



City of Westminster

## Committee of Cabinet Report

Date:	<b>20 September 2006</b>
Classification:	<b>For General Release</b>
Title of Report:	<b>Implementing the smoke-free legislation in Westminster.</b>
Report of:	<b>Director of Community Protection</b>
Wards involved:	<b>All Wards</b>
Policy context:	<b>Westminster City Plan; Programme for Healthier Westminster; Westminster Health Promotion Strategy</b>
Financial summary:	<b>The government has committed to reimburse local authorities for enforcement costs to support the implementation of the legislation. At this stage, these costs have not been detailed.</b> <b>There are no significant additional costs on the council to become a smoke-free employer in advance of the legislation.</b>
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## 1.0 Summary

- 1.1 The Health Bill received Royal Assent in July 2006. The Health Act 2006 makes provision for banning smoking in enclosed public places, work vehicles and public transport. The government has issued draft regulations covering signage, definitions of affected premises and vehicles, details of certain exemptions and proposals on enforcement arrangements and fines.
- 1.2 The smoking ban will apply to enclosed spaces to which the public have access, including places of work, shops and offices, leisure and education facilities. It will cover all public transport and most work vehicles. The regulations do not apply generally to ships and aircraft, which will be addressed through the Department for Transport. Local authorities will be responsible for enforcement and will be reimbursed for enforcement costs.

### 1.3 The smoke free legislation has two major impacts on the city council:

- As an employer and service provider and
- As an enforcer of the legislation

- 1.4 This paper sets out implications and necessary actions for the city council as: employer and client; service-provider; enforcement authority; and community leader.

## 2.0 Recommendations

- 2.1 That the city council's premises and vehicles are made 'smoke-free' from January 1<sup>st</sup> 2007, in advance of the requirements of legislation at no additional significant cost to the council.
- 2.2 That a communications strategy be implemented to ensure awareness of the legislation with local businesses, key stakeholders and council staff, as well as lobbying central government should guidance not be issued in a timely manner; and supporting any calls for additional provision on issues such as additional expenditure and cigarette-related litter should a case be established.
- 2.3 That the Government be lobbied over extension of ability to designate other areas not included within the 'enclosed' or 'substantially enclosed' definition, to be smoke-free, paying particular reference to those areas that may be included within the displacement of smoking from workplaces, such as licensed premises, to forecourts and pavements.
- 2.4 That the Government be lobbied to ensure that the costs associated with implementing the provisions of the Health Act 2006 are met from central Government.

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- 2.5 That Community Protection managers develop plans to lead the enforcement of the legislation, working with affected businesses and organisations in association with national and regional initiatives; this to be achieved wherever possible by building new procedures into existing environmental health, food safety, health and safety, and other community protection procedures, visits and enforcement processes.
- 2.6 That a city council Smoke-Free Officer Working Group be established to lead the development and implementation of an action plan to support the smooth transition to smoke-free premises and vehicles.
- 2.7 That city council officers to work in conjunction with multi-agency partners, such as through the Westminster Tobacco Control Alliance, to raise awareness of the legislation; to support a smooth implementation process; and to promote opportunities to quit smoking.

### **3.0 Background Information**

- 3.1 The Health Bill received Royal Assent on 20<sup>th</sup> July 2006 and requires workplaces, public premises, public transport and work vehicles in England and Wales to be 'smoke free' from summer 2007 (date to be determined). All employers will be responsible for applying the legislation to their own properties and staff. Other countries, such as Ireland, have already implemented similar legislation. The most comparable is Scotland, which went 'smoke-free' in March 2006.
- 3.2 The smoke-free premises clauses of the Act require provision for "enclosed or substantially enclosed premises<sup>1</sup>" to be "smoke free". The clauses apply to all premises:
- to which the public has access
  - used as a place of work
  - and vehicles used for work purposes or available to the public for transport.

Private residences, including those of which a trades person has access, are exempt from the regulations. The legislation also provides for additional premises that do not meet the criteria as 'substantially enclosed premises' may be designated as smoke-free, subject to further regulations being made. This could apply to situations such as: sports stadia; rail stations; bus stops; or possibly office frontages. The Government has indicated that it has no intention at present to make such provisions.

