally, we do not think that there are serious race equality issues for action on secondhand smoke. However we recognise that different cultures use tobacco differently – one example is restaurants where hookahs are smoked. We welcome comments on whether this or other practices may be disproportionately affected, recognising that smoking rates are the single biggest factor in differences between life-expectancy across socio-economic groups. In general smoking rates increase in lower socio-economic groups and support for restrictions decreases as a result.

## **COMPETITION ASSESSMENT**

38. A Competition Assessment has been undertaken following RIA guidance. Based on this assessment a simple competition assessment is set out. The Options cover all businesses in England where activity takes place in an enclosed public place - including workplace. 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 based on the filter test.
- 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. As paragraph 31 stated this 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 a LA were to decide to require specified ventilation in local legislation. Views are welcomed on these aspects.
- Option 4 will result in a decision for licensed public places whether to serve food or not. As with option 2 this route may decrease rather than increase barriers to entry for similar reasons in premises that will be smokefree. Views are welcomed on competition aspects of this option.

Comments are welcomed on all aspects of the competition assessment to inform its development for a final RIA.

## **RURAL PROOFING**

39. We have also 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.

## **COSTS TO SMALL BUSINESS**

40. The Department will consult with relevant stakeholders and DTI's Small Business Service to consider the impact of the range of the proposal and the listed exceptions to establish whether these measures would have a disproportionate impact on small and medium size enterprises.

## **MONITORING AND REVIEW**

41. Any action taken will need to be monitored to measure its effectiveness. Further consultation will be necessary on the full details of monitoring and evaluation, and we welcome comments on areas to consider.

## **ENFORCEMENT AND SANCTIONS**

42. 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 violations of smokefree areas. We welcome comments from stakeholders on this issue and on appropriate sanctions. To assist with these comments 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. The level of fines and the scale of enforcement will be developed following further consultation. Views on this are welcomed.

Option 1	Option 2	Option 3	Option 4
Continue with current enforcement	Based on Ireland's experience, it might need at 500 officers at a cost of £20m for a year, dropping substantially after the start.	Depending on what local authorities choose, the need for enforcement could be anything up to that identified for option 2 or 4	At least that required for option 2,
Hypothetical scenario 1	Hypothetical scenario 2	Hypothetical scenario 3	Hypothetical scenario 4
<p>The market and business/employers will decide the level of protection and therefore there will be no enforcement costs..</p> <p>Total Estimate £0m</p>	<p>Enforcement/Environmental Health Officers will be employed to enforce new legislation. Estimated total cost £20m.</p> <p>If there is a circumstance where the law has been broken then the Enforcement/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 prosecution remains very low.</p> <p>If Enforcement/EHOs cannot be contacted and the circumstance</p>	<p>Extreme case scenarios would be if each local authority decided to ban smoking in public places (option 2) or if they decide to do nothing and encourage voluntary action (option 1).</p> <p>However the costs will depend on the level of enforcement decided by each LA. We welcome comments on this.</p> <p>These costs would include Enforcement/Environmental Health Officer costs, any prosecution/appeal costs to courts and legal aid plus possible police enforcement costs.</p>	<p>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:</p> <p>Enforcement/Environmental Health Officer employment and training costs - £20m.</p> <p>Again any prosecution/appeal costs to courts and legal aid plus possible police enforcement costs.</p> <p>We welcome in particular views on prosecution and police costs. ]</p>

	<p>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.</p> <p>Total Estimate</p> <p>£20m plus any Courts/Legal Aid plus possible police costs</p>	<p>Total Estimate</p> <p>£0 to 20m plus any Courts/Legal Aid plus possible police costs</p>	<p>Total Estimate</p> <p>£20m plus any Courts/Legal Aid plus police +</p>
<p>We welcome comments on the above hypothetical scenarios and costs involved with enforcement.</p>			

### **CONSULTATION**

43. There is more information in the overarching RIA for the White Paper about the responses to the *Choosing Health?* Consultation. In that consultation a wide range of people were asked about action on secondhand smoke. Informal soundings have taken place over the last years including since the evaluation of the Health and Safety Executive’s draft Approved Code of Practice (ACoP). Government ministers and officials also met the Hospitality Industry a number of times in 2004 on their proposals for voluntary change. Further, wide, public consultation will take place on proposals for action.

44. Opinion polls and surveys support government action to protect people from exposure to secondhand smoke; and support bans in most areas.

#### *Public opinion*

45. Second-hand smoke (SHS) was the single biggest issue raised in the public consultation that took place over three months (April -June 2004). Over half of submissions to the *Choosing Health?* consultation were in favour of a national ban on smoking in public places or workplaces. The consultations demonstrated huge public interest and desire for action.

