



## **Proposal for an Approved Code of Practice on passive smoking at work**

This consultative document is issued by the Health and Safety Commission in compliance with its duty under Section 16(2) of the Health and Safety at Work etc Act 1974, to consult bodies which appear to it to be appropriate before seeking the Secretary of State's consent to an Approved Code of Practice.

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**to reach him no later than 29 October 1999**

The Commission tries to make its consultation procedure as thorough and open as possible. Responses to this consultative document will be lodged in the Health and Safety Executive's Information Centres after the close of the consultation period where they can be inspected by members of the public or be copied to them on payment of the appropriate fee to cover costs.

Responses to this consultative document are invited on the basis that anyone submitting them agrees to their being dealt with in this way. Responses, or parts of them, will be withheld from the Information Centres only at the express request of the person making them. In such cases a note will be put in the index to the responses identifying those who have commented and have asked that their views, or part of them, be treated as confidential.

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**CONSULTATIVE  
DOCUMENT**

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# Proposal for an Approved Code of Practice on Passive Smoking at Work

## CONSULTATIVE DOCUMENT

### Contents

	Page
Introduction	1
Background	2
What are the effects of passive smoking?	2
The current position	2
Options for change	3
Our proposal: an Approved Code of Practice	5
Regulatory Impact Assessment	9
This consultation exercise	10
Glossary	11
Annex 1: Draft Approved Code of Practice	13
Notice of approval	14
What is this Code for?	15
Passive smoking	16
Looking into the problem	16
The effects of passive smoking on employees' health and welfare	19
Assessing risk and judging welfare	20
Deciding what to do	24
Smoking policies: general guidance	25
Smoking policies: what are the options?	28
Banning smoking at the workplace	28
Restrictions on smoking short of a ban	32
Special provisions for rest areas and rest rooms	37
Taking action: implementing the policy	37
Employees' responsibilities	38
Keeping the situation under review	39
Sources of further information	40
Annex 2: Draft Regulatory Impact Assessment	43
Annex 3: Replying to this Consultative Document	60



# PASSIVE SMOKING AT WORK

## INTRODUCTION

1 Smoking kills about 120,000 people each year in the United Kingdom. The human and societal cost of this is enormous, and the Government has announced that it intends to introduce a package of measures both to persuade current smokers to give it up, and to discourage non-smokers from starting in the first place.<sup>1</sup> Passive smoking—inhaling other people’s tobacco smoke—is a particular issue for the workplace. This Consultative Document asks for your views on whether we should take further action to encourage employers to improve employees’ health and welfare at work by reducing their exposure to environmental tobacco smoke—and if the answer is “yes”, how best to do it. In Northern Ireland, the Health and Safety Executive Northern Ireland will be undertaking a similar exercise.

2 The Health and Safety Commission (HSC) recognises that the proposals in this document could be seen as limiting personal choice—of the public as well as workers. The Office for National Statistics recently found that 84% of people said they would support restrictions on smoking at work.<sup>2</sup> However, the survey did not examine what kind of restrictions people would be prepared to see, nor how they would be enforced. For example, only 51% of people were willing to see restrictions on smoking in pubs, even though these are workplaces for the bar staff. In many cases where we consult on proposals such as this, it may be assumed that the provision or something quite similar is highly likely to be introduced eventually. The consultation is often a fine-tuning exercise. That is not necessarily the case for this consultation. We are not sure to what extent people will support these proposals. We will decide whether or not to introduce an Approved Code of Practice according to the reasoned responses we receive.

3 This document is also available on the Health and Safety Executive (HSE) website at <http://www.open.gov.uk/hse/condocs/>. Alternatively, you can obtain further copies from HSE Books at the address on the back cover.

4 The Commission would welcome comments on all the issues raised in this Consultative Document. For your convenience, all the questions we ask are set out in the reply form at annex 3, which you may find helpful to use when replying, but you can let us have your comments in any form. If you are replying on behalf of an organisation, it would be helpful if you could tell us what that organisation does, and what its aims are. Details of how to reply are on the front cover and in annex 3. We should like all replies to arrive **no later than 29 October 1999**.

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<sup>1</sup> *Smoking Kills. A White Paper on Tobacco*, Cmnd 4177; The Stationery Office: London, 1998; ISBN 0 10 141772 1.

<sup>2</sup> *Smoking-related behaviour and attitudes, 1997*; S Freeth; Office for National Statistics, 1998; ISBN 185774 289 3.

## BACKGROUND

5 HSC wants to contribute to the Government's efforts to improve public health. Much of our work in occupational health supports public health improvements and we have a programme of work with the Health Departments in the public health field. One of the issues in this programme is tobacco smoking, and we have considered how we, HSE and those Local Authorities (LAs) responsible for enforcing the law on health, safety and welfare at work could contribute to the Government's efforts on this issue.

6 Although the biggest health risk from smoking tobacco is to smokers themselves, HSC considers it would not be appropriate to use health, safety and welfare law to ban smoking at work to protect their health. Health, safety and welfare law imposes duties on employers, the self-employed and employees to protect workers and others from risks that arise from work.

7 However, exposure to *other people's* tobacco smoke at work is a different matter. Some employees are exposed to fellow employees' smoke, or to that of customers or clients, whether they want to be or not. Employers have a responsibility under the Management of Health and Safety at Work Regulations 1992 to identify people particularly at risk from workplace hazards, and this covers people whose health might be particularly badly affected by passive smoking. In addition, passive smoking is regarded by many people as unpleasant and uncomfortable, and therefore to be a matter of employee welfare.

### What are the effects of passive smoking?

8 The Government's White Paper, *Smoking Kills*<sup>1</sup> points out that "passive smoking" (inhaling other people's tobacco smoke) poses a risk to health. For example, living with a smoker increases the chance that you will develop cancer or ischaemic heart disease (disease that reduces the supply of blood to the heart muscles, increasing the risk of a heart attack). Although there is emerging evidence that exposure to tobacco smoke *in the workplace* may of itself be sufficient to give rise to ill health we cannot, at the present time, be certain of the size or extent of the risk. However, we do know that, for some people, exposure to tobacco smoke can make a pre-existing health problem, like asthma or chronic bronchitis, worse.

9 Irrespective of the health effects, what is certainly true is that many people find tobacco smoke unpleasant.<sup>2</sup> It irritates the eyes, nose, throat and chest and many people do not like its smell. Some individuals can find it very uncomfortable and difficult to work in such circumstances.

### The current position

10 In 1988, HSE published guidance for employers (*Passive smoking at work*, IND(G)63(L), last revised in 1992), explaining what they should do to comply with health, safety and welfare law as it applies to passive smoking. Many employers have introduced policies on smoking as a result. In a 1996 survey,<sup>3</sup> about four-fifths of the people questioned said there was either a ban on smoking where they worked, or smoking was allowed only in

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<sup>3</sup> *Smoking-related behaviour and attitudes*; F Dawe and E Goddard; The Stationery Office: London, 1997; ISBN 0 11 620948 8.

certain areas. That leaves a significant minority of people still exposed to tobacco smoke at work. A recent survey carried out by MORI for Action on Smoking and Health estimated that over 3 million people are exposed to environmental tobacco smoke at work.

**11** There have also been a number of cases in Employment Tribunals and the Courts where employees who do not smoke have taken action against their employers for an alleged failure to look after their health and welfare at work because of exposure to tobacco smoke. Also, some smokers have taken action against their employers to try to get them to allow them to smoke at work. It is not in the interests of either employers or employees to rely on Courts or Tribunals to resolve differences between them. HSC believes it would be much better for *all* employers and employees to agree appropriate policies governing smoking at work.

**Question 1: Do you think that we should take further action to make sure that all employers introduce smoking policies designed to ensure their employees' health and welfare at work?**

### **Options for change**

**12** HSC wants employers to agree with their employees, and then introduce, policies on smoking at work that ensure, so far as is reasonably practicable, their employees' health and welfare at work. There is a lot of guidance for employers about how to do this, yet it seems that a significant minority of employers have not done so. If the existing guidance is insufficient to persuade employers to introduce effective policies, we need to consider what more can be done. There are a number of options to consider if we want to persuade people to take action. These include:

- w recommending that the Secretary of State introduce a new law;
- w enforcing the existing law more strictly;
- w holding a campaign; or
- w providing better guidance.

We will explore these options as we see them.

#### *A new law?*

**13** We could propose that the Secretary of State introduce a set of regulations that would require employers to control smoking in workplaces so as to ensure employees' health and welfare at work. Health and safety regulations fall into two broad categories:

- w prescriptive regulations; and
- w goal-setting regulations.

Prescriptive regulations are used when there is a need to specify precisely *what* dutyholders must do to manage a risk. Goal-setting regulations are used when there is a need to specify what *objective* the dutyholders must achieve, but not the precise method by which they must achieve it.

**14** We cannot be specific about what people should do to control passive smoking in every workplace, so prescriptive health and safety regulations about passive smoking could well be unreasonable and unenforceable. This would especially be the case in certain sectors where the workplace is also a public place (for example, pubs and restaurants), or provides accommodation for off-shift workers (for example, offshore installations).

**15** An alternative would be to propose goal-setting regulations. However, we would need to be convinced that existing goal-setting health, safety and welfare laws, such as the Health and Safety at Work etc Act 1974 and the Management of Health and Safety at Work Regulations 1992 did not already adequately cover the subject. We believe there is already sufficient health, safety and welfare law that can be applied to the question of passive smoking. What is needed is for the law to be better understood and followed. We do not believe that there is a convincing case for yet more law.

#### *Stricter enforcement?*

**16** Another option would be for HSC to ask HSE and LAs to enforce the health, safety and welfare law that currently applies to passive smoking more strictly, with Improvement Notices or by taking prosecutions.

**17** While on the face of it, this sounds attractive, in reality we believe this would cause immense practical difficulties. Before starting a prosecution, a health and safety inspector must be convinced that the case has a reasonable prospect of resulting in a conviction. And of course, in Court the inspector must prove beyond reasonable doubt that the employer failed to ensure, so far as was reasonably practicable, the health, safety or welfare of their employees. Proving beyond reasonable doubt that passive smoking at a particular workplace was a risk to health is likely to be very difficult, given the state of the scientific evidence. Inspectors are therefore unlikely to proceed with a case that addressed only the general risk to health from passive smoking. Inspectors would need to rely on proving that the employer had not ensured their employees' welfare. Traditionally, this has been seen as a less important issue than ensuring health or safety. A defendant might successfully argue that the detriment to welfare from passive smoking was a trivial issue. A Court might well impose only a nominal penalty on conviction. If this happened, it might not provide sufficient incentive for others to take action.

**18** An alternative approach, of serving an Improvement Notice, might be more effective. However, if an employer appealed to an Employment Tribunal against such a notice, an inspector would face many of the same difficulties as in a prosecution. In particular, the inspector would need to prove to the Tribunal what action to ensure health and welfare was reasonably practicable. There is little current guidance on this specific point. We are therefore not convinced that there is a sound basis for relying heavily on formal enforcement, without some means of being clear about the standard of protection employers are expected to reach.

### *A campaign?*

**19** Another option would be to increase awareness of the existing guidance through a campaign. For example, we could seek to raise awareness of the issue of passive smoking at work and the options that employers have to deal with it. However, the Health Education Authority, the Health Education Board for Scotland and the National Assembly for Wales' Health Promotion Division already run smoking awareness campaigns, including campaigns about passive smoking at work. While we are happy to continue our existing work with them in other areas, we do not think there is much scope for us to add to their smoking campaign efforts.

### *Better guidance?*

**20** As mentioned in paragraph 10, HSE already issues general guidance about passive smoking at work. We could ask HSE to revise this guidance, setting out more explicitly what employers should do about passive smoking to comply with health, safety and welfare law. Such guidance could indicate what standard of protection employers should seek to achieve for their employees. This might encourage those employers who do not have a smoking policy that ensures employees' health and welfare, to introduce one.

**21** The final option we have considered is an Approved Code of Practice (ACoP). We think that people might support a move in this direction because an ACoP is a particularly persuasive form of guidance. It might succeed where ordinary guidance has not.

## **Our proposal: an Approved Code of Practice**

**22** ACoPs have a special status in law. They are rather like the Highway Code. It is not of itself an offence not to do what a Code says. However, a Code can be introduced as evidence in a prosecution. If it is proved that the employer did not follow the relevant provisions of the Code, the Court will find them guilty of the offence *unless* they can prove they have complied with the law in some other way. Similarly, in an appeal against an Improvement Notice before an Employment Tribunal, an ACoP can be used to illustrate what an employer would need to do to comply with the Notice. ACoPs are, therefore, much more persuasive than ordinary guidance. People tend to do what an ACoP says because if they do, they avoid the risk of Court proceedings or enforcement notices.

**23** An ACoP would provide authoritative guidance about the minimum standard employers are expected to reach. An employer who has introduced a smoking policy that ensures employees' health and welfare in line with the ACoP will be doing enough to comply with health, safety and welfare law. On the other hand, if an employer declined to introduce a smoking policy, and the issue came to taking formal enforcement action against him, an ACoP would set out what a good employer should have done as a minimum.

**24** We think that this may be the right approach, *if* people support taking more action on this issue under health, safety and welfare law.

**25** The Commission is concerned to ensure that whatever it decides to do fits in with other action on smoking. The White Paper announced the introduction of a charter on smoking in public places. This is a voluntary arrangement in which hotel, pub and restaurant owners have agreed to take action to increase the provision of non-smoking facilities in their premises. In some ways the charter goes beyond what could be required under health, safety and welfare law for the protection of workers, and which would be set out in any ACoP. So if an employer follows the charter's principles, they should find it easy to comply with health, safety and welfare law. If we decide to go ahead with an ACoP, HSE will work with the hospitality industry to ensure that the charter and the Code do not advise that different, conflicting things should be done, nor that they suggest things have to be done twice to satisfy both the charter and the ACoP.

