

# EXECUTIVE COUNCIL

## RESTRICTED

**Title of Report:** Legal Prohibition on Smoking in Public Places and Workplaces  
**Paper No:** 38/09  
**Date:** 26 February 2009  
**Report of:** Principal Crown Counsel

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### 1.0 Purpose

The purpose of this paper is to advise in relation to progress on the draft legislation required to prohibit smoking in enclosed public places and enclosed workplaces, to seek guidance on the administration of the legislation, and to seek further policy guidance in relation to certain proposed exemptions.

### 2.0 Recommendations

Honourable Members are recommended to:

- (a) Note that progress is being made in the drafting of legislation to prohibit the smoking in enclosed public places and enclosed workplaces;
- (b) Agree that the Department of Health and Social Services has responsibility for the administration of the legislation and therefore responsibility for providing instructions requested by the drafter on any outstanding detail (except enforcement; which falls to the RFIP); and
- (c) Give further policy guidance or instruction in relation to the proposed exemption in respect of warehouses, garages and shearing sheds as detailed at paragraph 6.

### 3.0 Summary of Financial Implications

None

### 4.0 Background

4.1 The meeting of Executive Council of 24 January 2008 made a number of policy decisions in relation to the recommendations of the Working Group on the Possible Legal Prohibition on Smoking in Public Places. The drafting of legislation was actioned to implement the decisions of Executive Council.

4.2 The Chief Police Officer had previously expressed concerns about the RFIP taking on responsibility for enforcement of the prohibition, but Members advised that there was no alternative to the RFIP having responsibility for enforcement, and actioned the Chief Police Officer to consider enforcement issues as part of his review. Unfortunately it seems that the minute to advise him that he had been requested to carry out such work was never copied to the Chief Police Officer. Being unaware of what was expected of him; the Chief Police Officer has not been in a position to carry out the work.

4.3 Significant progress has been made on a framework for the Bill and supporting regulations. The detail of the regulations will be largely taken up with enforcement issues and the required provision for fixed penalties. Therefore there must now be a pause in the drafting to allow the Chief Police Officer to advise in relation to enforcement issues from the RFIP perspective.

4.4 However, production of the framework has, in any event, highlighted other areas in which further guidance is required from Executive Council before a draft Bill and supporting regulations can be finalised.

## **5.0 Administration of the ordinance and regulations**

5.1 Although the RFIP has been tasked with enforcement of the legislation, no department has been identified as having responsibility for administering the legislation. The proposals for the Bill were finalised by a working group chaired by Councillor Clausen and attended by Councillor Summers, the Chief Medical Officer, Principal Crown Counsel and various representatives from the private sector. The working group made recommendations in all the overarching policy areas, which were considered and decided upon by Executive Council. However, the absence of a department nominated to administer the legislation means that there is no-one available to instruct on the detail of the legislation; the regulations in particular. Some of this instruction can come from the Chief Police Officer in relation to enforcement and surrounding areas as set out above. However, there are other areas that the Attorney General's Chambers are likely to require instructions on to enable completion of the legislation, for example, in relation to the requirements for the placing of signs and notices in public places and workplaces.

5.2 The legislation in the UK is administered by the Department of Health and by local councils; clearly the legislation is driven by public health policies. Members are invited to confirm that the Health and Medical Services Department should administer (ie "own") the legislation and instruct on any further detail required.

## **6.0 Policy guidance**

6.1 It is anticipated that the process set out above will ensure that the majority of the outstanding policy detail required for the legislation will be made available to the drafter. However, there is one matter in relation to which particular policy guidance is requested from Executive Council because it goes to the heart of a fundamental exception to the prohibition proposed by Executive Council.

6.2 The working group indicated that there are particular premises which fall within the definitions of enclosed public place and enclosed workplace and which might be excepted from a prohibition because they would appear to create a lesser risk of passive smoking, being high ceiled work places such as warehouses, shearing sheds and garages. The working group could not reach consensus on whether or not such places should be excepted from the legislation, but Members determined that the three types of workplace should be excepted, “recognising that this might need to be done by including a minimum size to prevent the exemption being abused”.

6.3 The drafter has had particular difficulty in producing a draft exemption as instructed, so now seeks further policy guidance.

6.4 It is noted that some legislation in other countries did have similar exemptions; using floor space (eg 100,000 square feet) as a minimum requirement as well as a maximum number of employees (eg 20) in the relevant definition of warehouse. The figures used illustrate the difficulty in equating the scales used in other countries with the Falkland Islands. Further, such exemption, which typically appeared in American state legislation, appears to no longer be available. Internet research shows that the reasons for such exemptions no longer being available may be that there is no known safe level of exposure to second hand smoke, and because the exemptions suggested that different levels of protection were being made available to manual and office workers.

6.5 The drafter would therefore seek clarification that the purpose of the exemption is that the perceived risk in such premises is lesser because of their large size. If that understanding is correct, the drafter seeks guidance or instructions in relation to the appropriate minimum size to use in the relevant definitions, given that the information commonly available suggests that there is no safe size and the minimum sizes used previously in other countries would be of little or no relevance in the Falkland Islands anyway.

## **7.0 Financial Implications**

None

## **8.0 Legal Implications**

There are no separate legal implications beyond the legal issues inherent in the paper.

## **9.0 Human Resources Implications**

None