- 3.3 There are limited exemptions proposed in the regulations for private premises that also serve as a workplace, or a place that is open to the public, such as care homes, hospices, long-term care mental health units, and prisons (subject to specific conditions). To support the exemption process, the person in charge of the premises must ensure that they have designated the smoking room in accordance with the Regulations.

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<sup>1</sup> Enclosed and substantially enclosed premises, on a temporary or permanent basis, will have a roof that may be fixed or a moveable structure or device, and openings in the walls which are less than half of the total area of walls (no account can be taken of openings in which doors, windows or other fittings can be opened or shut).

3.4 New penalties will come into place in relation to the following smoking offences:

- Individuals who commit an offence of smoking in a smoke-free place
- Employer / person in charge who fails to display the required no-smoking signage or fails to prevent smoking in a smoke-free place.

In vehicles, the duty to enforce rests with the operator, driver or another person such as a guard charged with management responsibilities for a vehicle.

In premises, local authorities will be responsible for enforcement. Local authorities are expected to collaborate with each other, carry out compliance inspection based on risk assessment, and cooperate with businesses in enforcing the law.

3.5 The Government expects the legislation to be largely self-enforcing. To support the implementation of the legislation, the Department of Health are developing a mass media campaign to raise awareness with businesses and local communities of the regulations. To support compliance, all businesses will be mailed an information pack that contains an overview of how to comply; appropriate signage; as well as signposting to appropriate personnel to answer any questions at the Department of Health. A telephone support service has been launched to answer any questions in addition to a website that enables anyone to download all resources necessary to support the implementation of the legislation i.e. signage and toolkits.

3.6 Local authority officers are under a duty to 'police' the legislation. The regulations make local authorities the prime enforcement authorities and the Government has indicated that they expect environmental health officers and other designated local authority officers to fulfil these functions. Local authorities will collaborate with other inspection and enforcement bodies when necessary. The Government expects some enforcement action to be required and some cases to be taken to court.

3.7 The implementation of the Act will, on the basis of experience in Ireland and Scotland, result in customers who wish to smoke being attracted to those premises with gardens and other outside private areas. It will also lead to more drinking on forecourts and pavements. All this will add to the problems that already can arise from outside drinking and eating. The Statement of Licensing Policy has some scope for consideration of any public nuisance that arises from licensed premises. Operators of licensed premises may seek to create shelters for smokers by way of awnings or open sided structures. These may require planning permission which will receive separate consideration but may include aspects of public nuisance and amenity.

3.8 As Westminster has a high number of licensed premises, it may face some issues with non-compliance. To support compliance and to complement the national mass media campaign, Community Protection officers will work proactively during the lead-in period to raise awareness of the legislation and how to comply during routine visits. Officers will prioritise visits to licensed trade to ensure that they comply with the legislation.

- 3.9 The *Choosing Health* White Paper confirms the Government's commitment to the New Burdens Doctrine and states that it will *reimburse* local authorities for any extra costs they face as a result of the policies in the White Paper. The Government's current estimate of costs for enforcement nationally is between £5 million and £13 million. The Government has committed to providing funding to reimburse local authorities for enforcement costs as well as free signage and communication resources.
- 3.10 Even allowing for some government funding for implementation and enforcement of the legislation, there will be considerable costs that respective Council services, specifically those that relate to personnel time, will have to fund to support the implementation of the legislation. There is currently no Government provision for additional funding to manage increases in outcomes such as litter, street cleansing and noise.
- 3.11 Health ministers have undertaken to keep smoke-free legislation under review into the future and have committed to conducting a comprehensive evaluation of the legislation to be published within three years of implementation.

#### **4.0 Implications of Implementation of the Legislation for Westminster City Council as an Employer and Service Provider**

- 4.1 The legislation will apply to city council buildings and vehicles. It is recommended that the city council's premises and vehicles be made 'smoke-free' from January 1<sup>st</sup> 2007 in advance of the requirements of legislation, serving as a role-model to the wider business community. To lead and support this process, there are a number of work-streams that the council must now develop and implement. A time-limited Smoke-Free Officer Working Group will oversee the planning and delivery of this work, by involving all relevant departments.