**Question 2: Should we issue an Approved Code of Practice on passive smoking?**

**Question 3: If you answered "no" to question 2, what *other* action do you think we should take to ensure that employees' health and welfare are protected? Please give reasons for your answer.**

*What advice would an ACoP contain?*

**26** We have carefully considered what advice we could give in an ACoP on passive smoking. Some people think that we should concentrate on advice that would help employers reduce whatever risk there is to their employees' health from exposure to environmental tobacco smoke. However, we do not know how big the risk is of developing diseases such as cancer or ischaemic heart disease from passive smoking at work. We therefore consider that we do not have a firm enough basis to issue an ACoP that would give employers guidance on how to ensure the health of *all* their employees. However, as mentioned in paragraph 8, we know that there are risks from passive smoking at work to the health of people who already suffer from asthma or chronic bronchitis. We believe that we could offer employers guidance in the form of an ACoP about how to comply with their duty to ensure these employees' health.

**27** We also know that tobacco smoke causes discomfort and irritation. These are matters of employee welfare rather than their health. A provision in existing health, safety and welfare law<sup>4</sup> already requires employers to protect employees who do not smoke from the discomfort caused by tobacco smoke in rest areas and rest rooms. We consider that an ACoP could offer guidance to employers on how to comply with their duties to ensure the welfare of their employees at work in connection with exposure to tobacco smoke at work. This would be the main thrust of any ACoP. Of course, measures taken to reduce the discomfort from exposure to tobacco smoke should also reduce whatever risk there is to employees' health from passive smoking at work.

**28** An employer's duty under the Health and Safety at Work etc Act 1974 is to ensure the welfare of *all* his employees. It has been suggested to us that this means that any action an employer takes on passive smoking should give equal weight to the welfare of both employees

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<sup>4</sup> Regulation 25(3) of the Workplace (Health, Safety and Welfare) Regulations 1992. A similar provision is contained in paragraph 43 of schedule 1 to the Offshore Installations and Wells (Design and Construction, etc.) Regulations 1996.

who smoke and those who do not. However, passive smoking is caused by the actions of smokers, not non-smokers. If an employer is to ensure his non-smoking employees' welfare in connection with passive smoking at work, he must somehow constrain smoking within the workplace. This will almost inevitably affect the welfare of his employees who smoke, at least to some extent. Employers should not simply ignore their duty to ensure the welfare of employees who smoke, but we suggest that, as far as passive smoking is concerned, where the welfare needs of employees who smoke and employees who do not smoke come into conflict, priority should be given to the needs of employees who do not smoke. We think this is right because it is smoking that creates the issue in the first place.

**29** We do not consider that the Code should seek to give any guidance about protecting the health of the public, because information about the magnitude and extent of the risk to the public from passive smoking in public places is even more uncertain. The issue is better dealt with in the other ways discussed in the White Paper. Similarly, we do not believe that it is appropriate to include in an ACoP information about wider matters that are not our direct interest, such as giving up smoking.

**Question 4: Do you agree that an ACoP on passive smoking should *mainly* focus on giving guidance about how employers should reduce their employees' exposure to tobacco smoke to ensure their welfare?**

**Question 5: If you answered "no" to question 4, what guidance do you think we *should* give in an ACoP on passive smoking? Please give reasons for your answer.**

**Question 6: Do you agree that, if there is a conflict between the welfare needs of employees who smoke and employees who do not smoke, employers' smoking policies should give priority to the needs of non-smokers?**

#### *Summary of the draft ACoP*

**30** A draft ACoP is at annex 1. It advises that employers should, in consultation with employees:

- a) make judgements about the detriment to employees' welfare from passive smoking;
- b) assess the risk from passive smoking to the health of employees who suffer from asthma, chronic bronchitis or other respiratory diseases;
- c) devise a smoking policy based on those judgements and assessments;
- d) implement the policy; and
- e) keep the health risk assessments, welfare judgements and policy under review.

31 By doing this, we seek to consolidate existing good practice.

32 We suggest in the draft ACoP that employers should make judgements about the detriment to welfare from passive smoking. This is not a concept that we have explicitly referred to before. We would be grateful for your views about how you think this process should be carried out.

33 We suggest in the draft ACoP that employers should carry out an assessment of the risk to health from environmental tobacco smoke for employees who suffer from a pre-existing health problem such as asthma or chronic bronchitis. We appreciate that this might be very difficult to do, and we would be grateful for your views about whether the draft ACoP's provisions are workable. If you think they are not, we would be grateful if you could suggest an alternative approach.

**Question 7: How do you think employers should judge the detriment to employee welfare from tobacco smoke? We have mentioned taking account of both the physical symptoms it causes and its smell. Is there anything else that employers should consider?**

**Question 8: Are the draft ACoP's provisions about assessment of the risk to health from environmental tobacco smoke for employees who suffer from a pre-existing health problem workable? If not, what alternative would you suggest?**

34 The draft ACoP suggests a hierarchy of measures that employers should adopt in their policies to ensure employees' health and welfare. This hierarchy is derived from some of the fundamental principles of occupational health and safety management: that where it is possible to do so, it is more effective to remove a problem than to manage it; that it is better to have physical protection measures rather than ones relying on people to do things; and that "passive" physical measures, that do not require much maintenance, are normally better than "active" ones. The hierarchy is:

- a) completely banning smoking at work;
- b) banning smoking except in designated rooms;
- c) having separate smoking and non-smoking work areas;
- d) providing adequate ventilation; or
- e) adopting a safe system of work.

35 The idea is that employers should start at the top of this list, and ban smoking completely if it is reasonably practicable to do so. The draft guidance to accompany the ACoP suggests some situations where a ban may be workable, and some where it might not. Where a complete ban is not reasonably practicable, employers should move to the next item in the list (having

separate smoking rooms). If that is not reasonably practicable, they should move down to the next item (having separate smoking and non smoking work areas) and so on. In some workplaces, a combination of measures will be needed, but measures lower down the list should only be used to the extent that measures further up it are not reasonably practicable. This gives a degree of freedom for employers to decide what the most effective way of ensuring their employees' welfare is, but the decision should be made in a structured way. If employers depart from the hierarchy, they will need to be able to justify why they have done so, and explain how what they have done is equally as effective at protecting employees' welfare as following the hierarchy would have been.

**36** Paragraph 67 of the draft guidance to accompany the ACoP seeks to address passive smoking in workplaces such as restaurants, pubs and residential care homes, where members of the public congregate or live. In our view, it is not currently reasonably practicable under health, safety and welfare law to ban smoking in all such workplaces: in some cases, because it would not be commercially viable, and in others because it would interfere with personal freedoms. However, we are conscious that commercial realities and social mores change, and the decision about what might be reasonably practicable changes over time, or can even be different in different locations.

**Question 9: In paragraph 67 of the draft guidance to accompany the ACoP, we suggest that currently, it may not be reasonably practicable to ban smoking in some workplaces.**

**(a) Do you agree with our suggestions for workplaces where a complete ban on smoking may currently not be reasonably practicable?**

**(b) If not, which others would you add, or which ones would you delete?**

**(c) What further guidance could we give on this subject?**

**Question 10: Are the rest of the proposals in the draft ACoP workable? How could they be improved?**

## **Regulatory impact assessment**

**37** When preparing proposals for Regulations or Approved Codes of Practice, HSC is required to submit to Ministers for their approval a document known as a Regulatory Impact Assessment or RIA. An RIA: describes the issue that has given rise to the need for regulation; compares various options; and identifies costs and benefits, to assist informed public debate about regulation. We have prepared a draft RIA for this proposal, which is reproduced at annex 2. We would be grateful for your views on it, and for any information you have that would help to improve it.

**38** There are some gaps in the information available to help us quantify the costs and benefits of an ACoP on passive smoking. We have therefore had to make some assumptions, mainly based on what we do know. If the assumptions we have made are borne out in practice, the total cost to society of introducing an ACoP would be between £3.1 billion and

£8.9 billion, over a ten-year period, in present value terms. These would mainly be in drawing up and implementing smoking policies and the costs of installing ventilation or air cleaning equipment, particularly in the hospitality sector. Over the same ten-year period, the total benefits to society (in terms of the reduction in ill health of employees with asthma and chronic bronchitis, a reduction in the number of fires at work from smoking, and improvements in productivity) are estimated to be between £1.4 billion and £2.1 billion. That is, the costs of introducing the ACoP will be between two and four times larger than the benefits. We have not been able to quantify all of the benefits—particularly welfare benefits—and this balance only refers to the costs and benefits that we have been able to quantify in monetary terms.

**Question 11: The Commission would welcome comments on the assumptions made in compiling the draft RIA and on its conclusions.**

### **This consultation exercise**

**39** We are always trying to improve how we conduct consultation exercises. We would be grateful for your feedback on the quality of this Consultative Document. Please would you answer the following questions.

**Question 12: In your view, how well does this Consultative Document represent the different policy issues involved in this matter? (Very well, well, not well or poorly)**

**Question 13: Is there anything you particularly liked or disliked about this consultation exercise?**

**Thank you for taking the time to read this Consultative Document.**

## Glossary

Asthma	A condition in which the airways react to certain substances. The airways tighten, their lining becomes inflamed and starts to swell, and a sticky phlegm is produced, causing wheezing and coughing.
Chronic bronchitis	A long-term inflammation of the air passages in the lung, giving rise to cough and phlegm with, in some cases, shortness of breath.
HSC	Health and Safety Commission.
HSE	Health and Safety Executive.
Improvement Notice	A method of enforcing health, safety and welfare law in which an inspector serves a notice on a dutyholder requiring them to take action to comply with the law within a fixed period.
Ischaemic heart disease (IHD)	Disease that restricts the flow of blood to the muscles of the heart; it can cause angina (chest pain) and heart attacks.
LA	Local Authority (that enforces health, safety and welfare law)
RIA	Regulatory Impact Assessment.



## Health and Safety Commission

### *Draft* Approved Code of Practice and Guidance

#### Passive smoking at work

##### Status

This publication is an Approved Code of Practice which also includes guidance on how to comply with the law.

This Code has been approved by the Health and Safety Commission, with the consent of the Secretary of State. It gives practical advice on how to comply with the law. If you follow the advice you will be doing enough to comply with the law in respect of those specific matters on which the Code gives advice. You may use alternative methods to those set out in the Code in order to comply with the law.

However, the Code has a special legal status. If you are prosecuted for breach of health and safety law, and it is proved that you did not follow the relevant provisions of the Code, you will need to show that you have complied with the law in some other way or a court will find you at fault.

The ACoP is accompanied by guidance which does not form part of the ACoP. Following the guidance is not compulsory and you are free to take other action. But if you do follow the guidance you will normally be doing enough to comply with the law. Health and safety inspectors seek to secure compliance with the law and may refer to this guidance as illustrating good practice.

**Notice of Approval**

By virtue of section 16(1) of the Health and Safety at Work etc. Act 1974, and with the consent of the Secretary of State for the Environment, Transport and the Regions, the Health and Safety Commission (HSC) has, on [date] approved the Code of Practice entitled "Passive smoking at work".

The Code of Practice is approved for the purposes of providing practical guidance with respect to section 2(1) of the Health and Safety at Work etc. Act 1974 and regulations 3(1), 3(3), 3(4) and 4 of the Management of Health and Safety at Work Regulations 1992 in respect of the exposure of employees to environmental tobacco smoke.

The Code of Practice comes into effect on [date]. This Code of Practice is a guide to the law and explains in non-legal language what the law means. It also includes guidance on how to comply with the law.

Reference in this Code of Practice to another document does not imply approval by the HSC of that document except to the extent necessary to give effect to this Code of Practice.

Signed

.....

Secretary to  
the Health and Safety Commission

[Date]

## Introduction    What is this Code for?

1    This document contains an Approved Code of Practice (ACoP) and guidance on what employers and employees need to do to comply with their duties under health, safety and welfare law in respect of the exposure of employees to environmental tobacco smoke, often called "passive smoking". The code and guidance apply to all workplaces and situations subject to the Health and Safety at Work etc. Act 1974 (HSWA) and extend outside Great Britain to offshore oil and gas activities.

2    The document was prepared by the Health and Safety Executive (HSE) for the HSC after widespread consultation. It contains law, ACoP text and guidance. These have different status, and to make it clear which is which, the law is printed in *italic*, ACoP is printed in **bold**, and the remaining text, in normal type, is additional guidance.

3    Although only the Courts can give an authoritative interpretation of law, in considering the application of this Approved Code of Practice and guidance to people working under your direction, you should consider the following. If you have people working under your control and direction who are treated as self-employed for tax and National Insurance purposes, they may nevertheless be treated as your employees for health and safety purposes. You may therefore need to take appropriate action to protect them. If you are in any doubt about who is responsible for the health and safety of a person working for you this could be clarified and included in the terms of a contract. However, remember, you cannot pass on a legal duty that falls to you under the Health and Safety at Work etc Act 1974 (HSWA) by means of a contract and you will still retain duties towards others by virtue of section 3 of HSWA. If you intend to employ such workers on the basis that you are not responsible for their health and safety, you should seek legal advice before doing so.

4 The code adopts a simple, 4-step approach to passive smoking:

- (a) look into the problem;
- (b) decide what to do;
- (c) take action; and
- (d) keep what you've done under review.

Guidance

**Passive smoking**

5 When someone smokes tobacco, others sharing the same area cannot avoid inhaling some of the tobacco smoke. This is "passive smoking".

6 This guidance sets out what employers and employees should do, as a minimum, to comply with health, safety and welfare law in respect of passive smoking. Although employers will need to make decisions about what to do, it is best to work with employees in coming to those decisions. That way, you will reach a solution that everyone, smokers and non-smokers alike, can accept.

