

CONFIDENTIAL

10 DOWNING STREET

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FILE TITLE:

Lebanon

SERIES

*National
Health*

PART:

8

PART BEGINS:

*2 Nov
30 Oct 99*

PART ENDS:

11 SEPTEMBER 2000

CAB ONE:

LABOUR ADMINISTRATION

Part done

PREM 49/1499

CONFIDENTIAL

T.S.O. Order No. N0064510 3/98 C5 59064

PART CLOSED

DATE CLOSED	11 SEPTEMBER 2000
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Series : NATIONAL HEALTH

File Title : TOBACCO

Part : 8

Date	From	To	Subject	Class	Secret
29/08/2000	HMT		to health and safety executive: proposal for an approved code of pra	C	0
04/09/2000	ms/cabinet office	PUS/DETR	Proposed ACoP: Passive Smoking in the Workplace - Update	U	0
04/09/2000	DETR	DPM	Tobacco control bill	C	0
05/09/2000			HSC - Press release Passive smoking at work	C	0
11/09/2000	Ch.Staff	PU	Tobacco	R	0

Series : NATIONAL HEALTH

File Title : TOBACCO

Part : 8

Date	From	To	Subject	Class	Secret
02/11/1999		PM	Letter from Brityish American tobacco - Closure of spennymore facto	C	0
02/11/1999	DoH	CH/EX	Tobacco Taxation	C	0
03/11/1999	SS/DoH	PM	Litigation by the Tabacco Industry: Next Steps	R	0
05/11/1999	PU	PM	Litigation by the Tabacco Industry: Next Steps	C	0
05/11/1999	ms/cabinet office	PUS/DoH	Passive smoking at work	C	0
08/11/1999	HA/PS	DoH	Litigation by the Tobacco Industry	R	0
10/11/1999	Cab Off		Letter to Chair, Health and Safety Commission - Proposal for an appr		0
11/11/1999	LP	SS/DoH	Litigation by the tobacco industry: next steps	C	0
16/11/1999	SS/DoH	PM	Tobacco Litigation: Next Steps	R	0
18/11/1999	LP	SS/DoH	Tobacco Litigation: Next Steps	U	0
20/11/1999	SS/DoH	LP	Litigation by the tobacco industry : Next Steps	R	0
22/11/1999	DoH	HA/PS	Tobacco Litigation : Next steps	C	0
24/11/1999		CDL	From HSC: Proposal for an approved code of practice on passive sm	U	0
24/11/1999		Cab Off	Proposal for an approved code of practice on passive smoking at wor	C	0
10/12/1999	MS/CMS		Proposal for an approved code of practice on passive smoking at wor	U	0
16/12/1999	DoH	HA/PS	Tobacco Litigation	R	0
22/12/1999	Ch.Staff	PM	Ecclestone	C	0
23/12/1999		Ch.Staff	From Federation Internationale de l'Automobile: tobacco sponsorship	U	0
12/01/2000	PUS/DoH	CDL	Passive smoking at work	R	0
18/01/2000	Cab Off		Proposal for an approved code of practice on passive smoking at wor	U	0
19/01/2000	CDL	PUS/DoH	Passive smoking at work	U	0
31/01/2000	MS/CMS		letter to chair of health and safety commission - Proposal for an appr	C	0
30/03/2000	PUS/DoH	PM	Draft directive regarding the manufacture, presentation and sale of to	U	0
31/03/2000	PU	PM	Draft EU Directive on Tobacco Products	R	0
04/04/2000	HA/PS	DoH	Draft directive on the Manufacture, Presentation and sale of tobacco	U	0
20/04/2000	PUS/DoH	CDL	Passive Smoking at Work	U	0
05/05/2000	PU	PM	Passive Smoking at Work	U	0
11/05/2000	HA/PS	DETR	Passive Smoking at Work	R	0
16/05/2000	CDL	MS/DoH	Passive Smoking at Work	U	0
24/05/2000	SS/DoH	HA/PS	Department of healths response to Dame Rennie Fritchie Report on	U	0
26/05/2000	PU	PM	Department of health response to the Fritchie Report	R	0
16/06/2000		Ch.Staff	Letter from Dafvid Ward, European Union's ban on tobaco advertisin	U	0
20/06/2000	SS/DoH	PM	Passive Smoking at work : Approved code of practice on smoking in t	R	0
23/06/2000	Cab Off	FA/APS	Tobacco	U	0
23/06/2000	SOC	HA/PS	Response to Fritchie report on NHS appointments	U	0
26/06/2000	SS/DoH	LP	Tobacco Advertising Ban	U	0
30/06/2000	LP	SS/DoH	Tobacco bill - announcement	C	0
03/07/2000	CDL	PUS/DoH	Approved code of practice: passive smoking in the workplace	C	0
03/07/2000	HA/PS	DoH	Approved code of practice: passive smoking in the workplace	C	0
05/07/2000	DETR	HA/PS	Passive Smoking at Work: Proposal for an Approved Code of Practi	U	0
17/07/2000	CDL	DTI	Improving regularity performance: meeting of the panel for regulatory	C	0
17/07/2000	CDL	SS/DTI	Panel for regulatory accountability, the timing of proposals for regulat	C	0
20/07/2000		DPM	From the Health and Safety Commission (HSC): Passive smoking at	U	0
28/07/2000	SS/DoH	DPM	Tobacco Control Bill	U	0
31/07/2000	CDL	PUS/DETR	ACoP: Passive Smoking in the Workplace - Meeting of Panel for Reg	U	0
31/07/2000	CDL	PUS/DETR	ACoP: Passive Smoking in the	C	0
31/07/2000	LP	SS/DoH	Tobacco Advertising Bill	R	0
07/08/2000	DoH	LPO	Tobacco Control Bill	U	0
24/08/2000	SS/CMS	SS/DoH	Tobacco control bill	C	0
29/08/2000	HS	SS/DoH	Tobacco control bill	C	0
29/08/2000	PUS/DETR	CDL	ACoP: passive smoking in the workplace - meeting of panel for regul	C	0