The following sections summarise the implications and work streams necessary for each department. There are no significant net costs for the council to go smoke-free in advance of the legislation and work streams will be integrated within departmental business plans.

##### *4.1i Human Resources*

To work with city council staff, managers and trade unions to:

- Update HR policies to ensure health and safety for all staff.
- Develop guidelines for managers to support the implementation of the policy.
- Develop guidelines to support staff and managers who work in private homes to minimise exposure to second-hand smoke.
- Communicate changes.
- Provide support for staff to access smoking cessation services and promote these services to visitors to council premises.

At this stage, the initial consultation with trade unions highlights a favourable response to the legislation. The trade unions see the smoke-free policy change as a positive move as long as it does not victimise current smokers and provision is put into place to support those who want to stop smoking, to stop.

#### 4.1ii Corporate Property

To liaise with Human Resources, Planning and Procurement to:

- Display no smoking signs in line with the requirements laid out in the regulations in all city council premises and vehicles. Free signage is being made available to all employers by the Department of Health to support the implementation of the legislation. If these signs are not available by January 2007, Corporate Property have signs available for use.
- Coordinate the provision for smoking shelters as appropriate. There is no requirement on an employer to provide smoking shelters, however to prevent staff who smoke from feeling victimised, discussions are taking place to provide shelters at the major city council work-sites at minimum cost (City Hall; Council House; Lisson Grove).
- Secure planning permission for shelters as appropriate.
- Consider the role of the possible shelters as a mechanism to prevent staff smoking outside of main council entrances.
- Increase provision of smoking-related litter bins.

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#### 4.1iii Children and Community Services

To work closely with Human Resources and contract partners to:

- Develop a council protocol to protect staff from exposure to second-hand smoke when working within a private home.
- Liaise with contracted services to raise awareness of the change in council smoking policy and the commitment of the service provider to abide by the service terms of agreement.
- Decide whether a smoking room may be permitted within those premises exempt from the legislation. Westminster has two residential adult care homes and if the decision is made to appoint a smoking room, the provisions as outlined within the regulations should be met to reduce exposure of staff and other residents to second-hand smoke. Elsewhere any buildings and areas that are not exempt from the legislation will have to ban smoking within workplace premises and vehicles.
- Work with schools to ensure compliance as part of the Healthy Schools initiative.
- Appropriate signage as provided by the Department of Health will need to be displayed.
- Explore availability of cessation services within care centres.

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#### 4.1iv *Communications*

To liaise with all departments to communicate:

- Changes to the tobacco policy.
- Responsibilities of employees and of managers.
- Street cleansing and proper disposal of smoking-related litter.
- How to access support to smoking cessation services.

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#### 4.1v *Procurement*

To liaise with all Departmental Contract Boards and Human Resources to:

- Notify all contracted services of the city council's intention to become a smoke-free employer, raising awareness of the terms of agreement that the contractor has to support city council policies.
- Forward a copy of the new human resources smoking policy to all contract partners.
- Include smoking policy information within new service specifications.

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### **5.0 Encouraging Compliance and Supporting the Enforcement of the Legislation with Businesses across Westminster.**

5.1 Working together with partners, such as the Westminster Tobacco Control Alliance (multi-agency partnership working to deliver strategic tobacco control objectives across Westminster), city council officers will work to support the implementation of the legislation across the City. There are already many smoke-free areas in Westminster. No-smoking exists across Transport for London bus and Underground services and mainline trains, as well as underground stations. Many businesses have no-smoking policies in their shops and offices. However, some workplaces have smoking rooms and these will no-longer be permitted. All licensed premises are also included in the legislation. The enforcement of the legislation falls under the remit of the local authority and it is proposed that enforcement actions should be led by the environmental health department. At this stage, it should be noted that the local authority is not expected to enforce the legislation with taxi cabs. This is the responsibility of the Public Carriages Office.