**Looking into the problem**

*Health and Safety at Work etc. Act 1974, section 2(1)*

*It shall be the duty of every employer to ensure, so far as is reasonably practicable, the health, safety and welfare at work of all his employees.*

*Management of Health and Safety at Work Regulations 1992, regulations 3(1) and 3(4)*

3.-(1) Every employer shall make a suitable and sufficient assessment of—  
(a) the risks to the health and safety of his employees to which they are exposed whilst they are at work; ...  
for the purpose of identifying the measures he needs to take to comply with the requirements and prohibitions imposed upon him by or under the relevant statutory provisions.  
...  
(4) Where the employer employs five or more employees, he shall record—

- (a) *the significant findings of the assessment; and*
- (b) *any group of his employees identified by it as being especially at risk.*

ACoP

7 Certain conditions such as asthma or chronic bronchitis can be made worse by exposure to tobacco smoke. When carrying out their risk assessment under the Management of Health and Safety at Work Regulations 1992, employers should take account of the fact that there may be amongst their employees people who suffer from these conditions. Employers should identify what measures they may need to take to protect the health of such workers.

8 So that employers can discharge their duty to ensure their employees' welfare at work as required by the Health and Safety at Work etc. Act 1974, they should look into and make judgements about the extent of the discomfort caused to their employees by exposure to tobacco smoke at work. The duty to ensure employees' welfare at work does not extend to people who are not employees (e.g. customers, clients or visitors).

9 Employers will need to consider as part of their risk assessment and welfare judgement:

- (a) the location, sources, quantity and type of tobacco smoke;
- (b) the length of time that employees are exposed to environmental tobacco smoke; and
- (c) any other relevant circumstances - for example:

w whether the employees affected are at work or on a work break (see paragraph 85); and

w on offshore installations, whether the employee is off-shift.

10 From this assessment, employers should determine what their options are for controlling exposure to environmental tobacco smoke. These will include one or more of the following:

banning smoking in the workplace, either completely or partially;

physically segregating non-smokers from tobacco smoke;

providing adequate ventilation; or

adopting a system of work that reduces the time an employee is exposed to environmental tobacco smoke.

#### Guidance

11 Employers have a duty to ensure their employees' health, safety and welfare at work. This duty can only be discharged satisfactorily by:

assessing risks to employees' health and safety, as specified in the Management of Health and Safety at Work Regulations 1992;

deciding what action is necessary to ensure their welfare at work; and

where employers share a workplace, co-operating with the other employers.

12 Smoking can affect employees':

safety - if there is a risk of the burning tobacco igniting flammable materials in the workplace;

health - for example, if a worker with a chest disease has to work in a smoky atmosphere which may make that condition worse; and

welfare - the components of tobacco smoke are irritating to the eyes, nose, throat and chest and can make people uncomfortable. It also has an unpleasant smell that clings to people's hair and clothing.

## Safety

13 This code is not about the risks to safety that arise from smoking. For advice about general fire safety issues, you should contact your local fire authority. If you need to know how to work safely with flammable materials, you should read HSE publications such as:

"Safe working with flammable substances", IND(G)227(L), free from HSE Books

"The safe use and handling of flammable liquids", HS(G)140, ISBN 0 7176 0967 7

"The storage of flammable liquids in containers", HS(G)51, ISBN 0 7176 0481 0

HSE publications are available from HSE Books at the address on [page 41].

### **The effects of passive smoking on employees' health and welfare**

#### (a) Employees with existing health conditions

14 Some people with certain respiratory diseases (mainly asthma and chronic bronchitis) can be very badly affected by tobacco smoke. For example, it can irritate their lungs so much that it triggers an asthma attack, or it may make their bronchitis worse. Such people need protecting from tobacco smoke at work. These conditions are not uncommon, and it is quite possible that you will have one or more such employees amongst your workforce, either now or in the future. If you do not know for certain that you do not have any such employees (and bear in mind that they may not necessarily know themselves), you should assume, for the purposes of carrying out your assessment, that you do. You need to think now about how you will protect such employees' health.

#### (b) Other employees

**15** There is evidence that passive smoking over a period of time can cause lung cancer, and that it contributes to ischaemic heart disease and other illnesses in non-smokers. It probably leads to several hundred deaths each year. Although there is emerging evidence that exposure to tobacco smoke in the workplace may of itself be sufficient to give rise to ill health we cannot, at the present time, be certain of the size or extent of the risk.

**16** The evidence about the extent of the general risk to health from passive smoking may change. When reviewing your risk assessment, you should make yourself aware of any new evidence about the general risk to health from passive smoking. You could do this by reading information published by bodies such as the Health Education Authority, the Health Education Board for Scotland and the National Assembly for Wales' Health Promotion Division. Other organisations such as Action on Smoking and Health (ASH) and the Freedom Organisation for the Right to Enjoy Smoking Tobacco (FOREST) can also provide information.

**17** Tobacco smoke also irritates the eyes, nose, throat and chest, causing physical discomfort, and it has an unpleasant smell. Discomfort is not in itself a risk to health or safety, and so it is not covered by the Management of Health and Safety at Work Regulations 1992. However, the Health and Safety at Work etc. Act 1974 requires employers to ensure their employees' welfare at work, as well as their health and safety. This Code and guidance is aimed mainly at helping you prevent the discomfort that tobacco smoke causes, and thus to help you ensure your employees' welfare at work.

### **Assessing risk and judging welfare**

**18** Always keep in mind that the purpose of carrying out a risk assessment or judging a detriment to welfare is to help you decide what your best option is for taking action.

**19** You should carry out a risk assessment and make judgements about welfare even if everyone in your workplace currently smokes tobacco. Smokers are unlikely to want the workplace to be heavy with smoke all the

time any more than non-smokers are. Also, people may give up smoking, or you may recruit someone who doesn't smoke.

**20** If no-one smokes in your workplace, or if you already ban smoking and the policy is working well, then obviously there won't be a problem from passive smoking. In these circumstances, you will not need to carry out an assessment or judge the detriment to welfare from passive smoking.

**21** If you do need to carry out a risk assessment and make judgements about welfare, begin by finding out the scale of the problem. Ask yourself, and your employees or their representatives, these questions:

(a) where do people smoke?

(b) how many people smoke and who are they?

**w** for example, are they customers or employees or both?

(c) how bad does the smoke get?

**w** the density of tobacco smoke can vary over time - think how you will cope with the worst case

(d) what is the smoke like?

**w** many people find cigar and pipe tobacco smoke more disagreeable than cigarette smoke, and some cigarettes produce a more pungent smoke than others

(e) when do people tend to want to smoke and for how long?

**22** Parts of workplaces that are in the open air, such as streets, farms, quarries and construction sites, have excellent natural ventilation and there is little chance of any employee suffering a significant risk to their health or experiencing discomfort from exposure to tobacco smoke in such areas. You do not need to include these in your assessment.

**23** On offshore installations, people who work in the accommodation – for example, as cleaners – should be regarded as working, while those in the accommodation but off-shift (who are, in legal terms, at work), should be regarded as customers or clients.

**24** In assessing the risk to health of people with an existing condition that can be made worse by tobacco smoke, you will need to be guided by what the employee's doctor says, because each case will be different. However, in general, people with asthma or chronic bronchitis can react to environmental tobacco smoke at levels much lower than those that cause irritation in other people. So, you need to think about what additional measures you could reasonably take to reduce such employees' exposure to environmental tobacco smoke even further, **if** an employee told you that their illness was being made worse by exposure to environmental tobacco smoke at work. For example, could you:

re-consider banning smoking, either completely or partially?

move them to work in areas where there is no smoking? or

increase the ventilation in the areas where they work?

**25** With asthma and chronic bronchitis, there may not be a simple relationship between the severity of the attack and the amount of environmental tobacco smoke to which the employee is exposed. So, although you may be able to introduce measures that substantially reduce exposure to environmental tobacco smoke, there may still be problems for some people. You should keep the situation under review, and be prepared to change your assessment of the risk (and the control measures you have put in place) if it becomes clear that the measures you have taken so far are not fully effective. This process of monitoring and review will help to refine your risk assessment over a period of time.

**26** In making judgements about employees' welfare, think about both the physical symptoms that tobacco smoke can induce, like itchy eyes, or soreness in the nose, throat or chest; and its unpleasantness, such as its smell, and how the smell pervades people's clothing and hair. It may be difficult to make a completely objective judgement about the extent of discomfort. The best thing to do is consult your employees. Try to get people to come to an agreement about how uncomfortable it really is (or can get). If such an agreement is impossible, you will need to take decisions based on your own judgement. Bear in mind what the Code says in paragraphs 32 to 34 below about balancing the needs of employees who smoke and those of employees who do not.

**27** Then think about possible solutions, bearing in mind the control measures you already have in place. Don't rule out possibilities at this stage. Your options include:

completely banning smoking in the workplace;

banning smoking except in designated rooms at designated times (for example, a rest room - but see paragraph 85 below about rest rooms);

having separate smoking and non smoking work areas;

providing adequate ventilation; or

adopting a safe system of work that restricts the amount of time employees have to spend in the smoky area.

**28** These are discussed more in the next section. But before moving on to deciding what to do, gather information about the costs and benefits of each option. For example, ventilation or air cleaning may sound like your best option, but think about the cost of maintaining this type of equipment.

29 You should keep a record of the findings of your risk assessment and judgement about welfare. Keep it in a form that will help you review it at a later date.

### Deciding what to do

Health and Safety at Work etc. Act 1974, section 2(1)

*It shall be the duty of every employer to ensure, so far as is reasonably practicable, the health, safety and welfare at work of all his employees.*

Management of Health and Safety at Work Regulations 1992, regulation 4

*4.-(1) Every employer shall make and give effect to such arrangements as are appropriate, having regard to the nature of his activities and the size of his undertaking, for the effective planning, organisation, control, monitoring and review of the preventive and protective measures.*

*(2) Where the employer employs five or more employees, he shall record the arrangements referred to in paragraph (1).*

ACoP

30 Every employer should draw up and introduce a workplace smoking policy based on the findings of their risk assessment and their judgements about ensuring employee welfare.

31 Employers should involve their employees in drawing up such a policy, consulting safety representatives or other representatives of employee safety appointed under:

the Safety Representatives and Safety Committees Regulations 1977;

the Offshore Installations (Safety Representatives and Safety Committees) Regulations 1989; or

the Health and Safety (Consultation with Employees) Regulations 1996.

The best solutions are often those that have been devised in cooperation with employees.

32 The policy should specify and give effect to the action the employer will take

to keep his employees' exposure to environmental tobacco smoke as low as is reasonably practicable.

33 The policy should also specify and give effect to the action the employer will take to ensure, so far as is reasonably practicable, the welfare of any employees who smoke tobacco.

34 For the purposes of deciding between two conflicting courses of action to be taken in pursuance of paragraphs 32 and 33 above, the employer should give effect to a policy that gives priority to the needs of employees who do not smoke tobacco.

35 The policy should also specify and give effect to any additional action the employer may need to take to protect the health of any employee who has or develops:

asthma;

chronic bronchitis; or

other respiratory conditions

that, in the opinion of a registered medical practitioner, would be made worse by exposure to environmental tobacco smoke.

36 Employers should bring the policy and any revision of it to the attention of all their employees.

#### ***Smoking policies: general guidance***

#### **Guidance**

37 You should introduce a smoking policy for your workplace. You should introduce one even if everyone in your workplace currently smokes tobacco. Smokers are unlikely to want the workplace to be heavy with smoke all the time any more than non-smokers are. Also, people may give up smoking, or you may recruit someone who doesn't smoke. Having a policy in place will help avoid any problems later.

38 If no-one currently smokes in your workplace, you should still have a smoking policy, to avoid problems later if an

ex-smoker starts smoking again, or if you recruit someone who does smoke.

**39** Draw up the policy in consultation with your employees. In larger organisations, you could set up a working group including safety representatives. In smaller organisations, that may not be practical; you may be able to speak to all your employees directly. Consulting employees means listening to their views and taking account of them as far as you can. It does not necessarily mean that you have to do what they (or a majority of them) say. The responsibility for taking decisions and implementing them still rests with you as the employer.

**40** If your organisation has more than one workplace, you may choose to have different policies at different sites. This gives you flexibility, but it may cause resentment if one group of employees feels another has a benefit they do not share. Again, consult your employees.

**41** The policy should aim to reduce employees' exposure to, and so their discomfort from, environmental tobacco smoke to as low a level as is reasonably practicable. The next section describes some of the issues you will need to consider in deciding what action is reasonably practicable.

**42** Your policy should identify any additional measures you may need to take to ensure the health of employees who suffer from asthma, chronic bronchitis or other respiratory conditions whose illness may be made worse by tobacco smoke. Your policy should aim to:

- (a) remove the risk of exacerbating their condition; or, if that is not reasonably practicable
- (b) reduce the risk of exacerbating their condition to as low a level as is reasonably practicable.

**43** Employees should be encouraged to seek medical advice if they are concerned that exposure to environmental tobacco smoke is making them ill. You should also encourage

them to tell you if they have a medical problem that is being made worse by work, so that you can take steps to protect them.

**44** You will not need to take the measures you have identified until you have information from a doctor saying that the employee is suffering from asthma, chronic bronchitis or another respiratory condition that may be made worse by tobacco smoke. It may not be possible to be very specific in your policy about the additional measures you may take, because what you will have to do will depend on how the employee's illness affects them. If it is not reasonably practicable to ban smoking to protect them, other options might include restricting smoking to a specific area where they do not have to work, changing work rotas so the affected employee does not need to go into the smoky area, providing additional ventilation, or moving them to other work, in a less smoky atmosphere.

**45** People with asthma or other long-term illnesses may be regarded as having a disability, within the meaning of the Disability Discrimination Act 1995. Whether they are will depend on how severe their illness is, and how it affects them. Treating employees less favourably because of a disability may be unlawful under the Act.

**46** To decide what is "reasonably practicable" you should strike a balance between the cost (in money, time or trouble) of reducing exposure to tobacco smoke further, with the risk it presents to the health of employees with a pre-existing condition, or the discomfort it causes. Exposure will be as low as is reasonably practicable if the risk to the health of employees with a pre-existing condition or the discomfort from exposure is insignificant in relation to the cost of reducing exposure any further.

**47** Don't forget that the policy should consider all your employees who might be affected, including cleaners and other maintenance staff who may have to go into areas where smoking is permitted.