46. There is increasing public support for smoking restrictions or smoke-free legislation to cover indoor public places and workplaces. Recent polls indicate that the measure of support varies according to types of premises.<sup>20</sup> For most workplaces and public places support for restrictions is generally 80% or more. However, pubs stand apart from all other indoor places, even other parts of the hospitality sector, as being a special case in the mind of the public. Support for restrictions in pubs stood at 56% in 2003. And when probed further and offered 4 different types of restriction the results were, “In pubs would prefer...”:

No smoking allowed anywhere	20%
Mainly non-smoking with smoking areas	51%
Mainly smoking with non-smoking areas	19%
Smoking allowed throughout	8%

<sup>20</sup>Lader, D Goddard E: Smoking-related behaviour and attitudes, 2003, Office for National Statistics

Don't go to pubs/don't know

2%

47. The option to legislate for smoke-free enclosed public places includes proposals to consult on those areas amongst others, which might be exempted from the legislation. This would include consultation with other government departments, the hospitality industry, business group, health organisations, licensing and enforcement agencies, agencies responsible for long stay hospitals and homes.

### **SUMMARY AND RECOMMENDATION**

48. 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 which 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. Whatever the final policy the impact will be carefully monitored for unforeseen negative or positive health effects and any other knock on effects.

Option 1 – continue voluntary approach	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 smoke than a total ban, exceptions mean this option is 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

### **CONTACT POINT**

49. Contact details for questions about the RIA

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## **Annex A: Notes on derivation of figures**

Calculation of value of life years - The mortality benefits from smoking cessation are converted into life years gained using epidemiological evidence as to the increase in life expectancy associated with smoking cessation. Each life year gained is valued at £30,000. This value of a life year in turn is derived from (a) the Department of Transport's value of a statistical life, about £1m or a little over (b) statistics showing that the average road death leads to a loss of about 35 years of life years.

### **Benefits**

a) Averted deaths from secondhand smoke - The deaths averted from second hand smoke are calculated for the workplace and public places separately. The estimates rely on a combination of factors: (a) estimates of prevalence of exposure to secondhand smoke in different locations (b) epidemiological evidence as to the dangers of these levels of secondhand smoke exposure. The reductions in mortality are then converted into life years lost and evaluated in money terms using similar assumptions as in deaths averted by smoking cessation. For a complete ban the benefit in public places is £350m and in the workplace £21m. Option 1 uses 20% of these figures to illustrate the assumption that voluntary action would deliver much less than a ban. Option 4 is estimated to deliver something around 40% to 70% of the secondhand smoke protection associated with a full ban for customers because of the exemptions in hospitality sector. Among workers the protection is, across the workforce, practically the same as for Option 2.

b) Averted deaths from smokers giving up - The numbers giving up were estimated by combining evidence as to (a) the current distribution of the workforce by degree of smoking restriction (b) evidence as to the effect on smoking cessation of different degrees of smoking restriction. Those stopping were assumed to gain on average one year of life expectancy, valued at about £30,000. The estimate of the numbers giving up as a result of a ban in public places is based on restrictions in pubs. It extrapolates from the workplace ban adjusting for the different period of enforced abstinence and an estimate of the time smokers spend in pubs.

c) Averted deaths from reduced uptake of smoking - This estimate is based on the number of young people who take up smoking at work, and evidence as to lower uptake in environments where smoking is restricted.

e), f) Reduced Sickness Absence and Production Gains - The production gains relate to employees working more productively in smoke free environments. Gains are also made from reduced time off work through smoking related illness. The figures are based on the ACoP RIA.<sup>21</sup>

g) Safety Benefits - Safety benefits include damage, deaths, injuries, cost to fire services, and administration costs. Individually they are too small to be included so are rolled together. These are also based on the ACoP RIA.

h) Cleaning Costs - These are also based on the ACoP RIA.

f) – h) for Option 4 As the exceptions to a total ban will largely affect the hospitality industry, these economic effects will be less great – they have been estimated at 90% of a total ban.

### **Costs**

o) Production Losses – These relate to smokers taking smoking breaks away from workplaces that previously allowed smoking in the workplace. The figures are based on the ACoP RIA.

p) Consumer Surplus - Consumers' surplus is the value a consumer places on the opportunity to consume a good or service over and above the price. Smokers unable to smoke at work lose consumers' surplus. This can be thought of as the compensation which would be required to induce them voluntarily to accept a ban, or alternatively, the sum they would be prepared to pay to bribe the employer not to impose a ban. The amount is estimated by calculating the price rise (given evidence

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<sup>21</sup> Health and Safety Executive RIA ACOP August 2000

as to the “elasticity of demand”) which would induce smokers to cut down by the amount associated with a ban. The loss of consumers’ surplus is equal to half this price rise times the amount smoked.