RESTRICTED

File

From: Jonathan Powell
Date: 11 September 2000

ROBERT HILL

cc: David North

TOBACCO

David Ward came to see me today and left me the attached note.

He said they anticipated the ECJ overturning the tobacco directive in the next couple of weeks. The FIA would make the attached declaration saying that they intended to implement the ban on advertising even though the directive had fallen. He hoped we would welcome this and urge other sporting bodies to act in the same way. I said I would pass it on.

He said there was a fairly strong counter group in the FIA mainly representing the teams headed by a prominent Tory, but they were fairly confident they could be defeated.

J

JONATHAN POWELL

RESTRICTED

At its meeting in Seville, Spain on October 4th the FIA's World Motor Sports Council has decided that :

"The FIA will introduce a world-wide ban on tobacco advertising and sponsorship in international motor sport from the end of 2006 season as originally envisaged by the European Union Directive (98/43/EC). It is intended that the FIA's ban will also comply with the World Health Organisation's proposed Framework Convention on Tobacco Control and the related Protocol on Tobacco Advertising and Sponsorship.

FIA World Motor Sport Council
Seville, Spain, October 4th

Tobacco Advertising and Sponsorship

This Autumn significant developments will occur which concern the issue of tobacco sponsorship. The European Court of Justice will give a decision on the legality of the European Union Directive on tobacco advertising and the World Health Organisation will begin formal negotiations on a proposed Framework Convention on Tobacco Control. In response the FIA must consider its policy towards tobacco advertising and sponsorship.

The European Union Directive on Tobacco Advertising

Following the opinion of the Advocate General delivered on June 15th it is very likely that the European Court of Justice will annul the European Community Directive on Tobacco Advertising (98/43/EC). This Directive requires a ban on tobacco advertising in all fifteen Member States of the European Union by July 2001 with an extension to October 2006 for sponsorship of world level events such as Formula One. The issue before the Court is a technical legal argument that the Directive has been introduced on the wrong legal basis. A decision to annul the Directive has nothing to do with the substance of the proposed tobacco ban, nor would it suggest that the Member States of the EU are no longer interested in banning tobacco advertising or sponsorship.