**48** If any of your employees work remotely - for example, in another employer's workplace or in someone's home - your smoking policy should say how you will make sure that your employees comply with it. If they have to work in a place where smoking is permitted, you will need to think about how you will reduce their exposure to tobacco smoke as low as is reasonably practicable. For example, could you

ask your customers or clients not to smoke (or allow others to smoke) while your employees are working? or

reduce the time they need to spend in the smoky environment?

**49** It is a good idea to record your policy so that everyone is clear about what it says. Make sure that everyone who is affected by the policy knows what it says.

***Smoking policies: what are the options?***

*Banning smoking at the workplace*

ACoP

**50** The most effective way of reducing employees' exposure to environmental tobacco smoke at work is to ban smoking in the workplace. Employers should consider this option first and, unless it is not reasonably practicable to do it, this should be the preferred course of action.

Guidance

**51** In most commercial and industrial workplaces banning smoking is likely to be the cheapest and most effective solution. However, you should consider carefully how you do it, so that you do not introduce any unintended consequences.

**52** In workplaces such as pubs, clubs and restaurants, a complete ban may not be reasonably practicable. However, other measures to ensure employees' welfare will be reasonably practicable, and you should follow the guidance set out below.

**53** There are two main sources of employees' exposure to environmental tobacco smoke:

(a) from fellow employees who smoke; and

(b) from customers, clients, etc. who smoke in the workplace.

### **Exposure from fellow employees' smoke**

**54** In principle, this is the easiest type of ban to enforce, because the employer is in charge of what happens in the workplace. However, it should be done in consultation with employees. See paragraphs 87 to 91 for more guidance on implementing a policy.

**55** If you ban employees from smoking on your premises completely, many smokers will still want to smoke sometime during their work period. You will need to work out how you will manage this. The issues are not insurmountable, but they need some thought.

Will you allow them to leave the premises to smoke?

If you do, is there a safe place where they can do so?

Will you allow them extra breaks to go and smoke? How many breaks will you allow?

If you do not allow them to leave the premises to smoke, they may smoke secretly, perhaps in places where they might cause a fire hazard. How will you manage that risk?

**56** You should also bear in mind that if you do not allow employees who smoke to smoke at all, their morale and work performance might suffer.

**57** You should not simply ignore the welfare needs of employees who smoke. If you decide to ban smoking completely, and it is not reasonably practicable to let employees leave the premises to smoke, you could offer them help to give up smoking. You could do this by giving them information published by bodies such as the Health Education Authority, the Health Education Board for Scotland or the National Assembly for Wales' Health Promotion Division, or you could give them time off to attend smoking cessation sessions.

**58** If a complete ban on employee smoking is not reasonably practicable, the next stage is to consider a partial ban. That is, you could ban smoking on the premises except for certain rooms or areas where smokers can go to smoke. Such rooms or areas will need to be adequately ventilated (see paragraph 79). Providing segregated smoking rooms as rest areas could be one way of helping employees who smoke to accept a policy that generally bans smoking. If there are rest areas or rest rooms used by non-smoking employees as well, you will need to make provision to protect the non-smokers from discomfort (see paragraph 85). You will also need to think about when you will allow employees to smoke: for example, will you allow them to take extra breaks compared with non-smokers, or only during regular breaks?

**59** Smoking rooms may introduce additional costs in terms of space, ventilation and cleaning. Nevertheless, where they are reasonably practicable, they can provide a good solution.

**Exposure from customers', clients' or other visitors' smoke**

**60** It may be necessary for legal reasons, such as for fire safety, to ban smoking by customers or clients in some workplaces or in parts of them.

**61** Even if there is no legal requirement to ban smoking by customers, some employers may choose to do it for business reasons. For example, you may wish to ban smoking:

- (a) to provide a cleaner environment for customers (for example, in the auditoria of cinemas and theatres and in hotel bedrooms); or
- (b) because your organisation provides a health-related service.

**62** Where such a policy has been successfully introduced, this guidance does not require an employer to consider relaxing the restrictions on smoking.

**63** Even if there is no law that means you must ban customers from smoking, and you

choose not to do so for your own reasons, you should nevertheless consider whether it is reasonably practicable under health, safety and welfare law to ban customers or clients from smoking so as to ensure your employees' health and welfare.

**64** If your business is in the hospitality sector it might not be reasonably practicable to ban smoking completely in areas where employees need to work because you wish to cater for customers who choose to smoke. If this is the case, you should consider other measures, described in the next section. The Government's Public Places Charter aims to encourage better provision for non-smoking customers in places such as pubs, restaurants and hotels. Although this Approved Code of Practice is aimed only at helping you protect employees' health and welfare, following it should help you meet your commitments under the Public Places Charter as well.

**65** If the workplace is also someone's home (such as a residential care home), it may not be reasonably practicable under health, safety and welfare law to ban smoking by the people living there. Indeed, in the case of an employee visiting a client in their own home, it would be utterly impractical. However, you should take seriously any employee concerns about the residents' smoking and take all reasonably practicable measures to limit employees' exposure.

**66** Decisions on banning smoking by customers or clients will have to be made on a case-by-case basis. However, it will *usually* be reasonably practicable under health, safety and welfare law to ban completely customers or clients smoking for reasons of employee welfare in places where the public must visit, but where they normally remain for only a short time - for example, in: libraries, bus and railway station ticket offices and buffets, shops, supermarkets, Government (including Local Government) buildings, banks, building societies and post offices. This list is not exhaustive.

**67** Currently, it *may not* be reasonably practicable to ban completely customers or clients smoking where:

- (c) the public must visit, but where they remain for some time - for example, airport departure lounges; or
- (d) the public visit out of choice - for example, restaurants, cafés, public houses, bars, clubs, hotels, casinos and betting shops; or
- (e) people live - for example, the accommodation on an offshore installation, residential care homes, and prisons.

**68** In these cases, you should take other measures, as discussed in the next section.

**69** To reinforce your policy, you could post notices saying where smoking is and is not permitted. This will also help customers or other visitors to comply with your policy.

*Restrictions on smoking short of a ban*

ACoP

**70** If a complete or partial ban on smoking is not reasonably practicable, employers should take one or more of the following measures:

- (a) physically separate ("segregate") employees from environmental tobacco smoke; or where that is not reasonably practicable,
- (b) adequately ventilate the workplace; or where that is not reasonably practicable,
- (c) introduce and maintain a safe system of work.

Guidance

**71** If neither a complete ban nor a partial ban on smoking in the workplace is reasonably practicable, you should use your risk assessment and welfare judgement to decide what other action is reasonably practicable. You may need to do more than one thing to reduce exposure as low as is reasonably practicable.

**72** There is a hierarchy of measures that you should consider in turn. First, consider

whether it is reasonably practicable to keep non-smoking employees physically separate from tobacco smoke. If it is not, or if it is only reasonably practicable to do it to a limited extent, then consider whether it is reasonably practicable to provide adequate ventilation. If it is not, or if it is only reasonably practicable to do it to a limited extent, then consider what other steps you can take to reduce employees' exposure to tobacco smoke as low as is reasonably practicable.

**73** The idea is that you should use a measure higher up the list as far as possible, and use a measure lower down the list only to the extent that it is not reasonably practicable to use one higher.

**74** For example, in a pub or restaurant, it may not be reasonably practicable to ban customers smoking completely. However, as a minimum, you could make the area nearest where employees spend most of their time (e.g. the bar or other serving area) no-smoking [segregation]. You could also provide ventilation or air-cleaning equipment, properly sited, to reduce the amount of smoke in the air [ventilation]. What is reasonably practicable for your situation will depend on many factors.

### **The principles of segregating and ventilating**

**75** Wherever possible, non-smoking employees should be physically separated from tobacco smoke: that is, they should be in different rooms each with appropriate levels of ventilation, and a ventilation system that prevents the migration of tobacco smoke.

**76** Where this is not reasonably practicable, the segregation technique used will be determined by:

- (a) the ratio of smokers to non-smokers;
- (b) who the smokers are (for example, employees or customers/clients);
- (c) the physical arrangement of the area;

(d) existing ventilation arrangements;  
and

(e) the limits of reasonable practicability in introducing new ventilation arrangements.

**77** If physical segregation is not reasonably practicable, segregation within a room should be defined by the ventilation system. Non-smokers and smokers should be allocated to two distinct areas with ventilation rates for each area determined by the level of smoking. The ventilation should ensure that the flow of air is from the non-smoking area to the smoking area.

**78** If this combination of segregation and ventilation is not reasonably practicable, consider extracting air at one end of the room and introducing it at the other. Smokers can then be restricted to the extracted end of the room. If the volume of air extracted is large, you will need to consider how the fresh air will be heated, and its cost.

**79** Good ventilation will reduce the effects of tobacco smoke to a degree, but it will not completely prevent exposure. You should provide enough ventilation to reduce discomfort to a tolerable level. A ventilation rate of 8 litres per second (30 m<sup>3</sup>/hour) of outdoor air per person is usually adequate for non-smoking rooms. But where smoking is allowed this rate needs to be increased to reduce the concentration of environmental tobacco smoke to levels that do not cause discomfort. You may need to seek competent advice from a ventilation specialist. Remember that regulation 6 of the Workplace (Health, Safety and Welfare) Regulations 1992 requires employers at enclosed workplaces to which those Regulations apply, to ventilate workplaces with a sufficient quantity of fresh or purified air. Similar provisions apply in other workplaces.

**80** Air cleaning devices contribute to improving air quality by pulling the air through a series of filters to remove particles and gases from it, and then returning the air to the room. However, such devices have to be sited very carefully and

they need to be properly maintained because their effectiveness can deteriorate over a short time. Follow the manufacturer's advice carefully. They should be seen as a supplement to fresh-air ventilation, not a substitute for it - nor for segregation. They may, however, be the only reasonably practicable solution in buildings that cannot be substantially altered for legal reasons - for example, listed buildings.

**81** Air taken from rooms or workspaces where smoking is allowed should not normally be re-circulated. Separate smoking rooms set up in air-conditioned buildings, for example, should be separately vented to the outside. So, if you decide to ban smoking except in designated smoking rooms, think carefully about where these rooms will be sited.

Here are two examples of how different businesses have solved environmental tobacco smoke problems. They show how straightforward a solution can be.

**Case study: ventilation**

A small, single-room social club recognised that it had a problem from tobacco smoke putting off customers and causing discomfort to the staff. The club also got stuffy and hot when full. A fan was installed to bring in fresh air behind the bar servery and another to take out the stale air at the other side of the room, creating a flow of air away from the barstaff. The cost was less than £1000, but as a result, the air quality improved dramatically. More members visited and drink sales increased.

*(This case study is reproduced with the permission of Atmosphere Improves Results.)*

**Case study: air cleaning**

An office-based company had a smoking policy that allowed smoking only in designated smoking rooms. However, some non-smokers complained about the drift of tobacco smoke from the smoking rooms. Smokers in one of the smoking rooms complained about poor ventilation. The company took advice, and installed air cleaning units in the smoking rooms and just outside them, at a cost of about £3000. The manufacturer of the units

was involved in helping the company decide which units to use and where to put them. These measures resolved the problems in this case.

*(This case study is reproduced with the permission of FOREST.)*

**82** In smaller workplaces, segregation may be very difficult. A comfortable environment may be achieved by opening windows or doors, if the weather permits, or you could consider air cleaning devices. The best solution may be to prohibit smoking in the workplace.

**83** If the measures you need to take would be very expensive, it may only be reasonably practicable to undertake them in conjunction with other planned building works. If the planned works are not to be undertaken for a considerable time, you should set out in your policy what measures you will need to take in the meantime.

**84** If none of these measures is completely effective, you will need to consider a system of work to reduce employees' exposure to tobacco smoke. This may particularly be the case if you have little or no control over where or when smoking takes place (such as if your employees visit people's homes and people there smoke). For example, if additional segregation and ventilation is not reasonably practicable in a residential home for the elderly, one solution might be that the care assistants go into smoking areas for only short periods.

***Special provisions for rest areas and rest rooms***

*Workplace  
(Health, Safety  
and Welfare)  
Regulations  
1992,  
regulation  
25(3)*

*(3) Rest rooms and rest areas shall include suitable arrangements to protect non-smokers from discomfort caused by tobacco smoke.*

ACoP

**85** The existing Approved Code of Practice on the Workplace (Health Safety and Welfare) Regulations 1992 (at paragraph 239) says:

"Rest areas and rest rooms should be arranged to enable employees to use them without experiencing discomfort from tobacco smoke. Methods of achieving this include:

- (a) the provision of separate areas or rooms for smokers and non-smokers; or
- (b) the prohibition of smoking in rest areas and rest rooms."

Guidance

**86** The guidance earlier in this document will help you discharge this responsibility.

### **Taking action: implementing the policy**

*Health and Safety at Work etc. Act 1974, section 2(1)*

*It shall be the duty of every employer to ensure, so far as is reasonably practicable, the health, safety and welfare at work of all his employees.*

ACoP

**87** Your policy should set out who is responsible for implementing the policy and how it will be done. It should set out how the policy will be enforced, and what the penalties for not complying with the policy will be. A policy that has no means of enforcement is pointless.

Guidance

**88** You are entitled to ask your employees to comply with reasonable rules at work, and to take disciplinary action if the rules are broken. Remember, though, that you must introduce a new policy fairly and with consultation of the employees affected, or their representatives. If employees resign and claim to have been constructively dismissed when a smoking ban is introduced, or complain of unfair dismissal after being dismissed for breaching a smoking policy, Employment Tribunals will consider whether you acted reasonably in all the circumstances.

**89** You should read the ACAS Code of Practice "Disciplinary practice and procedures in employment" and their handbook "Discipline at Work" for advice about disciplinary procedures.

**90** A policy is more likely to be accepted if it is phased in over a period of a few months rather than introduced immediately. Employers should consult their employees or their representatives over what would be a suitable period for its introduction.