5.2 The following summary provides an overview of services impact:

#### 5.2i *Environmental Health*

To liaise with Community Protection, Communications, Street Environment, Planning and Licensing departments to:

- Develop a proactive response to the legislation by raising awareness and supporting businesses, and those with management responsibilities, to comply with the regulations.
- Implement a non-confrontational reactive enforcement response, encouraging officers to work with local businesses to build compliance through education, advice and support.
- Develop a response to reports of non-compliance and respond to complaints as received.
- Mobilise front-line Community Protection staff to visit each licensed premise within the two-month period leading up to the date of the legislation to raise awareness of implications of the legislation.
- Work with partners such as the Tobacco Control Alliance and the Chartered Institute of Environmental Health (CIEH) to ensure a smooth and coordinated response to the legislation. Some instances, such as smoking of water pipes (shisha), are likely to require a more directed communications campaign.
- Work with other enforcement bodies, such as the police and licensing bodies, to plan for any displacement effect that accentuate on-street noise and other possible anti-social behaviour problems.

#### 5.2ii *Communications*

To work with Community Protection, Planning, Licensing and Environment to:

- Launch a communications strategy that complements the national and regional campaigns. The national communications plan from the Department of Health is due to be published for consultation in the autumn 2006. The communications plan is likely to use local and national media sources as well promote a national helpline and website access.
- Support the role of the city council as an information source signposting to the Department of Health to resolve any questions; promoting a national helpline to questions that pertain to the legislation; and to promote the smoking cessation service to those who want to quit smoking.
- Consider targeted campaign development at those businesses that may be particularly affected by the legislation i.e. shisha (waterpipe) cafes.
- Raise awareness of the potential environmental impact of the new legislation and lobby for additional resource from central government and a government funded public awareness campaign.

#### 5.2iii *Street Environment*

To work with Communications and Community Protection to:

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- Plan for the potential wider environmental impacts (such as litter) caused by smoking activity being displaced from smoke-free places including increased provision of smoking-related litter bins as well as communicating a clean-streets message.
- Strengthen links with businesses to raise awareness of their role to challenge possible increases in smoking-related litter and opportunities to promote clean streets.

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#### 5.2iv Planning

Whilst the use of existing ancillary gardens and patios is unlikely to require consent, new structures such as smoking shelters may require planning permission. Listed building consent might also be required. The City Council's policies, as set out in the Replacement Unitary Development Plan, aim to protect residential amenity and other policies seek good quality design. Each case will be looked at on an individual basis covering the need for planning permission, the likely noise and disturbance that may be generated and the appropriateness of the proposed structure.

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- Business will be encouraged to write to Development Planning Services for an informal view prior to submitting an application.

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#### 5.2v Community Safety

To liaise with relevant departments including 24-hour Noise Team to:

- Plan for any displacement effect within licensed premises and possible increases in noise.

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### 6.0 - Financial Implications

- 6.1 *Employer costs (specifically for the council to implement the legislation):*  
 There will be minimal net costs for the council to implement the regulatory requirements. Costs to install signage, cigarette-related litter bins and other internal training and communications costs will be carried by each respective department. There is a possible cost to provide smoking shelters for staff at each of the three major city council sites: City Hall; Council House; and Lisson Grove to total £12,000.

Westminster has two residential care homes that fall under the exemption category within the legislation. Each care home will chose whether or not to designate a smoking room. Any designated smoking rooms will need to fit closing mechanisms on doors, ensure any ventilation systems do not ventilate on other areas that are smoke-free, and meet stricter requirements for fire regulation. However, in most cases, these requirements are already covered to meet fire regulations serving no additional cost.

**6.2** ~~6.2~~ — *Enforcement costs:*

Discussions are under way with the Local Government Association and other stakeholders on questions around enforcement and other associated costs. Given the large number of work and public premises in Westminster, even a basic enforcement task could add significantly to staff workloads. The city council will need to ensure that an adequate sum is allocated for its enforcement and communications responsibilities in anticipation of any reimbursement coming from the Government, both leading up to the legislation and beyond.