In response to the likely demise of the Directive it is clear that the European Commission and a majority of Member States will wish to pursue its original objectives. Indeed some countries, provoked by the failure of the Directive may act even more swiftly. The most likely course of action will be national legislation banning tobacco advertising and sponsorship. It remains to be seen if the various examples of national legislation will include the extra time allowed to international sports events. The European Commission will certainly bring forward new proposals to achieve a ban on tobacco advertising and sponsorship.

The WHO Framework Convention on Tobacco Control

Last year the WHO (a specialised agency of the United Nations made up of 191 member governments) began work on a Framework Convention on Tobacco Control (FCTC). This convention, which is due to be completed by May 2003, will be an international legal instrument capable of signature and ratification by member states. Once in force it will provide for the first time ever a worldwide legal system for controlling the use and promotion of tobacco products. The FCTC is expected to cover a broad range of issues such as smuggling, fiscal measures, agricultural diversification, labelling, advertising and sponsorship.

In October the WHO will begin formal negotiations on the FCTC. Not surprisingly a draft text for the convention (and for protocols that may be annexed to it) includes a worldwide ban on tobacco advertising. In particular, the WHO secretariat has already prepared a draft protocol on advertising and sponsorship. The text envisages legislation to eliminate "all direct and indirect advertising, promotion and sponsorship concerning tobacco". However, it acknowledges that such legislation "will be introduced progressively". Preliminary reactions from WHO members states meeting in a preparatory working group have been very favourable to the proposed protocol.

Once adopted the FCTC and its protocols can be ratified by each member state of the WHO and by regional bodies such as the European Union. Once ratified (which normally involves a local legislative act) the convention will be in force in the country concerned. If the timetable proposed by the WHO is met it is likely that a majority of WHO member states will be signatories of the FCTC by 2006.

To promote the FCTC the WHO's Director General Mrs Gro Harlem Brundtland (the former Prime Minister of Norway) has launched a Tobacco Free Initiative which will build support for its objectives using networks of non-government organisations (NGOs) and sympathetic governments.

The WHO promotion of the FCTC is the end game in the battle between health authorities and the tobacco industry. Once adopted the FCTC will provide a world-wide legal framework for governments to take common action against the tobacco industry. It is very likely that a tobacco advertising/sponsorship ban will be the major feature of the FCTC. This is because it is relatively easy to negotiate and will satisfy governments that are looking for political gestures in the difficult area of tobacco control. The FCTC will also provide a common political platform to anti-smoking campaigns around the world as each country is encouraged to ratify the convention.

As mentioned earlier the original time-scale of the European Directive of October 2006 is a realistic planning period for the effective implementation of the FCTC in the majority of industrialised countries. It would, therefore, be prudent for teams currently competing in FIA World Championships to assume that by the end of 2006 both in Europe and in the world the legal environment will be extremely hostile to tobacco advertising and sponsorship.

FIA Policy on Tobacco Advertising and Sponsorship

At its meeting in December 1998 the World Motor Sports Council invited interested parties to provide evidence that, as a result of tobacco brand name sponsorship identification displayed in connection with Formula One motor racing, a significant number of individuals who were not and would not otherwise have become smokers made the decision to smoke. The FIA wrote to all governments from countries currently hosting Formula One events, the WHO, the

European Community, the World Bank, and published a call for evidence in the Economist magazine.

The response to the FIA's inquiry has been disappointing. Only four governments replied to the written request for information. We received replies from the Argentine, British, Canadian, and German Governments, from the WHO, the World Bank, the European Commission, and from two universities, from Action on Smoking and Health and from the German tobacco manufacturers. The evidence provided contains very little material relating to motor sport. Overall the evidence supplied does not demonstrate that there is a strong link between tobacco sponsorship and the encouragement of non-smokers to take up smoking.

Although the FIA's inquiry has proved to be inconclusive, it is clear from the unanimous decision of 191 governments at the 1999 World Health Assembly of the WHO to commence negotiations on the Framework Convention on Tobacco Control that there is widespread political agreement that tobacco advertising and sponsorship should be banned.