### ***Employees' responsibilities***

*Health and Safety at Work etc. Act 1974, section 7*

*It shall be the duty of every employee while at work—*

*(a) [not reproduced]*

*(b) as regards any duty or requirement imposed on his employer or any other person by or under any of the relevant statutory provisions, to co-operate with him so far as is necessary to enable that duty or requirement to be performed or complied with.*

*Guidance*

**91** If, after consulting employees, an employer introduces a policy on smoking in the workplace to comply with this Code, employees (including employees of another employer who shares the workplace) should comply with that policy while they are at work.

### ***Keeping the situation under review***

*Health and Safety at Work etc. Act 1974, section 2(1)*

*It shall be the duty of every employer to ensure, so far as is reasonably practicable, the health, safety and welfare at work of all his employees.*

*Management of Health and Safety at Work Regulations 1992, regulation 3(3)*

*(3) Any assessment such as is referred to in paragraph (1) or (2) shall be reviewed by the employer or self-employed person who made it if—*

*(a) there is reason to suspect that it is no longer valid; or*

*(b) there has been a significant change in the matters to which it relates,*

*and where as a result of any such review changes to an assessment are required, the employer or self-employed person concerned shall make them.*

## Guidance

**92** You should keep the operation of your policy under review, in consultation with your employees' safety representatives or safety committee where appropriate. At regular intervals – say, each year – you should check to see whether the measures you have adopted are protecting your employees' health and ensuring their welfare at work. You could do this by asking employees about their working conditions. It might be best to do this through safety representatives, other employee consultation machinery or a questionnaire that provides anonymity for the respondents. In small firms, a less formal approach will be more appropriate. However, bear in mind that you are unlikely to get a complete picture if people think that their (perhaps unpopular) views may be held against them.

**93** If, as a result of this review, your assessment of the risk to health or your judgement about the detriment to welfare changes, you should record the findings of your new assessment. You should then take action to make the necessary improvements.

## Sources of further information

The following organisations publish guidance that may help you devise your smoking policy, or can give more detailed guidance:

Advisory, Conciliation and Arbitration Service (ACAS): contact your local office (look in the telephone directory)

ASH, 16 Fitzhardinge Street, London W1H 9PL

ASH Scotland, 8 Frederick Street, Edinburgh EH2 2HB

ASH in Wales, 374 Cowbridge Road East, Canton, Cardiff CF5 1JJ

Association of Licensed Multiple Retailers, 11 Fairway Drive, Greenford, Middlesex UB6 8PW

*Atmosphere Improves Results*, FREEPOST LON 8895, London NW1 1YU (no stamp required)

Brewers and Licensed Retailers Association,  
42 Portman Square, London W1H 0BB

FOREST, Audley House, 13 Palace Street,  
London SW1E 5HX

Health Education Authority, Trevelyan House,  
30 Great Peter Street, London SW1P 2HW

Health Education Board for Scotland,  
Woodburn House, Canaan Lane, Edinburgh EH10  
4SG

National Assembly for Wales, Health  
Promotion Division, Fynnon Las, Ty Glas  
Avenue, Llanishen, Cardiff CF4 5DZ

Institute of Personnel and Development, IPD  
House, Camp Road, London SW19 4UX

The Restaurant Association, Africa House,  
64-78 Kingsway, London WC2B 6AH

Tobacco Manufacturers' Association, 55  
Tufton Street, London SW1P 3QF

#### General health and safety information

Call HSE's InfoLine, telephone 0541 545500  
or write to HSE Information Centre, Broad  
Lane, Sheffield S3 7HQ.

HSE priced and free publications are  
available from:

HSE Books, PO Box 1999, Sudbury, Suffolk  
CO10 6FS, telephone 01787 881165, fax 01787  
313995.

#### Other information

The Health Education Board for Scotland runs  
an award scheme, "Scotland's Health at  
Work", for organisations that adopt  
health-promoting policies at work. Contact  
HEBS for more information.



## DRAFT REGULATORY IMPACT ASSESSMENT FOR AN APPROVED CODE OF PRACTICE ON PASSIVE SMOKING AT WORK

### 1 PURPOSE AND INTENDED EFFECT OF THE MEASURE

#### (a) Issue and objective

1 Smoking kills about 120,000 people each year in the United Kingdom. The human and societal cost of this is enormous, and the Government announced in its White Paper *Smoking Kills* that it intends to introduce a package of measures both to persuade current smokers to give it up, and to discourage non-smokers from starting in the first place.

2 Passive smoking—inhaling other people’s tobacco smoke—is a particular issue for the workplace. Employers need to strike a balance between the demands of some non-smoking employees for a smoke-free workplace, and those of some smokers for their right to smoke. There is no statutory basis for workplace smoking policies, though the Courts and Employment Tribunals have set out some principles in case law.

3 The Office for National Statistics recently found that 84% of people said they would support restrictions on smoking at work<sup>1</sup>. However, the survey did not examine what kind of restrictions people would be prepared to see, nor how they would be enforced. For example, only 51% of people were willing to see restrictions on smoking in pubs, even though these are workplaces for the bar staff. So HSC is not sure to what extent people will support any proposals for further action under health, safety and welfare law on passive smoking at work. The White Paper announced that HSC would consult on whether to introduce an Approved Code of Practice.

4 HSC wants all employers to agree with their employees and then introduce, policies on smoking at work that ensure so far as is reasonably practicable, their employees’ health and welfare at work. This will consolidate existing good practice.

#### (b) Risk assessment

5 In the case of the workplace, passive smoking has two main effects:

- w it can exacerbate certain diseases, such as asthma and chronic bronchitis; and
- w it causes discomfort—it irritates the eyes, nose, throat and chest, and tobacco smoke has an unpleasant smell.<sup>2</sup>

6 The Government’s White Paper points out the evidence that passive smoking also poses a risk to health. For example, living with a smoker increases the chance that you will develop cancer or ischaemic heart disease (disease that reduces the supply of blood to the heart muscles, increasing the risk of a heart attack). Although there is emerging evidence that exposure to tobacco smoke *in the workplace* may of itself be sufficient to give rise to ill health HSC cannot, at the present time, be certain of the size or extent of the risk.

<sup>1</sup> *Smoking-related behaviour and attitudes, 1997*; S Freeth; Office for National Statistics, 1998; ISBN 185774 289 3.

<sup>2</sup> *Smoking-related behaviour and attitudes*; F Dawe and E Goddard; The Stationery Office: London, 1997; ISBN 0 11 620948 8.

## 2 OPTIONS

### (a) Identification

7 Five options have been considered:

w introduce a new law;

w enforce the existing law more strictly;

w hold a campaign or

w provide better guidance, which could be either

ordinary guidance ; or

an Approved Code of Practice.

#### *A new law*

8 HSC cannot be specific about what employers should do to control passive smoking in every workplace, so prescriptive health and safety regulations about passive smoking could well be unreasonable and unenforceable. This would especially be the case in certain sectors where the workplace is also a public place (for example, pubs and restaurants), or provides accommodation for off-shift workers (for example, offshore installations)

9 An alternative would be to propose goal-setting regulations. However HSC considers that existing goal-setting health, safety and welfare laws already adequately cover the subject HSC does not believe that there is a convincing case for more law.

#### *Stricter enforcement*

10 HSC could ask HSE and LAs to enforce the health, safety and welfare law that currently applies to passive smoking more strictly, with Improvement Notices or by taking prosecutions

11 While on the face of it, this sounds attractive, in reality HSC believes this would cause immense practical difficulties. Before starting a prosecution, a health and safety inspector must be convinced that the case has a reasonable prospect of resulting in a conviction. And in Court the inspector must prove beyond reasonable doubt that the employer failed to ensure, so far as was reasonably practicable, the health, safety or welfare of their employees. Proving beyond reasonable doubt that passive smoking at a particular workplace was a risk to health is likely to be very difficult, given the state of the scientific evidence. Inspectors are therefore unlikely to proceed with a case that addressed only the general risk to health from passive smoking. Inspectors would need to rely on proving that the employer had not ensured their employees' welfare. This has traditionally been seen as a less important issue than ensuring health or safety. A defendant might successfully argue that this was a trivial issue. A Court might well impose only a nominal penalty on conviction. If this happened, it might not provide sufficient incentive for others to take action.

12 An alternative approach, of serving an Improvement Notice, might be more effective. However, if an employer appealed to an Employment Tribunal against such a notice, an inspector would face many of the same difficulties as in a prosecution. In particular, the inspector would need to prove to the Tribunal what action to ensure health and welfare was

reasonably practicable. There is little current guidance on this specific point. HSC is therefore not convinced that there is a sound basis for relying heavily on formal enforcement without some means of being clear about the standard of protection employers are expected to reach.

#### *A campaign*

13 A campaign could increase awareness of HSE's guidance. However, the Health Education Authority, the Health Education Board for Scotland and the National Assembly for Wales' Health Promotion Division already run smoking awareness campaigns, including on passive smoking at work. HSC does not consider there is much scope for it to add to their efforts on campaigns.

#### *Better guidance*

14 HSC or HSE could issue revised guidance, setting out more explicitly what employers should do about passive smoking to comply with health, safety and welfare law. Such guidance could indicate what standard of protection employers should seek to achieve for their employees. This might encourage those employers who do not have a smoking policy that ensures employees' health and welfare, to introduce one.

#### *An Approved Code of Practice*

15 HSC also considered issuing an Approved Code of Practice (ACoP). ACoPs have a special status in law. It is not of itself an offence not to do what a Code says. However, a Code can be introduced as evidence in a prosecution. If it is proved that the employer did not follow the relevant provisions of the Code, the Court will find them guilty of the offence unless they can prove they have complied with the law in some other way. Similarly, in an appeal against an Improvement Notice before an Employment Tribunal, an ACoP can be used to illustrate what an employer would need to do to comply with an Improvement Notice. ACoPs are, therefore, much more persuasive than ordinary guidance. People tend to do what an ACoP says because if they do, they avoid the risk of Court proceedings or enforcement notices.

16 On balance, HSC considers that people might support a move in this direction because, while an ACoP is a form of guidance, it is a particularly persuasive form of guidance. It might succeed where ordinary guidance has not and therefore this may be the right approach if people support taking more action on this issue under health, safety and welfare law.

### **(b) Issues of equity and fairness**

17 Is it fair that the proposed Approved Code of Practice should apply to the hospitality industry despite their agreement to the White Paper's voluntary charter on smoking in public places, and the business need of that sector to cater for smoking customers? On the other hand, is it fair to exclude employees in this sector from the protection an ACoP would afford?

18 Is it fair that the proposed Approved Code of Practice says that where the welfare needs of smoking employees and non-smoking employees come into conflict, priority should be given to the needs of non-smoking employees?

19 Is it fair that people who do not wish to be exposed to tobacco smoke are nevertheless being exposed?

### 3 INFORMATION SOURCES AND BACKGROUND ASSUMPTIONS

20 Information to derive the likely benefit and impact to society from introducing the ACoP comes from several sources. These are reported in the relevant paragraphs. To estimate costs to business (small, medium, and large firms), and to the public sector, HSE commissioned an independent consultant W. S. Atkins, to conduct a survey of organisations of varying size and sectors. The survey was also used to provide information for the Small Business Litmus Test.

21 Since some of the figures quoted are subject to uncertainty, wherever possible we have provided a range of figures. In other cases, a best estimate has been made, or an assumption made on the basis of the—sometimes very limited or mixed—available evidence.

22 The base year for appraisal is year 1998/1999. Costs and benefits are calculated in 1998/99 prices over a ten year period.<sup>3</sup>

### 4 BENEFITS

#### (a) Health benefits

23 Benefits will in general depend on the type of policy chosen following the introduction of the ACoP, and on the current prevalence of smoking in the workplace. The benefits may be broadly divided into health, safety, welfare benefits to society and cost savings to employers.

24 Environmental tobacco smoke (ETS) can aggravate respiratory conditions such as asthma and chronic bronchitis.

25 An ONS Omnibus survey<sup>1</sup> showed that only 13% of adults worked on premises that did not restrict smoking in 1997, and that about 24% of adults (aged 16-64) smoke. If the above proportions are applied to the working population in GB (about 25 million people), about 6 million workers are likely to be smokers and 19 million workers non-smokers. Of these, about 2.5 million (13% of 19 million) may be affected by ETS. However, a recent MORI survey<sup>4</sup> suggested that this is an underestimate and that about 3.4 million people (18% of 19 million) are currently affected by ETS at work.

26 The Health Survey for England carried out for the Department of Health in 1996 showed that the prevalence of doctor-diagnosed asthma is about 10% among adults aged 16-64. If it is assumed that the same percentage applies to the whole of GB, we have that about 2.5 million workers (10% of 25.08 million) may have doctor-diagnosed asthma in GB. We do not have similar information for chronic bronchitis sufferers. We have assumed that a maximum of 5% of the working population is at risk from chronic bronchitis (about 1.3 million people).

27 A survey<sup>5</sup> of 52,000 people with asthma by the National Asthma Campaign showed that 59% of the people interviewed said their symptoms were made “a great deal”, or “quite a lot” worse by a smoky atmosphere. It is unlikely that all these people would need to take time off work because of their condition. HSE has conservatively assumed that, in any given year, 25% of the workers at risk from asthma (about 112,000 people)<sup>6</sup> and 25% of the workers at risk from

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<sup>3</sup> In arriving at ten year cost figures (throughout this RIA, except for the cost savings from avoiding fires) two adjustments are made. Firstly, earnings are assumed to rise by 1.8% per year in real terms - the observed increase for the whole economy over the past twenty-five years or so. Secondly, costs are discounted to present value using the Treasury recommended 6 per cent discount rate.

<sup>4</sup> Reported in *Smoking at work: the butt stops here*; ASH, the National Asthma Campaign and TUC, 1999.

<sup>5</sup> *The impact of asthma survey*. National Asthma Campaign, Allan & Hanburys Ltd, 1996. Survey research by Gallup.

