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Response to the Department of Health's Consultation on the Smokefree Elements of the Health Improvement and Protection Bill, September 2005

1. The Faculty of Occupational Medicine is grateful to the Government for the opportunity to comment on this consultation document. **Our particular concern is the protection of the workforce and our main point is that the consultation document accords insufficient importance to this.** We have comments to make on questions 5, 6, 7, 13, and 16.
2. The Faculty welcomes the Government's initiative to protect the public from the known harmful effects of second hand smoke. In particular we welcome the intention to protect people in the workplace. However, we find the exemption from the ban, of pubs and clubs which do not serve food, and of membership clubs, to be illogical, and suggest that it will be confusing to the public, difficult to enforce and likely to perpetuate health inequalities. **Our central concern is that this exemption will result in the health of workers in these industries remaining unprotected.**
3. **Question 5** in the consultation document asks for comments on the merits of the proposal to exempt all licensed premises that do not prepare and serve food. The Faculty's view is that this is inconsistent with the overall aim of the legislation which is set out on page 5 of the consultation document: *This legislation delivers the Government's objective of protecting persons from the health risks attributable to the exposure to second hand tobacco smoke.* If the Government decides to exempt some pubs and clubs, it is thereby making a clear decision, contrary to its declared intention, that it will not protect some categories of people from second hand tobacco smoke.
4. Although the first sentence of the document refers to workplaces, the focus of the document is on the health of the customers, rather than the health of the workers. The health of the customers is clearly important, and the public protection aspect of this document is to be welcomed, but, for the purposes of this response, the Faculty is focusing on the health of the workforce.
5. In choosing to ban smoking in food serving pubs only, the Government is making this an amenity issue rather than a public health issue. Exempting non food pubs, will not reduce the health risk to workers in those pubs and, indeed, might well increase the risk, if, as a consequence of this legislation, the prevalence of smoking in non food pubs increases. If this legislation is to impact positively on health, the focus has to be on the protection of the workers, and particularly of vulnerable workers, rather than on the distinction between food and non food pubs, which will leave 10% -30% (*Choosing Health* estimate) of the pub workforce unprotected.

6. Allowing some employers to continue to expose their staff to tobacco smoke appears to run counter to the requirements of the Management of Health and Safety at Work Regulations 1992, which emphasise employee health and put a duty on employers to minimise preventable risks and additionally to identify workers whose health might be particularly badly affected by second hand smoke. In this consultation document, the Government appears to be concerned to promote the rights of customers who wish to opt for a smoking pub. There appears however to be no equivalent concern for the workers in such pubs who will be involuntarily exposed to smoke, or for their right to the same legal protection as other workers.
7. The Faculty's unequivocal view is that all workers should be protected, in so far as is possible, from workplace hazards. We know that it is only possible to protect workers in all pubs and clubs from the hazard of environmental tobacco smoke by banning smoking; practice in other countries has demonstrated that banning smoking in all such establishments is a practicable solution.
8. The Government's proposal to exempt some pubs and clubs would, if put into practice, result in some workers being unnecessarily exposed to carcinogens and other noxious agents in tobacco smoke and would cause some deaths which could otherwise be prevented. **The Faculty urges the Government not to allow some pubs and clubs to be exempt from the smoking ban.**
9. **Question 6** seeks views on exemptions for some residential premises. Other bodies have better knowledge of some of the particular issues raised, but the Faculty wishes to point out that most, if not all, of these premises, whilst being a residence for some, will also be a workplace for others. **It is therefore important that when such exemptions are considered, proper recognition be given to the rights of the staff in residential premises to be protected from environmental tobacco smoke.**
10. **Question 7** seeks views on the proposal to allow membership clubs to be exempt. The same argument applies to this as to the proposed exemption of some pubs and clubs. The document refers to the members being *free to choose whether to allow smoking or not* (page 10). The focus is again on the freedom of the customers – in this case, the members – but there is no reference to the workers in those clubs, whose health would be put at risk if members opt to allow smoking.
11. If the Government allows membership clubs to be exempt, it is thereby taking a decision, contrary to the declared intention of the legislation, to allow a category of workers to be exposed to environmental tobacco smoke and this will result in work related deaths which could be prevented. **The Faculty urges the Government not to allow membership clubs to be exempt from the smoking ban.**
12. **Question 13** seeks views on the proposal that, in exempted licensed premises, smoking at the bar would not be allowed. The Faculty points out that, even if smoking at the bar were not allowed, some smoke would still reach the bar staff and there is no current evidence to suggest there is an acceptably safe concentration of environmental tobacco smoke; there is also little evidence that smoke-free areas, ventilation or air conditioning provide adequate protection from

second hand smoke in enclosed workplaces. No-smoking bar areas would therefore not provide protection to the health of the bar staff. Indeed, the consultation document recognises that there would not be any health benefit but refers to this as a *courtesy measure* (page 14).

13. The question of requiring smoking free bar areas is therefore of no relevance to the Government's declared intention of *protecting persons from the health risks attributable to the exposure to second hand tobacco smoke* (page 5). **In order to provide the same level of protection for workers in such establishments, as will be afforded to other workers under this legislation, the Government should not allow any licensed premises to be exempt from the ban.**
14. **Question 16** seeks views on whether the partial ban will increase inequalities. The document surmises that smoking pubs and clubs may be concentrated in poorer areas. If this is the case, then this will indeed widen the health gap, in that the legislation will bring less health benefits for pub customers in poorer communities than for those in better off communities. However, this, although a valid and important point, again focuses on the customers, and not the workers. Bar staff who are involuntarily exposed to tobacco smoke in exempt pubs and clubs will normally be amongst the lowest income earners in society.
15. **Our view is that the proposals as they stand, will therefore impact disproportionately on one of the lowest paid sectors of the workforce, and so exacerbate health inequalities.**
16. The Faculty considers that the Government's failure to consider fully the health and safety of workers in this proposed legislation will result in preventable work related illness and deaths, arising from environmental exposure to tobacco smoke in the workplace.
17. **The Faculty calls on the Government to ban smoking in all pubs and clubs, without exemptions, in order to protect the health of all workers in the hospitality industry.**

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