On entry into force the FCTC will for the first time provide an internationally applicable legal instrument promoting a ban on tobacco advertising and sponsorship. Although not all governments will agree to ratify the FCTC, it will be very widely adopted and become the legal norm as regards control of tobacco products. As more nations world-wide ratify the Convention international motor sport will face an increasingly limited tolerance of tobacco advertising and sponsorship. This will be a highly unstable and unpredictable situation for both the FIA and for those in motor sport that rely on commercial sponsorship.

It is suggested
~~The FIA believes~~ that it is better to anticipate the impact of the FCTC and provide a stable and predictable future for international motor sport. It is, therefore, proposed that pending entry into force of the WHO FCTC and the related protocol banning tobacco advertising and sponsorship that the FIA introduce a total ban on tobacco advertising and sponsorship in international motor sport from the end of 2006.

This time-scale is consistent with the original terms of the European Union Directive and provides a reasonable lead-time for teams that receive tobacco sponsorship to find alternative sources of support.



05-SEP-2000 17:04

FROM CABINET OFFICE RIU

TO 902078399044

P.01/05

020 7270 6235

FAX TRANSMISSION

(P)

DN
cc: PU
Press

TO : DAVID NORTH
FAX : 020 7839 9044
FROM : CHRIS HAYES RIU
DATE : 5 Sept 2000
NO. OF PAGES : 5 (including cover)

David,

- The HSE press notice.
- Not sure if this has yet been released although date suggests it will be issued tonight

Chris.

020 7270 6235



Health & Safety Commission

NEWS RELEASE... NEWS RELEASE... NEWS RELEASE... NEWS RELEASE...

C044:00

5 September 2000

PASSIVE SMOKING AT WORK - HEALTH AND SAFETY COMMISSION **PROPOSES CODE OF PRACTICE**

The Health and Safety Commission (HSC), has decided that it favours the introduction of an Approved Code of Practice (ACOP) for passive smoking at work. This decision follows a public consultation on the issue.

It has also decided to recommend that in recognition of the particular challenges faced by parts of the hospitality industry, where the Public Places Charter applies, compliance with this will count as complying with the ACOP for two years. This will be supported by new guidance.

HSC Chair Bill Callaghan commented:

"We carefully considered the different options, including continuing with a voluntary approach, before deciding that the best way of protecting the three million people still exposed to environmental tobacco smoke was through an ACOP.

"The introduction of an ACOP is an important and welcome development, and represents the best way to proceed in this contentious area. It will enable everyone - employers and employees, smokers and non smokers - to know exactly where they stand with regard to workplace smoking and ensure compliance with health and safety law. It will guarantee the welfare of non smoking employees and allow employers to make arrangements best suited to the requirements of each enterprise.

More

020 7270 6235

Section 2

"I would stress that the code should not be viewed as a draconian measure, that will prevent smokers enjoying a cigarette in their local pub or club. We are not proposing a ban on smoking in workplaces. It is rather a recognition of the need to protect those workers exposed to environmental tobacco smoke and to build on existing good practice.

"I am aware that the introduction of an ACOP will require some, but not all, businesses to invest in measures that assist them in meeting its requirements. Nevertheless, I believe that the wider benefits, and particularly the welfare gains for those staff currently exposed to workplace tobacco smoke, makes such expenditure worthwhile".

The consultation document was issued on 29 July last year, with a three month period to respond to the options outlined. It included a draft ACOP. In the event, 83.2% of respondents favoured the introduction of an ACOP, 5.2% preferring stronger regulatory action and 11.7% rejecting a regulatory approach. Commissioners discussed these figures and the accumulated evidence on the subject together with the views of key stakeholders. They concluded that the ACOP offered the most sensible way to tackle the workplace smoking.

The ACOP would give authoritative guidance on employers' obligations under health, safety, and welfare law regarding passive smoking at work. This Code would have special legal force, similar to that of the Highway Code. Failing to follow the Code would not be an offence in itself, but an employer will need to demonstrate that equally effective methods have been adopted to signal compliance with the law.