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**6.3** ~~6.3~~ — *Education and Communication costs:*

The Department of Health is developing a national communications plan to support the implementation of the legislation, including the free allocation of signage for all businesses (for national distribution). The Department of Health has set up a helpline and website to support the implementation and enforcement of the legislation, as well as making the public fully aware of the smoke-free changes. On a local level, the council will still need to ensure that a local communications plan is developed to support those small and medium sized employers as well as those premises considered to be 'high risk' i.e. some licensed premises. Any direct communications work undertaken will require a budget. Internal communications would require a budget of £2,000. External communication work will require a minimum budget of £2,000, variable according to the scope of the work undertaken.

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**6.4** ~~6.4~~ — *Training costs:*

The Department of Health will produce a range of guidance documents and other resources for businesses and organisations to incorporate into their pre-existing staff training arrangements. In addition, the Department of Health is working with the Chartered Institute for Environmental Health to commission free training sessions for lead environmental health officers from each local authority.

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**6.5** ~~6.5~~ — *Environmental factors:*

There will be some unintended consequences of the smoke-free places legislation such as additional clean up costs for local authorities; the need for additional disposal facilities for cigarette butts in outdoor space; as well as possible increases in noise and anti-social behaviour from smokers moving outside from licensed premises. Each factor will have consequent effects for the city council including possible complaints.

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**6.6** ~~6.6~~ — *Costs to support the council to go smoke-free in advance of the date of the legislation*

There are no additional costs for the council to cover to enable the council to go smoke-free in advance of the date of the legislation.

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**7.0 Legal Implications**

- 7.1 The city council will be required to ensure that no-smoking signs are displayed in premises it occupies and manages and to cause a person smoking to stop smoking on premises it controls or manages.
- 7.2 The Government's proposals contained in its draft regulations will require the city council, as operator of smoke-free vehicles, to display no-smoking signs and to prevent smoking in such vehicles. The city council's drivers will also be required to prevent smoking in such vehicles.
- 7.3 The Act places a duty upon local authorities to enforce provisions of the Act.

## **8.0 Staffing Implications**

- 8.1 The implementation of the legislation will generate a volume of work for existing members of staff within affected departments and services such as Environmental Health; Licensing; Planning; Street Environment; Children and Community Services; Procurement; Communications as well as Human Resources and Corporate Property. The impact will be variable depending on the level of departmental involvement.
- 8.2 To support the recommendation that the city council should go smoke-free in advance of the implementation date of the legislation, consultation has taken place with the trade unions and is currently taking place with departmental management teams. Feedback from the trade unions is positive working from the understanding that the smoke-free policy put in place will not victimise smokers.
- 8.3 Examples of good practice from Scotland and Ireland highlight a need for increased officer support within Environmental Health departments, in addition to the normal teams, to support the implementation and enforcement process. The strength of the campaigns to support the legislation within these two countries is dependant on developing an early communications response, raising awareness of the implications of the legislation with all sectors, specifically the business community. It is expected that all staff involved with the implementation of the legislation and encouraging compliance - such as environmental health officers - will need to allocate a further time to any site visit to introduce the implications of the legislation. After the initial stage, they will need to add checks on signage and general compliance to their normal inspection routines.

## **9.0 Outstanding Issues**

- 9.1 The Government's draft smoke-free premises and vehicles regulations (to be made under powers in the Health Act 2006) are out for consultation until October 9<sup>th</sup> 2006. Two responses are being coordinated for Westminster: One from the city council and the other from the multi-agency Westminster Tobacco Control Alliance.
- 9.2 In addition to the final published regulations, there are a number of details that we await from the Department of Health (DH) to enable the city council's action plan to be finalised. These include:
- The DH Communications Plan to brief all local authorities on the content and timeline for the National and Regional communications strategies. This

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information is expected in the autumn and will enable the development of a local complementary communications strategy.

- The financial allocation to reimburse Local Authorities under the New Burdens Doctrine
- Date of implementation of legislation (currently stated as summer 2007).

## **10.0 Performance Plan Implications**

- 10.1 There will be performance plan implications for all affected departments during the lead in period to the date of implementation of the legislation, and beyond. The main implications focus on impact on staff and any extra resources necessary to support compliance with the legislation such as training; policy and procedure development; and community liaison.
- 10.2 Departments are in the process of identifying opportunities to meet the requirements of the implementation of the legislation at reasonable cost as detailed in the financial section of this report.