<sup>6</sup> About 2.5 million workers may have asthma and about 18% (447,000) of them may be subject to ETS. We assume that 25% of 447,000 (111,800) may have their condition made worse by ETS at work.

bronchitis (about 56,000 people)<sup>7</sup> may have their condition made worse by ETS at work, and as a result may each have to take between one and two weeks (in total) off work. This means that between about 0.8 million and 1.7 million days work would be lost each year. Based on average annual earnings<sup>8</sup>, absence would cost between £83 million and £166 million per year, and between £700 million and 1.4 billion over a ten year period, in present value terms.<sup>9</sup>

28 There will also be costs to society due to medical treatment for sufferers. HSE has assumed that each period of absence is associated with one visit to the GP and one prescription. This implies that there are £30<sup>0</sup> per absence costs to the NHS, which, multiplied by the number of people taking sick leave, is equal to £5 million per year, and over a period of ten years equals £40 million, in present value terms.

29 Note that the above figures do not include any loss of income through having to change job, nor the costs of pain and suffering associated to asthma/chronic bronchitis, since passive smoking only exacerbates the illness, rather than causing it. We note, however, that the impact of passive smoking on people with asthma/chronic bronchitis may involve self-exclusion from smoky workplaces.

## (b) Safety benefits

30 The proposed ACoP may reduce smoking-related fires, and, therefore, fire fatalities, injuries and direct property damage. The Home Office Statistical Bulletin, November 1998, shows that deaths and injuries from fire in the workplace were 30 and 2,111, respectively, in 1997. Of non-fatal casualties, 495 involved burns, 661 reported being overcome by smoke or fumes, and 955 included physical injuries, shock only, precautionary check up and other. The Bulletin shows that only 55% of fires were accidental, and about 12% (i.e. 2,900) of accidental fires were caused by smoking materials and matches. The Association of British Insurers<sup>11</sup> reports, in 1998, a total of £601 million spent in non-domestic fire claims and £207 million in business interruption claims following fire damage. If the claims approximate the actual costs to business, and we assume that only 55% of them were due to accidental fires, and only 12% were due to smoking and we also scale down the above UK figures<sup>12</sup> to obtain GB figures, we have that about £52m damage, 2 deaths and 139 injuries (of which 33 involve burns and 44 report being overcome by fumes) per year are caused by smoking in the workplace.

31 HSE has assumed that the introduction of the ACoP may mean a reduction of only about 80% of fires, since it is possible that some fires will be caused by clandestine smoking. To give a monetary value to the deaths caused by fires, the DETR's value of a statistical life is used about £960,000 in 1998/99 prices.

32 As far as injuries are concerned, a study<sup>13</sup> on the cost of fires suggests the following:

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<sup>7</sup> About 1.25 million workers may have chronic bronchitis and about 18% (224,000) of them may be subject to ETS. We assume that 25% of 224,000 (56,000) may have their condition made worse by ETS at work.

<sup>8</sup> The 1998 New Earnings Survey gives the average annual earnings (all occupations) as £19,561. Adding an allowance for non-wage labour costs, gives £25,429 annual cost of staff time per worker.

<sup>9</sup> It is assumed that benefits increase by 1.8% per year in real terms - in line with the assumptions for earnings.

<sup>10</sup> Unit costs of Health and Social Care, 1997, by Netton and Dennett report the following cost £10 per GP consultation, and £18 cost of prescription in 1996/7. The figures have been updated to 1998/99 by assuming an annual increase of 4%, the average rate of annual increase of unit costs for hospital and community health services in the past five years. There on, the annual costs due to medical treatment are assumed to be the same each year, and are discounted using a 6% discount rate.

<sup>11</sup> Association of British Insurers, *News Release*, 24 February 1999.

<sup>12</sup> The scaling factor used is 2.28%, the proportion of Northern Irish private companies over UK companies.

<sup>13</sup> D. Roy, 1997, *The cost of fires: a review of the information available*, Home Office, ISBN 1 85893 932 1.

- i) treating injuries involving burns as serious;
- ii) it is not clear how many of the reported instances of being overcome by smoke involve long-term damage to health: a figure of 25% is suggested and treated as serious;
- iii) no cost is ascribed to other cases of being overcome by smoke and fumes;
- iv) the instances involving physical injuries, precautionary check-up and other/unspecified are regarded as minor.

We follow this approach and use DETR values<sup>14</sup> for serious (£109,000 in 1998/9 prices) and minor (£149, for “non-whiplash” slight injuries) non-fatal injuries. The present value of avoiding smoking-related fires over a period of ten years is, therefore, equal to about £222m damage, £9 million in deaths avoided, and £23 million in injuries avoided<sup>15</sup>.

33 An Audit Commission report<sup>6</sup> informs that the marginal cost to the fire services of responding to a typical incident is around £108. This means a total cost avoided to the fire services of about £0.2 million the first year, and £13m over a ten year period, to attend fires

34 To the above, we need to add the costs of administration of insurance claims, which constitute a cost in resource terms. D. Roy, 1997,<sup>17</sup> suggests a rough estimate would be that these amount to between 10% and 20% of gross claims. We have assumed a conservative estimate of 10% and obtain a cost avoided of £4m during the first year and £22 million over a ten-year period in present value terms.

35 Note that the actual figures will be influenced by the policy chosen by the organisations following the ACoP. It is possible that more fires will be avoided if smoking rooms are in place, because a complete ban may lead to smoking clandestinely, which may lead to fires because of the absence of proper disposal facilities.

### (c) Cost savings

36 Employees may be less effective because they feel fatigued or suffer from headaches, eye irritation etc. Little data exist on productivity lost due to ETS. A survey of US government office buildings, quoted by the United States Occupational Safety and Health Administration, OSHA,<sup>18</sup> attributes an average productivity loss of 14 minutes per day or 3% to poor indoor air quality. Similarly, and again in the USA, the National Energy Management Institute<sup>12</sup> estimates that there is an increase in productivity of 3.5% or approximately 15 minutes per day for employees in a building that starts as an unhealthy building and then becomes a healthy building, after indoor air quality improvements.

<sup>14</sup> See 1997 Valuation of the benefits of prevention of road accidents and casualties *Highways Economics Note no. 1*, September 1998, DETR, and J. M. Hopkin and H. F. Simpson, 1995, *Valuation of road accidents*, TRL Report 163, ISSN 0968-4107.

<sup>15</sup> In arriving at ten year figures, two adjustments are made: firstly costs to the fire services, damage, deaths, injuries due to fires caused by smoking are assumed to decrease by 10% each year - in line with the observed trend of accidental fires over the past eight years. Secondly, safety benefits (for deaths and injuries avoided) are discounted to present value using a 2% discount rate. This is because health and safety benefits are seen as having a broadly constant utility value over time, regardless of changes in income, and could therefore be valued in "today's" values and discounted at the rate of pure time preference for "utility".

<sup>16</sup> *In the line of fire*, Audit Commission 1995, provides a figure of around £100, which is updated to 1998/99 prices using GDP deflator at market prices.

<sup>17</sup> See footnote 13.

<sup>18</sup> *Indoor Air Quality*, Occupational Safety and Health Administration (OSHA) Federal Register number 59:15968-16039, May 1994.

37 According to OSHA, ETS represents one of the strongest sources of indoor air contaminants in buildings where smoking is permitted. However, since in some workplaces smoking is restricted to certain areas, its contribution to indoor air quality in some workplaces may be minor. Furthermore, empirical evidence on productivity gains is mixed. An Australian study,<sup>19</sup> for example, reports that a total ban on workplace smoking had little perceived effect on productivity. In view of the above, HSE has assumed that there would be only a 1% productivity gain as a result of the ACoP.

38 In order to quantify the productivity improvements, the average annual employee payroll<sup>20</sup> is multiplied by 1% and by the number of non-smoker workers exposed to ETS. It is assumed that 20% of workers (0.7 million) only work part-time, to reflect national statistics on full and part-time workers. This means about £0.78 billion per year of productivity gain following the introduction of the ACoP.

39 However, these benefits must be balanced against costs to employers in terms of productivity loss by smokers, since productivity may decrease due to smokers going outside, or in a separate ventilated room, to smoke. A study by Borland<sup>21</sup> et al., 1997, shows that, in non-smoking workplaces in Australia, smokers reported consuming a daily average of about 5.4 cigarettes during work breaks. While much of this activity occurs in legitimate work breaks, some of it (1.3 cigarettes) appears to be taking place during work time and this represents a cost to employers.

40 ONS (1997) reported an average of 10 cigarettes a day consumed by UK smokers, therefore the above figure of five cigarettes at work may well be applied to British smokers. The consumption of 1.3 cigarettes is considered to take about 14 minutes (3% productivity loss) on average, since the time spent depends on the time needed to get to a smoking room or an outdoor place. Since about 18% of 6 million workers are assumed to currently smoke without restriction we estimate, by using the same assumptions as before, that costs in terms of productivity loss would be equal to £0.74 billion per year due to the ACoP (note, however, that some companies may avoid this cost by asking smokers to clock off or by providing mechanical ventilation).

41 Therefore, annual net benefits in terms of productivity gains would equal £1 million, and over a period of ten years equal £0.3 billion, in present value terms.<sup>22</sup>

#### (d) Welfare benefits

42 The ONS Omnibus Survey, 1997,<sup>1</sup> shows that for 56%<sup>23</sup> of non-smokers, passive smoking is a cause of discomfort, some of the problems being that ETS affects their breathing, irritates their eyes, makes them cough, sick, or gives them headaches. Other reasons for saying that they would mind if smokers smoke near them is the unpleasant smell. There is no information on non-smokers' willingness to pay to avoid passive smoking, therefore the benefit of restricting exposure are unquantifiable in monetary terms.

43 These benefits, though, need to be balanced against the welfare costs, in terms of, say, lower morale, to those workers who may cease to be allowed to smoke in the workplace (the actual number depending on whether mechanical ventilation/smoking rooms facilities are implemented). These costs are also unquantifiable in monetary terms.

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<sup>19</sup> B. Hocking, R. Borland, N. Owen, and G. Kemp, 1991, *A total ban on workplace smoking is acceptable and effective*, in *Journal of Occupational medicine*, vol. 33, no. 2.

<sup>20</sup> The *New Earning Survey*, ONS, 1998, reports £19,561 as the average annual earnings for all occupations. This figure is increased by 30% to allow for non-wage labour costs to give £25,429 average annual cost of staff time per worker.

<sup>21</sup> R. Borland, M. Cappiello, and N. Owen, 1997, *Leaving work to smoke*, in *Addiction*, vol. 92, no. 10.

<sup>22</sup> It is assumed that benefits increase by 1.8% per year in real terms - in line with the assumptions for earnings.

<sup>23</sup> Note that the ONS figure refers to exposure to ETS in general, i.e. not exclusively in the workplace.

### (e) Other unquantifiable benefits

44 ETS contributes to increased maintenance and cleaning expenses, which include: the need to paint walls more frequently, to clean, repair and replace furniture, upholstery, carpeting and curtains that have cigarette burns and/or odours; the need to wash surfaces that attract ash; and the need to clean ashtrays. A survey of 2000 US companies that had adopted no-smoking policies found that 60% of these companies were able to reduce their cleaning and maintenance costs and save about £300 per smoker per year. We do not know of similar studies carried out in the UK, and we do not know with certainty how many companies will introduce bans. Moreover, cleaning costs are specific to each particular employment situation and are extremely difficult to generalise. We therefore do not attempt to quantify these benefits in monetary terms.

45 Smoke may also damage machinery (e.g. fine measuring equipment and electrical components). ETS may therefore cause repair, and/or replacement costs resulting from deteriorated appliances. No quantitative estimates are available on the effects of smoke on equipment.<sup>24</sup>

46 Finally, the introduction of a no-smoking policy or other restrictions on smoking may reduce consumption and/or encourage quitting<sup>25</sup> and hence may reduce smokers' absences due to smoke-related ill health. On the other hand, though, a study by Ault *et al.*, 1991, suggests that it is possible that smokers may tend to be absent more often if the smoking policies in place result in reduced job satisfaction.<sup>26</sup>

### (f) Total benefits

47 Total quantifiable (in monetary terms) benefits to society for introducing an ACoP on passive smoking equal between £1.4 billion to £2 billion over a ten year period, in present value terms.

	<b>Benefits (over ten years) £m, 1998/99 prices</b>
Health benefits (lost output)	698 - 1,397
Health benefits (medical treatment)	40
Safety benefits (damage, deaths, injuries)	254
Safety benefits (cost to fire services)	1.3
Safety benefits (administration costs)	22
Cost savings (net productivity gain)	344
Welfare benefits	unquantifiable
Cleaning costs and damage to equipment avoided	unquantifiable
<b>Total</b>	<b>1,359 -2,058</b>

<sup>24</sup> See S. Parrott, C. Godfrey and M. Raw, 1996, *Cost and benefit analysis of smoking cessation in the workplace*, Final report to the Health Education Board for Scotland, University of York; and H. Nelson, 1986, *The economic consequences of smoking in Northern Ireland*, Ulster Cancer Foundation.

<sup>25</sup> See ASH Briefing: *Smoking in the workplace*, 16 November 1998

<sup>26</sup> R. W. Ault, R. B. Ekelund Jr, J. D. Jackson, R. S. Saba and D. S. Saurman, 1991, Smoking and absenteeism, *Applied Economics*, 23

## 5 COMPLIANCE COSTS FOR BUSINESS, CHARITIES AND VOLUNTARY ORGANISATIONS

### (a) Business sectors affected

48 All sectors are going to be affected, but the hospitality industry is the most likely to face high costs. Whereas it is practicable to ban smoking at work in most places (with no costs), it may be difficult to do so in pubs, restaurants and hotels, or in residential care homes. This is confirmed by the results of the Omnibus survey 1997<sup>27</sup>, which show that 42% of the people interviewed would take the provision of no smoking areas into account when deciding where to go for a meal, and 19% for a drink. Moreover, the survey report that only 51% and 85% would support restrictions in pubs and restaurants, respectively. Nevertheless, we note that banning smoking may not have an adverse impact on takings. Studies<sup>28</sup> from the US show that in bars and restaurants in areas where smoking bans have been introduced, there is no reduction in takings, since provisions for non-smokers may offset any loss from smokers that leave.