In the light of the code, employers should determine what is the most reasonably practical way of controlling environmental tobacco smoke. That will necessitate a number of responses: perhaps banning smoking in the workplace, either completely or partially; perhaps enabling the physical segregation of non smokers from tobacco smoke, providing adequate ventilation, or perhaps implementing a system of work that reduces the time an employee is exposed to environmental tobacco smoke.

More ...

020 7270 6235

Paragraph 3 ...

Should a complete or partial ban not be viable, perhaps because there is a common area where clients or customers have been given leave to choose to smoke, employers should take one or more measures. They may physically segregate employees from environmental tobacco smoke for example. Where that is not reasonably practical they should ensure that the workplace is adequately ventilated. Where that is not practically achievable they should implement a system of work that ensures that employee exposure to environmental tobacco smoke is reduced.

The Code would be issued under the provisions of the Health and Safety At Work Act 1974. The Commissioners' recommendation for the introduction of an ACOP will now be relayed to Ministers for a final decision.

Notes to Editors

1 The Government announced in 1998, via "Smoking Kills A White Paper on Tobacco", that the HSC would hold a consultation exercise to find out whether people would support greater action to control passive smoking at work, and if they did, what form that action should take. HSC issued a consultative document, *Proposal for an Approved Code of Practice on passive smoking at work, CD 151*, with a closing date of 29 October 1999 for comments. The findings of that consultation were considered by the Commissioners at their meeting on 5 September 2000.

2 In March 1998, the Government's Scientific Committee on Tobacco and Health (SCOTH) published a report which recommended that, whenever possible, smoking should not be permitted in the workplace. SCOTH concluded that long term exposure to environmental tobacco smoke (ETS) caused an increased risk of lung cancer, which in those living with smokers was in the region of 30 - 40%. Exposure to ETS was also cited as a cause of ischaemic heart disease.

3 HSE's current guidance for employers "Passive Smoking At Work" IND(G) 63 (rev 1) explains how to comply with health, safety and welfare law as it applies to passive smoking. It advises

- all employees should have policies on the issue;
- they should give priority to the needs of non smoking employees.

The ACOP will build on this guidance.

more ...

020 7270 6235

Section 4 ...

4 The Public Places Charter is a voluntary code agreed between the Department of Health and the Association of Licensed Multiple Retailers (ALMR), the Brewers and Licensed Retailers Association (BLRA), the British Institute of Innkeeping, the British Hospitality Association, and the Restaurant Association. It applies in places like hotels, restaurants and pubs. It includes a written policy on smoking, implementation of non smoking areas, cleaning and ventilation, training and supervision.

5 The legal basis of the Code rests on the welfare provision within section 2(1) of the Health and Safety at work Act 1974:

"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".

PUBLIC ENQUIRIES: Call HSE's InfoLine, tel: 08701 545500,
or write to: HSE Information Centre, Broad Lane, Sheffield, S3 7HQ.

PRESS ENQUIRIES: Journalists only: David Garner 020 7717 6455, out of hours
020 7928 8382. For press review copies telephone 020 7717 6904.

More information and press releases can be accessed on the Internet <http://www.hse.gov.uk/press/press.htm>

Ends

FROM THE RT HON HILARY ARMSTRONG MP
MINISTER FOR LOCAL GOVERNMENT AND THE REGIONS



The Rt Hon John Prescott MP
Deputy Prime Minister
Department of the Environment, Transport
and the Regions
6th Floor, Eland House
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OUR REF: IDC(00) 203

- 4 SEP 2000

DN
cc: SV
PN
VCS

Dear Deputy Prime Minister,

TOBACCO CONTROL BILL

I have seen Alan Milburn's letter to you of 28 July seeking your and colleagues agreement to the policy content of the above Bill.

The Department was consulted on the original proposals for regulations to implement the EU Directive on a ban on tobacco advertising, before the legal challenge to the Directive and the decision to take this policy forward by way of primary legislation. At that time it was agreed that the Department of Health would provide extra money to train trading standards officers to alleviate the short term additional burden on local authorities. I should be grateful for confirmation that this arrangement will be honoured.