## **11.0 Consultation**

- 11.1 Representatives from each of the affected departments have been involved in the development of a city council smoke-free action plan to support the implementation of the legislation.

## **12.0 Crime and Disorder Act (1998)**

- 12.1 There are possible implications of a displacement effect that may accentuate on-street noise, licensing issues and other possible anti-social behaviour problems from on-street smoking. Staff within Community Protection are currently assessing and planning an appropriate response.

## **13.0 Health and Safety Issues**

- 13.1 In addition to the protection from second-hand smoke that will be afforded through the provisions of the Health Bill, employers will continue to have a duty of care to protect the health, safety and welfare at work of all their employees under the Health and Safety at Work Act 1974. This is particularly pertinent to staff who work within private residences that are exempt from the smoke-free legislation. Departments affected include Adult Social Care; Housing and Residential Environmental Health.
- 13.2 Risk assessments on working with service users in their homes will need to assess the risk of violence is increased if the service user is asked not to smoke during the social worker's visit.

## **14.0 Health Impact Assessment**

- 14.1 The legislation will have an overall positive impact on health and wellbeing.

14.2 A significant improvement in respiratory health among bar tenders was documented after the passage of the Californian Smoke-Free legislation (Eisner et al, 1998). In New York, continue levels in non-smoking bar and restaurant staff declined by 85 % and Montana saw a 40% drop in hospital admissions for heart attacks during a 6-month period of smoke-free workplaces. In Ireland, 97% of premises inspected are compliant in respect of the smoking prohibition and 99% of smokers who visited a pub either smoked outside or did not smoke at all. In Ireland, almost one in five smokers chose not to smoke at all when out socialising.

## **15.0 Human Rights Act 1998**

15.1 The relevant conventional rights have been addressed by the Department of Health within their Regulatory Impact Assessment.

## **16.0 Equality Implications**

16.1 It is not considered that these measures will disadvantage any particular group. The policy change will have a universal beneficial impact across Westminster.

16.2 It is recognised that there are variations in tobacco use within different communities. For example, evidence shows that smoking prevalence is higher in groups such as low-income populations. In addition, cultural variations exist that lead to increases in smoking in forms other than cigarette i.e. shisha / waterpipes. The overall positive health impact of this legislation however, will prevent those communities who were previously exposure to second-hand smoke from exposure promoting overall health improvement.

16.3 This policy change has been developed in response to planned legal requirements imposed by national Government.

## **17. Conclusions and Reason for the Recommendations**

17.1 A key aspect of the Government's strategy on tobacco control is to shift the balance significantly in favour of smoke-free enclosed public places and workplaces through legislation, to reduce levels of exposure to second-hand smoke and corresponding negative health effects.

17.2 There is no additional cost on the council to go smoke-free in advance of the date of the legislation. However, there are multiple benefits of going smoke-free to support health improvement as well as role-model for enforcement with the broader Westminster community and business sectors.

17.3 Adoption of the recommendations in Section 2 of this report will ensure a smooth and well-prepared response to the legislation, supporting businesses, organisations and the wider Westminster community to comply with the regulations for smoke-free premises and vehicles.

## **BACKGROUND PAPERS**

The documents used or referred to in compiling this report were: -

Chartered Institute of Environmental Health & Action on Smoking and Health (2005). *Achieving Smoke Freedom Tool Kit: A guide for local decision makers*

Department of Health (2006) *Smoke-free premises and vehicles: Consultation on proposed regulations to be made under powers in the Health Bill* July 2006.

Eisner M, Smith A, Blanc B. (1998) '*Bartenders respiratory health after establishment of smoke-free bars and taverns*' -JAMA 280 p.1909-1914

House of Commons (2005) -*Health Act 2006*

Ireland Office of Tobacco Control (2004) -*Smoke Free Workplace Legislation Implementation Progress Report* Office of Tobacco Control, Dublin.

Southwark Tobacco Control and Smoking Prevention Strategy (London Borough of Southwark) 2005.

Committees\Council\Cabinet\Cabinet Cttee Meetings\Smoke Free Premises\20 Sept 2006 Meeting\Implementing the Smoke Free Legislation in Westminster 20 Sept 2006