49 The number of British organisations likely to be affected, by size, is shown in table 1. Table 1 excludes all businesses with zero employees and includes non-profit organisations. Public sector organisations are also in the table, even though costs to the public sector are commented on separately.

	All sectors excluding hospitality industry	Hospitality industry	Total
small	1,078,797	91,070	1,169,867
medium	25,383	1,409	26,792
large	6,978	246	7,415
public	3,166		3,166
total business			1,203,883
<b>total</b>			<b>1,207,049</b>

### (b) Compliance costs to business

50 For the evaluation of the 1992 “Six-Pack” Regulations,<sup>30</sup> views were sought from a random sample of organisations from all industrial and service sectors. NHS Trusts, local governments and charities were also included. The evaluation found that currently only 16% of organisations provide separate rest or eating areas for smokers and non-smokers, 42% did not provide separate facilities and the same proportion, 42%, reported having a no-smoking policy on the site. Large organisations and industrial organisations were most likely to provide these facilities. Furthermore, a survey<sup>31</sup> carried out in 1996 reported that only 36% of restaurants and cafés, and 14% of pubs had effective smoking policies in place.

<sup>27</sup> See footnote 1.

<sup>28</sup> See S. A. Glantz and L. Smith, 1997, The effect of ordinances requiring smoke-free restaurants and bars on revenues: a follow-up, *American Journal of Public Health*, vol. 87, no. 10.

<sup>29</sup> Figures for small, medium, large firms and public sector are from *Small and Medium Enterprise Statistics for the UK, 1997*, SME Statistics Unit, Department of Trade and Industry, July 1998.

<sup>30</sup> M. Hanson, K. Tesh, S. Groat, P. Donnan, P. Ritchies, and R. Lancaster, *Evaluation of the Six-Pack regulations 1992*, prepared by the Institute of Occupational Medicine for the HSE, contract research report 177/1998.

<sup>31</sup> NOP, 1996, *Smoking in public places: second survey report*.

51 The estimation of the following one-off and annual costs relies on a survey<sup>32</sup> commissioned by HSE especially for this RIA and carried out by independent consultants. Sixty-nine organisations, both in the private and in the public sector, were interviewed. Another 30 organisations were contacted but not included in the final report because they had a total ban in place.

52 In view of the above, the following assumptions were made:

- a) only organisations with at least one employee may face some costs
- b) of these, only 42% (about 506,100 organisations) are likely to face some costs;
- c) 63% of large and public organisations already provide facilities to reduce discomfort from ETS (in form of safe systems of work, and/or ventilation and/or partial ban) and therefore do not face costs (this percentage assumes the sample in the W. S. Atkins study is representative of the rest of GB);
- d) only 36% of restaurants do not face costs;
- e) only 14% of bars do not face costs;
- f) about 60% of small and medium organisations do not face costs (either they already have ventilation systems, or the workplace is outdoors).

53 Therefore, the number of organisations facing costs will be as in table 2:

	<b>All sectors excluding hospitality industry</b>	<b>Hospitality industry</b>	<b>Total</b>
small	431,519	62,644	494,163
medium	10,153	778	10,931
large	2,582	133	2,715
public	1,171		1,171
total business			507,809
<b>total</b>			<b>508,980</b>

54 Note that non-profit organisations are included in the table. These constitute about 4% of the total (non-public) organisations.

55 The cost estimates provided by W. S. Atkins are per size of firm/venue, rather than organisation. It is very difficult to obtain precise information on the number and size of work establishments in Britain. It is hoped that the organisations themselves will contribute to improve this piece of information during the consultation period.

56 The 1995 Census of Employment provides estimates of the number of “units” by industrial classification. “Units” in the Census very roughly correspond to establishments. The Census of Employment’s figures suggest that, on average, there are about 2 venues per medium and large organisations, and 10 venues per public sector organisation.

57 We have more information on the hospitality industry. According to the British Hospitality Association and the Brewers and Licensed Retailers Association, there are about 300,000 hotels, restaurants, cafés and fast-food outlets in Britain, and about 60,000 pubs in the UK. The Restaurant Association also suggests that some organisations may have between 100 and 350

<sup>32</sup> W. S. Atkins, 1999, *Passive smoking*, Report to HSE (RSU Reference 5218).

units. Similarly, some hotels groups have between 50 and 280 hotels in the UK. In view of this information, HSE has assumed the following for the hospitality organisations in table 1: on average, there are 2 venues per small organisation, 100 venues per medium organisation, and 150 venues per large organisation

58 In what follows, one-off and recurrent costs are, therefore, always calculated for the organisations in table 2, multiplied by the above factors to account for multiple venues per organisation.

### **(i) One-off costs**

59 One-off costs are faced during the first year of implementation of the ACoP. However, the hospitality industry, where the management of individual venues and the staff tend to change more frequently than in other workplaces, may face these costs more often. To take this into account, HSE has assumed that the hospitality industry faces “one-off costs” on average every 5 years.

#### *Familiarisation*

60 Organisations will have to spend time acquainting themselves with the ACoP, deciding how it applies to their circumstances and communicating the message to appropriate staff. These costs are quantified as management costs and estimated as: 2 hours spent by small organisations, 4 hours by medium and 8 hours by large organisations. This time allows a representative officer such as a safety officer or a manager<sup>33</sup> to go through the proposals and become familiar with the requirements as they apply to the organisation. For small firms, this would not take very much time, whereas for large firms, there may be line managers and other parties to consult. In no case has any surveyed organisation thought it would take more than one working day to familiarise with the ACoP. This cost, for all the organisations in table 1 (except the public sector), is equal to £69 million.

#### *Risk assessment*

61 None of the organisations interviewed were considered to be carrying out a suitable risk assessment. Some of the organisations had assessed the risks from smoking due to the storage of use of highly flammable liquids, but the draft ACoP requires employers to undertake an assessment to identify measures necessary to protect employees who suffer from asthma or chronic bronchitis; judge the extent of their employees’ discomfort due to ETS (welfare judgement) and to identify the sources and quantity of smoke.

62 The amount of time spent will vary depending upon each organisation's individual circumstances and policy already in place. If smoking is already partially banned everywhere apart from smoking rooms, the risk assessment will be very quick. If there are many different sites where people smoke, the assessment may take a considerable amount of time. The survey estimated that the time spent may range between 2 and 26 hours. Average figures of 6 hours for small, 12 hours for medium, and 12 hours for large organisations were assumed by W. S. Atkins. The total costs for non-public organisations in table 1, are therefore equal to £98 million.

#### *Drawing up and introducing a smoking policy*

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<sup>33</sup> HSE assumes that the time to familiarise, assess risk etc. is spent by managers in small and medium firms, and by health and safety officers in larger companies and in the public sector. The New Earnings Survey 1998, gives the average hourly wage (excluding overtime) of a manager and administrator, and of an occupational hygienist and safety officer as £14.65 and £12.36, respectively. Adding a 30% allowance for non wage costs, suggests that £19 and £16, respectively, are reasonable estimates. It is thereafter assumed that earnings rise by 1.8% per year in real terms.

63 The draft ACoP requires employers to draw up and introduce a smoking policy that sets out how employees will be protected from ETS at work.

64 The survey found that fewer small firms have policies currently in place, compared to larger companies. Organisations that have a written policy may nevertheless need to review it in line with the ACoP. Average figures of 10 hours for small, 4 hours for medium, and 2 hours for large organisations were determined by taking into account that, of the organisations surveyed, about 35% small, 74% medium, 87% large firms were already complying with the ACoP. Total costs are equal to £256 million.

#### *Reducing exposure*

65 The cost of reducing employees' exposure to ETS depends on the nature and size of the organisation and the assessed need for extra measures. Costs vary on a site-by-site basis and are very difficult to extrapolate to other firms. Moreover, the surveyed organisations were often unable to determine, previous to the risk assessment, whether they were already complying with the proposals, or, if they were not, whether they would choose a complete ban, a safe system of work or mechanical ventilation.

66 The one-off costs for control measures to reduce exposures will depend on the choice the organisation makes: no costs if a ban is implemented, little (mainly in terms of time spent to elaborate the system) if a safe system of work is chosen, high costs if ventilation is necessary.

67 Unless a ban is chosen, there would be costs in terms of time spent to consider the various options and to develop and implement the control strategies (e.g. review of location, identification of areas where a safe system of work is required, negotiation with employees etc.). The survey showed that smaller firms bear proportionately higher costs because they tend to have worse existing control measures than the larger ones.

68 The average time (excluding outliers) spent to reduce exposure, by organisation size, emerges from the survey as: 11 hours per small firm, 9 hours per medium and 22 hours per large firm.

69 Of the organisations surveyed, none segregated the workplace specifically into non-smoking and smoking areas. Some of them had shared rest-rooms for smokers and non-smokers. Of the total, 4% had implemented arrangements to prevent discomfort to non-smokers by, for example, the provision of suitable extraction systems or by only allowing smokers to smoke at specific times. Hence, they were considered to be complying with the ACoP. Instead, 12% had shared rest areas for smokers and non-smokers without any suitable provision to prevent discomfort to non smokers.

70 None of the organisations indicated they would provide smoking rooms as the result of the implementation of the ACoP: if this were to be considered the only way to reduce exposure, firms would prefer to ban smoking altogether to avoid additional expense.

71 Some organisations may consider safe systems of work for groups of employees if other control strategies are not considered to be reasonably practicable. Examples included allowing domestic services to enter rooms only when residents are not smoking, and considering the work routine of bar staff in relation to smoking areas in a large restaurant/bar. In some cases, mixed strategies were considered, for example a hotel would implement a total ban on smoking for all staff wherever they are in the building, and would introduce safe systems of work for the bar staff and domestic service staff.

72 Although several organisations recognised that they may implement a safe system of work, none were able to state exactly what they would do until they had formally assessed the risks.

73 Of the organisations interviewed, 17% would require ventilation, unless they opted for a ban.

74 In view of the above, HSE has made the following assumptions

- a) 40% of the organisations in table 2 would implement a ban and have therefore zero costs;
- b) 5% of the organisations already have a ventilation system in place or arrangements to prevent discomfort from ETS. They would therefore have zero costs;
- c) 39% of the organisations would implement a safe system of work, and therefore the only costs are those related to time spent to decide and implement the control strategy;
- d) 15% of the organisations would need mechanical ventilation;
- e) very few organisations (1%) would provide a smoking room as the result of the introduction of the ACoP. W. S. Atkins provides two examples of a large organisation who was currently providing new purpose built smoking rooms at the cost of £35,000 each, and a small organisation who estimated it would cost £2,000 to provide one. We have used these estimates to calculate the costs per large and small organisation, and assume a cost of £15,000 per medium organisation and
- f) all business sectors follow the above assumptions, except that, in the hospitality industry, 80%, rather than 15%, implement mechanical ventilation as a result of the ACoP; 1% will provide smoking rooms, and the rest will introduce safe systems of work.

75 It is very difficult to assess average costs of mechanical ventilation per organisational size. There are many factors which influence the costing that are not closely related to organisational size. In determining the costs of ventilation systems for those surveyed companies which would need to implement mechanical ventilation (nine organisations), W. S. Atkins provided two estimates: the lower ones include stand-alone filters and cleaners that could be wall- or ceiling-mounted; the higher estimates include full ducted extraction systems. In other two cases, actual likely costs were provided by the organisations interviewed. The costs varied from £400 to £20,000, depending on the requirements of the organisation. Only one example of costs per medium firm, and one example per large firm were provided.

76 The following costs (average low, to average high cost per organisational size) are assumed in our calculations: £2000 to £7000 per small firm and £2500 to £12000 per medium firm. The costs for the single large firm in the W. S. Atkins report vary from £6000 to £9000. However, this is unlikely to be representative of the costs faced by a typical large organisation, which may face much higher costs. In the Publican Market Report 1997, the results of a survey of 971 pubs show that the costs for a large venue would range between £5000 and £30000. HSE has adopted this range and assumed it applies to large venues in other sectors as well.

77 Costs for reducing exposure would therefore be equal to about £8m in time spent, between £580-2,400 million in mechanical ventilation systems and £39 million in providing smoking rooms

## **(ii) Recurring costs**

78 These are given by the time spent to maintain the policy and risk assessment, to monitor and audit the policy, and to maintain the control strategies (mainly the maintenance costs of mechanical ventilation systems). As pointed out before, recurring costs for the hospitality industry include “one-off costs” recurring after five years. The costs are derived assuming the following hours of work spent, by organisation size:

- a) Policy: ½ hour per small firm, 1 hour per medium and 2 hours per large firm, per year; same assumptions for monitoring and auditing the policy.
- b) For risk assessment and safe system of work review: 1 hour per small company, 2 hours per medium and 4 hours per large company, per year.

79 Annual costs equal £70 million, and over ten years they equal £60 million, in present value terms.<sup>34</sup>

80 The maintenance costs of mechanical ventilation systems are assumed by W. S. Atkins to be between 5-15% of the installation costs per year. Other studies estimate annual operating costs to be about 5%. HSE assumes costs per year would be on average 10% of the initial set-up costs. Costs, over ten years, would be equal to between £1.3 billion and £5 billion.<sup>35</sup>

## **(iii) Total compliance costs**

81 Total one-off compliance costs to business and non-profit organisations equal £.3 billion to £3.2 billion. Total recurring costs over a ten year period are equal to between £.9 billion and £5.7 billion.

82 The survey carried out by W. S. Atkins shows that the costs of implementing the ACoP are not seen as excessive, except when mechanical ventilation systems are required to reduce ETS. Because the hospitality sector is more likely to need ventilation systems, proportionately this sector incurs the greatest costs. For this industry, one-off costs to reduce exposure are equal to £46 million in time spent setting up a strategy, £21 million to provide smoking rooms, and between £436 million to £1.9 billion in mechanical ventilation. Recurring costs due to maintain and reinstall (every five years) mechanical ventilation systems are equal to between £644 million and £2.8 billion over a ten year period. Other recurring costs (“one-off costs” every five years) to set up a policy, provide smoking rooms and reduce exposure (time spent) equal £159 million over a ten year period. Thus, more than 60% of costs to total business due to introducing mechanical ventilation will be faced by the hospitality industry.