Given that it remains difficult to estimate the full extent of the costs to local authorities, especially with the potential for legal disputes, I would reiterate my suggestion that we undertake to keep the costs under review, on the understanding that a transfer from Alan's department would be provided into the settlement if the outcome of that review warranted additional provision for local authorities.

I welcome the fact that Alan has taken on board our concerns with regard to in-flight magazines and proposes a transitional period for non-European Community aircraft until July 2002. Now that we are taking this forward by way of primary legislation, however, I should be grateful for confirmation that this would not introduce a conflict with any international legislation or agreements.

Subject to receiving confirmation on these two points I am content with the draft proposals.

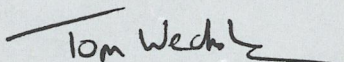


INVESTOR IN PEOPLE

The correspondence also seeks colleagues' views on whether the Bill should enable the National Association of Cigarette Machine Operators' voluntary code of practice to be put into statute. I and my officials have not seen a copy of this code of practice and therefore cannot take a view. However, it is possible that there would be regulatory, enforcement or local authority burden implications to such a change and I would welcome sight of the code and an opportunity to comment in detail if this proposal is taken forward.

I am copying this letter to the Prime Minister, members of HS Committee, Sir Richard Wilson and Robert Hill.

Yours sincerely,

Tom Wedg

HILARY ARMSTRONG

APPROVED BY THE
MINISTER OR SIGNED
IN HER ABSENCE



Parliamentary Secretary
Cabinet Office

Lord Whitty
Department of the Environment, Transport and the Regions
Eland House
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CABINET OFFICE
70 Whitehall, London SW1A 2AS
Telephone: 020 7270 0652

E-mail: gstringer@cabinet-office.x.gsi.gov.uk

Reference

Number:

58776.

4th September 2000

Dear Larry

PROPOSED ACoP : PASSIVE SMOKING IN THE WORKPLACE - UPDATE

Thank you for your letter to Mo Mowlam agreeing to attend the Panel that will discuss the proposed ACoP on passive smoking. I understand as you are unavailable for the September Panel meeting, the issue has now been moved to the following meeting, arranged for 30 October at 2.30 p.m.

As you know the Panel were not convinced that an ACoP was the best way forward and although Yvette thought there should be an ACoP she agreed that the one proposed should be substantially amended.

I was glad that in your letter you expressed support for this and I was looking forward to receiving revised proposals. However, I was somewhat disturbed therefore to discover that the Health and Safety Commission will be discussing the proposals for Approved Code of Practice on Passive Smoking at their meeting on 5 September that I understand remain largely the same as those rejected by the Panel.

I would be grateful for your views on this and your assurance that, given the Panel's views, no decision will be made on any recommendations made by the Health and Safety Commission before the panel meeting.

I am copying this letter to the Prime Minister, Yvette Cooper, members of the Panel for Regulatory Accountability, and Sir Richard Wilson.

Yours Sincerely,
Graham

GRAHAM STRINGER

Web site: www.cabinet-office.gov.uk



INVESTOR IN PEOPLE

0171 270 5231

RESTRICTED - POLICY**HM Treasury**

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Malcolm Darvill Esq
Health Directorate, Division A
Health & Safety Executive
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29 August 2000

*Dear Malcolm,***PROPOSAL FOR AN APPROVED CODE OF PRACTICE ON PASSIVE
SMOKING AT WORK**

Thank you for copying me your letter of 22 August and also for Michele McDermott's letter of 15 August. I have also seen George Gordon's letter of 25 August.

2. I strongly agree with George's comments. The latest versions of the RIA and draft Code seem very little changed from the last versions we saw in April. In particular, they seem to take little or no account of Sue Mahon's letter of 5 April to Michele McDermott with a number of detailed comments on the methodology of the RIA, the Chief Secretary's letter of 11 May to Yvette Cooper or the meeting of officials on 6 June. The Chief Secretary's main concern was the disproportionate impact of the proposal on the hospitality sector, and especially small businesses within the sector. Nothing in the latest version really addresses those concerns and, to the extent that the costs for that sector are now somewhat higher and the overall benefits of the Code somewhat lower, the Chief Secretary's concerns are in fact likely to have been exacerbated, not assuaged.

