

Miss Marloes Holtkamp
Tobacco Policy Branch
Public Health Improvement Division
Welsh Assembly Government
Cathays Park
Cardiff
CF10 3NQ

20th September 2006.

Dear Miss Holtkamp

Re: The Smoke Free Premises (Wales) Regulations 2007

I am writing on behalf of the Federation of Small Businesses in Wales in relation to the above regulations recently issued for consultation by the Welsh Assembly Government (WAG). As such, this letter constitutes the official response of the FSB to those regulations.

The FSB is the largest business organisation in the UK with over 195,000 members and some 9,500 of that number are located within Wales.

The FSB welcomes the opportunity to respond to the consultation on these important regulations, which inevitably form the basis for an enforcement regime on this issue. Inevitably, as business owners and operators the majority of our membership will be affected by these regulations.

Although the FSB has no position on the 'ethics' of a ban on smoking in public places on and we do not in any way question the potential health benefits which might arise from such a ban, we are concerned that the regulations as framed place too great an emphasis on the owner of the premises rather than the individual.

If laws are passed and broken by individuals then it is the individual who should be punished. Enforcement of these regulations and the spirit of the law should not be aimed at business owners, who in most cases have limited or no control over the initial actions of an individual. We would urge that

enforcement authorities adopt a position of reasonable tolerance in their interactions with businesses, understanding that these regulations inevitably impose an additional burden on businesses.

Question 3: We very much welcome the flexibility that the WAG has sought to adopt with relation to performers. It is entirely appropriate in our view, that such an exemption should exist.

With regard to paragraph 3.23, we feel that comprehensive practical guidance needs to be made available over and above these regulations regarding the designation of rooms that are not smoke free. There is a danger that misinterpretation of these regulations in this area would lead to unnecessary prosecution.

In the vein of the above, we feel that employers and owners of business premises should be provided with detailed guidance as to how to comply with these regulations more broadly and the steps they must undertake. Such guidance could also involve providing employers with information on how to go about implementing a smoke-free regime where that information is not already provided.

Question 4: We are concerned at certain aspects of the proposal to make HGVs and delivery vehicles smoke-free. Drivers of such vehicles often have to spend a long time in the cab and where they wish to smoke, it is simply not practical to pull over every time the need arises and promoting frequent stops will impact on delivery times and therefore the business.

However, we do recognise the rights of those who might also be in the vehicle in instances of cab-sharing on long-haul journeys for example. We feel that provision should be made therefore, to differentiate circumstances where a driver is alone and where they share that space with another.

We very much welcome the WAG's approach with regard to the provision of signage for smoke-free premises. Again however, we would encourage the WAG to produce practical guidance as to positioning of signs etc for businesses to ensure that there is less room for misinterpretation.

We welcome the WAG's determination to create a supportive environment where the emphasis is on encouragement of compliance. We feel that this is the right approach to a situation, which may well require a substantial change in mindset and operation for individuals and businesses alike.

We would urge more specifically that the WAG encourages enforcement authorities to adopt an approach of understanding towards businesses. Many businesses will need help and guidance rather than regulation and enforcement. We would also remind the WAG that there have been instances in the past where particular interest or pressure groups have gone out of their way to 'name and shame' businesses, which have not complied with certain items of regulations, such as the Disability Discrimination Act for example, in an attempt to make an example of them. Such actions are wholly

inappropriate and the motives of individuals seeking to do this should be questioned.

Particular understanding will have to be adopted towards public houses and bars where smoking is seen by some as an integral part of the 'experience'. Although we recognise the responsibility of a publican in providing and maintaining a smoke-free premises, they cannot and should not be held accountable for the actions of the individual. In this way, the WAG needs to clarify when it expects enforcement to be applied with respect to a publican – upon the lighting of a cigarette for example or following the failure of a publican to demand that a cigarette should be extinguished.

Business owners not only need to be made aware of their responsibilities under these regulations but also their *rights*.

We sincerely hope that the WAG finds these comments constructive and useful and we congratulate the WAG on the approach adopted thus far and we look forward to working with the WAG on the fair implementation of these regulations.

If you have any further questions, please do not hesitate to contact me.

Yours sincerely

Ben Cottam
Welsh Policy Adviser.