## **(c) Costs to the public sector**

83 Public sector organisations are assumed to spend: about 8 hours to familiarise themselves with the ACoP; 15 hours to carry out a risk assessment (W. S. Atkins reported an average of 23 hours, but only few public sector organisations were included in the survey and it seemed implausible that there would be much more time spent on this item by public sector organisations than by large firms); negligible costs to draw a policy because most of public organisations have a policy already in place; and about 25 hours for improvement and control measures. As explained in section 3(b), we have assumed that there are 10 venues per public sector

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<sup>34</sup> It is assumed that costs increase by 1.8% per year in real terms - in line with the assumptions for earnings.

<sup>35</sup> See previous footnote.

organisation, on average. Thus, familiarisation costs are £4 million, risk assessment costs £8 million, and time spent to implement systems to reduce exposure leads to £5 million costs.<sup>36</sup>

84 The W. S. Atkins survey reports three examples of mechanical ventilation costs per public sector establishment which suggest that costs per unit may vary between £3,000 and £10,000. However, we believe that costs are more likely to be similar to those faced by large organisations, and, thus, we assume that they vary between £5,000 and £30,000 per venue. Total one-off costs to reduce exposure through mechanical ventilation would, therefore, vary between £8.8 million and £27.7 million. Costs of providing smoking rooms (£35,000 per room) equal £4 million.

85 As far as recurring costs are concerned, each establishment is assumed to spend about 2 hours per year in maintaining the policy; 2 hours to monitor and audit strategies; and 4 hours per year to review risk assessment and safe systems of work. Therefore, over a period of ten years, total costs are equal to £34 million in time spent on policy, risk and monitoring, whereas maintenance costs of mechanical ventilation systems vary between £7 and £44 million.

**(d) Costs to HSE/Local Authorities**

86 It is likely that HSE and Local Authorities will implement the ACoP on a reactive basis. Hence there will be negligible additional cost.

**(e) Total costs to society**

87 Total costs of the proposal, from all sources (public, private, and non-profit), are shown in the following table:

	<b>One-off costs, £m, 1998/99 prices</b>	<b>Recurring costs (over ten years) £m, 1998/99 prices</b>
Familiarisation	73	
Risk assessment	205	
Drawing policy	256	
Reducing exposure, time spent	100	
Reducing exposure, mechanical ventilation	586-2,493	
Reducing exposure, smoking rooms	39	
Policy, risk assessment and monitoring		595
Maintenance of mechanical ventilation systems		809-3,499
Recurrent "one-off" costs for the hospitality sector		484-1599
<b>TOTAL</b>	<b>1,259-3,167</b>	<b>1,889-5,694</b>

NB: Totals may not add up due to rounding

<sup>36</sup> See footnote 37.

88 Total costs to society from introducing an ACoP on passive smoking are equal to between £3.1 billion and £8.9 billion over a ten year period, in present value terms.

## **6 IMPACT ON SMALL BUSINESSES, CHARITIES AND VOLUNTARY ORGANISATIONS**

89 Small businesses and voluntary organisations are likely to face disproportionate costs if they do not or cannot opt for a ban, since segregated smoking rooms or safe systems of work may not be feasible in small establishments. The hospitality industry may find that opting for a ban may be detrimental to the business (see, however, the US evidence by Glantz *et al.*, 1997, mentioned above) and have to face mechanical ventilation costs. It is likely that small hospitality businesses would face these costs. As an example, a research carried out by the campaign *Atmosphere Improves Results* (AIR) in 1997, showed that 73% of pubs expected turnover to decline if they implemented a ban, since 47% of pub customers smoke and 60% of pub-goers are smokers or go with smokers. The AIR research reported four case studies, where mechanical ventilation costs equalled on average £2,300 (the costs of two extra fans and two air-cleaners) per pub. The case studies showed, however, that there were benefits following the set up of mechanical ventilation systems in terms of a rise in sales and profits, so that the costs were actually recovered in less than three months on average.

## **7 ENVIRONMENTAL IMPACTS**

90 Since the implementation of the requirements of the proposed ACoP should lead to improvements in indoor air quality, the proposal has a positive environmental impact.

## **8 BALANCE OF COSTS AND BENEFITS**

91 Over a ten year period, total benefits to society equal between £1.4 billion and £2.1 billion, whereas costs to society may be between £3.1 billion and £8.9 billion. Thus, if the assumptions made are satisfied, the costs from introducing the ACoP will be between two and four times larger than the benefits. Note, though, that this balance only refers to the costs and benefits which we have been able to quantify in monetary terms. Other unquantifiable costs and benefits have been described previously. In particular, we have not been able to estimate welfare benefits, which may be considerable.

92 It is worth noting that the assumptions made in this RIA are based as far as possible on empirical evidence, but several of them are subject to the uncertainties laid out in the relevant paragraphs and in the following section.

### **Uncertainties**

93 Great uncertainty is due to the actual choices made by the organisations to implement the ACoP. Mechanical ventilation costs are the single most expensive way of reducing the effects of ETS, and many of the organisations interviewed were unable to state with certainty whether they would face these costs or opt for a ban. Moreover, costs per firm to implement mechanical ventilation vary depending on specific circumstances, and it is therefore difficult to adopt an appropriate average cost by organisational size.

94 The organisations contacted claimed that they would not provide additional smoking rooms but would rather opt for a ban. Since this may prove difficult if there is strong pressure

from smoking employees against this decision in the RIA we have assumed that 1% of the organisations would provide smoking rooms

95 We have assumed that 80% of firms in the hospitality sector will implement mechanical ventilation. However, there is uncertainty about how many firms may choose to ban smoking, and some firms may already have ventilation in place. If the percentage of firms who implement mechanical ventilation is lower (40%), then total costs will be equal to between £2.4 billion and £5.6 billion, i.e. between 1.8 and 2.7 times larger than the benefits.

96 The quantification of the costs has not taken into account possible smokers' willingness to pay to be able to smoke in the workplace. Nevertheless, inability to smoke in the workplace has become widely accepted by smokers: the ONS omnibus survey 1997, reports that 69% of current smokers think that smoking should be restricted at work.

97 Furthermore, the quantification of the benefits has not taken into account non-smokers willingness to pay to avoid discomfort from passive smoking. Such welfare benefits may be very large but, at present, we lack the information needed to quantify them in monetary terms.

98 The quantification of the benefits gained in terms of productivity improvements is also controversial. Some studies report little impact on productivity while others report that total bans on smoking in the workplace may have a larger impact on productivity than the one estimated here (1%) This assumption has a large effect on the cost/benefit ratio. In fact, if there are 2%, rather than 1% productivity gains, total benefits equal £7.9 to £8.6 billion over a ten year period and the benefits will either offset or be 2.5 times larger than the costs.

99 The actual number of days lost due to asthma/chronic bronchitis made worse by ETS is unknown. Total absence may be longer or shorter than the assumed one to two weeks per year per 25% of asthma and 25% of chronic bronchitis sufferers, and there may be more than 25% of sufferers taking time off. If the percentages increase to 50%, then total benefits equal £2 billion to £3.5 billion and the costs are 1.5 to 2.5 times larger than the benefits.

100 It is not clear whether:

- a) implementing a ban on smoking in workplaces or
- b) only introducing further restrictions on smoking in workplaces

would benefit the greater number of employees. It could be argued that a ban (rather than just more restrictions) would improve conditions for more people because more adults work in premises which already have some restrictions rather than none (ONS Omnibus Survey 1998). It could be argued that introducing further restrictions would therefore benefit only a comparatively small number of employees.

## **9 ENFORCEMENT, SANCTIONS, MONITORING AND REVIEW**

101 The law on which the proposed Approved Code of Practice will be based is enforced by HSE and Local Authority inspectors appointed under the Health and Safety at Work etc Act 1974. The Code does not create any offence, but if an employer fails to comply with the Code, it may be used as evidence of an offence under the 1974 Act. Inspectors may secure compliance by serving an enforcement notice as provided by the Act or by prosecution at their discretion (or at the discretion of the enforcing authority that appointed them). On summary conviction, a fine of up to £20,000 may be imposed. An unlimited fine may be imposed on conviction on indictment. Failure to comply with an enforcement notice additionally attracts the possibility of

imprisonment (up to 6 months on conviction in a Court of summary jurisdiction, and up to 2 years on conviction in a higher Court).

102 It is intended to monitor the impact of the Approved Code of Practice through the ONS' Omnibus or other surveys. The need for the Code will be reviewed in 5 years' time in the light of its impact, effectiveness and developments in smoking patterns.

*Version 4 (draft for public consultation): June 1999*

## REPLYING TO THIS CONSULTATIVE DOCUMENT

**1** We would welcome your comments on all the issues raised in this Consultative Document, but we would particularly like you to answer the questions we have asked. For your convenience, all the questions are set out in the reply form on the next page, which you may find helpful to use when replying. Please attach additional pages if necessary. We will acknowledge all responses and give full consideration to the substance of arguments in the development of proposals; we may also contact you again if, for example, we have a query

**2** The Commission tries to make its consultation procedure as thorough and open as possible. Responses to this Consultative Document will be lodged in the Health and Safety Executive's Information Centres after the close of the consultation period, where they can be inspected by members of the public or be copied by them on payment of the appropriate fee to cover costs.

**3** Responses to this Consultative Document are invited on the basis that anyone submitting them agrees to their being dealt with in this way. Responses, or parts of them, will be withheld from the Information Centres only at the express request of the person making them. In such cases a note will be put in the index to the responses identifying those who have commented and have asked that their views, or part of them, be treated as confidential.

**4** If you reply to this Consultative Document in a personal capacity, rather than as a postholder of an organisation, you should be aware that information you provide may constitute "personal data" in the terms of the Data Protection Act 1998. For the purposes of this Act, HSE is the "data controller" and will process the data for health, safety and environmental purposes. HSE may disclose the data to any person or organisation for the purposes for which it was collected, or where the Act allows disclosure. You have the right to ask for a copy of the data and to ask for inaccurate data to be corrected.

**5** Please reply to:

Stuart Bristow	
Health Directorate, Division A	Tel: 0171-717 6966 (messages)
Health and Safety Executive	Fax: 0171-717 6980
7th Floor, North Wing, Rose Court	e-mail: <a href="mailto:stuart.bristow@hse.gov.uk">stuart.bristow@hse.gov.uk</a>
2 Southwark Bridge	
London SE1 9HS	

We should like all replies to arrive **no later than 29 October 1999**.

**6** If you are not satisfied with the way this consultation exercise has been conducted, we want to know, and we want to put things right. If you cannot sort out the problem with the person named above, please write to the Head of Health Directorate, Division A at the address above. She will investigate your complaint and tell you what she is going to do about it. We aim to reply to all complaints within 10 working days. If you are not satisfied with the reply you receive, you can raise the matter with the Director-General of HSE, Jenny Bacon CB, at the same address.

**7** You can also write and ask your MP to take up your case with us or with Ministers. Your MP may also ask the independent Parliamentary Commissioner for Administration (the Ombudsman) to review your complaint.



<b>Question 2:</b> Should we issue an Approved Code of Practice on passive smoking?	Yes	
	No	
Any other comments:		

<b>Question 3:</b> If you answered “no” to question 2, what <i>other</i> action do you think we should take to ensure that employees’ health and welfare are protected?
Your comments:
Please give reasons for your answer:

<b>Question 4:</b> Do you agree that an ACoP on passive smoking should <i>mainly</i> focus on giving guidance about how employers should reduce their employees' exposure to tobacco smoke to ensure their employees' welfare?	Yes	
	No	
Any other comments:		

<b>Question 5:</b> If you answered "no" to question 4, what guidance do you think we <i>should</i> give in an ACoP on passive smoking?
Your comments:
Please give reasons for your answer:

<b>Question 6:</b> Do you agree that, when there is a conflict between the welfare needs of employees who smoke and employees who do not smoke, employers' smoking policies should give priority to the needs of non-smokers?	Yes	
	No	
Any other comments:		

<b>Question 7:</b> How do you think employers should judge the detriment to employee welfare from tobacco smoke? We have mentioned taking account of both the physical symptoms it causes and its smell. Is there anything else that employers should consider?
Your comments:

<b>Question 8:</b> Are the draft ACoP's provisions about assessment of the risk to health from environmental tobacco smoke for employees who suffer from a pre-existing health problem workable?	Yes	
	No	
If not, what alternative would you suggest?		

<b>Question 9:</b> In paragraph 67 of the draft guidance to accompany the ACoP, we suggest that currently, it may not be reasonably practicable to ban smoking in some workplaces.	Yes	
	No	
(a) Do you agree with our suggestions for workplaces where a complete ban on smoking may currently not be reasonably practicable?		
(b) If not, which others would you add, or which ones would you delete?		
(c) What further guidance could we give on this subject?		

<b>Question 10:</b> Are the rest of the proposals in the draft Approved Code of Practice workable?	Yes	
	No	
How could they be improved?		

<b>Question 11:</b> The Commission would welcome comments on the assumptions made in compiling the draft RIA and on its conclusions.
Your comments:

**Question 12:**

In your view, how well does this Consultative Document represent the different policy issues involved in this matter? Please tick one box.

- Very well
- Well
- Not well
- Poorly

**Question 13:**

Is there anything you particularly liked or disliked about this consultation exercise? Please add extra sheets if you wish.

Your comments:

**Any other comments:**

**Thank you for taking the time to reply to this consultative document.**

*Please return to:*

Stuart Bristow  
Health and Safety Executive  
Health Directorate, Division A  
7th Floor, North Wing, Rose Court  
2 Southwark Bridge  
London SE1 9HS

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# CONSULTATIVE DOCUMENT

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The full text of this and other Consultative Documents can be viewed  
and downloaded from the Health and Safety Executive web site on the internet:

**[www.open.gov.uk/hse/condocs/](http://www.open.gov.uk/hse/condocs/)**

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HSE Books, PO Box 1999  
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Tel: 01787 881165  
Fax: 01787 313995