3. I can understand the need to update the Commission, but if the intention is for it to decide on 5 September whether or not to recommend that Ministers agree to the Code in its present form, I think that your briefing for the Commissioners should say very clearly that the present version will almost certainly be unacceptable to Treasury Ministers. No doubt you will also be informing the Commissioners of the Prime Minister's views (minute from David North to Peter Unwin, 11 May), including his wish that Lord Haskins' Task Force should review any Code the Commission might recommend and report to him before proceeding with it.

4. I am copying this to George Gordon, Tim Baxter (DH), Graham Collins (DCMS), Gillian

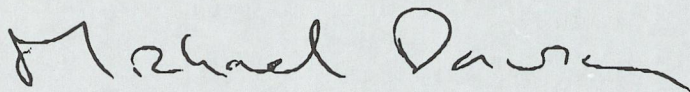


INVESTOR IN PEOPLE

0171 270 5231

Crooks (SBS), Martin Leppert and Susan Mawer (DETR), David North and Simon Virley (No10), and Sarah Thomas (No10 Policy Unit).

Yours sincerely,



MICHAEL DAWSON

FROM LORD WHITTY
PARLIAMENTARY UNDER SECRETARY OF STATE



The Rt Hon Dr Marjorie Mowlam MP
Minister for the Cabinet Office and
Chancellor of the Duchy of Lancaster
70 Whitehall
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DEPARTMENT OF THE ENVIRONMENT
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OUR REF: W/20897/00

29 AUG 2000

DN
cc: Suor
R
JB

**ACoP: PASSIVE SMOKING IN THE WORKPLACE – MEETING OF PANEL FOR
REGULATORY ACCOUNTABILITY: 18 JULY**

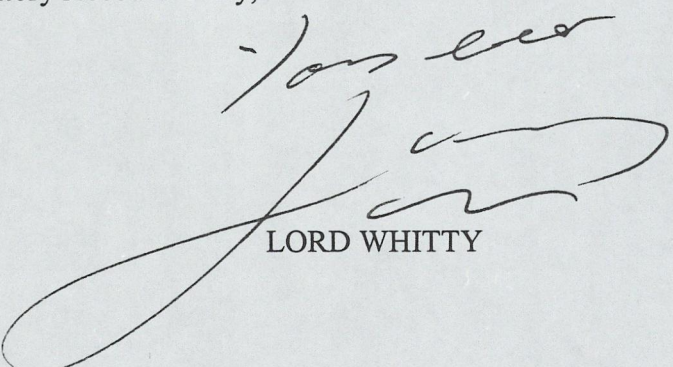
Thank you for your letter of 31 July seeking my views on the ACoP on Passive Smoking in the Workplace. I am grateful for your offer to report my views to the next meeting of the Panel on 19 September.

I would very much welcome the opportunity to personally attend a meeting of the Panel. Regrettably, I will be abroad for the September meeting. However I understand the discussion of passive smoking at work may be re-scheduled for October, which would be very helpful. This would enable me to put forward my views on this matter and answer any questions the Panel may have.

I firmly support the views expressed by Yvette Cooper at the meeting of the Panel on 18 July. Following that meeting further discussions have taken place, between officials and other interested parties, on taking this issue forward. I am now awaiting advice from the Health and Safety Commission on Passive Smoking in the Workplace, which I expect to receive early in September.

I should point out that I do not recommend ACoPs to the HSC as stated in your letter; it is the HSC who provide advice for the Secretary of State to consider on such matters.

I am copying this to the Prime Minister, John Prescott, Alan Milburn, Yvette Cooper, members of the Panel for Regulatory Accountability, and Sir Richard Wilson.


LORD WHITTY



INVESTOR IN PEOPLE

01712733965



QUEEN ANNE'S GATE LONDON SW1H 9AT

29 AUG 2000

The Rt Hon Alan Milburn MP
Secretary of State for Health
Department of Health
Richmond House
79 Whitehall
LONDON
SW1A 2NS

(f)

Top DN

cc CS
PO.

Dear Alan,

TOBACCO CONTROL BILL

Thank you for your letter of 28 July seeking HS colleagues' agreement on the policy content of the above bill.

2. The changes proposed are broadly welcomed and I am sure that the tobacco advertising ban will undoubtedly benefit as a result.
3. However, I am not convinced of the need to simplify the existing regulations on oral tobacco products by stating that it is an offence to supply an oral tobacco product to a person aged under 16. Under section 7 of the Children and Young Persons Act 1933 it is a criminal offence to sell to a person under the age of 16 years any tobacco. The definition of tobacco in the 1933 Act was amended by section 1 of the Children and Young Persons (Protection from Tobacco) Act 1991 to include any product containing tobacco and intended for oral or nasal use.
4. I am copying this letter to members of HS Committee, Sir Richard Wilson and Robert Hill.

Yours ever,
Jack

JACK STRAW

C00/11936/05149

(f)

Rt Hon Alan Milburn MP
Secretary of State for Health
Department of Health
Richmond House
79 Whitehall
London
SW1A 2NS



24 August 2000

DN
C: CS-11
PU

Dear Alan

TOBACCO CONTROL BILL

I am responding to your letter of 28 July to John Prescott seeking agreement to the policy content of the Tobacco Control Bill. I am content with the proposals you set out in that letter on the understanding that suitable provisions on tobacco sponsorship of sport are included in the Bill similar to those you propose for advertising and sponsorship generally.

My principal interest in the Bill relates to the provisions on sports sponsorship. Your letter makes clear that the transitional arrangements for sports sponsorship including the derogation for global events which it had been intended to implement via the regulations under the European Communities Act 1972, will now be in the Bill.

It is not clear from your letter, however, the extent to which arrangements under the 1994 voluntary agreement on advertising and the promotion of tobacco and the 1995 agreement on sponsorship of sport will be included in the Bill. I believe it is essential that the two agreements which have been monitored via COMATAS to date continue to be treated on a level footing and that if you propose placing requirements of the general voluntary agreement in legislation that the sports sponsorship provisions must be similarly treated.

I have seen Mo Mowlam's response of 15 August to your letter and my officials stand ready to assist yours in the preparation of regulatory impact assessments in relation to the sports sponsorship related provisions of the Bill.

I am copying this letter to members of HS committee and to Sir Richard Wilson.

Yours ever Chris

CHRIS SMITH



INVESTOR IN PEOPLE

Richmond House
79 Whitehall
London
SW1A 2NS
Tel: 020 7210 3000

(f)

Matthew Hill
Private Secretary The President of the Council and Leader of
The House of Commons
2 Carlton Gardens
London SW1Y 5AA

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cc CS
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) August 2000

Des Matthew

Tobacco Control Bill

I attach a copy of a letter circulated on 28 July to HS colleagues on the subject of Tobacco Control Legislation.

The Cabinet Office Secretariat have asked that the letter be copied to members of LP so that they are aware of the request for policy clearance to HS. You will see that we have asked for HS responses on the policy issues by 25 August.

I am copying this letter to the Private Secretaries to members of LP, and to the Private Secretaries of members of HS, with a request that they ensure LP members are copied in to responses to the 28 July letter.

Yours sincerely

Janet Grauberg

Janet Grauberg
Principal Private Secretary

Jack

● COPY



Richmond House 79 Whitehall London SW1A 2NS Telephone 0171 210 3000
From the Secretary of State for Health

Rt Hon John Prescott
Deputy Prime Minister
Department of the Environment, Transport and the Regions
6th floor, Eland House,
Bressenden Place,
LONDON
SW1E 5DU

Dear John

28 July 2000

TOBACCO CONTROL BILL

This letter seeks your and HS colleagues' agreement on the policy content of the above bill. I would be grateful for responses by 25th August.

Agreement has been reached on the legislative programme for the next session, including a bill to ban tobacco advertising. This policy has HS clearance, although pursuing the advertising ban via primary legislation does allow us to make the advertising ban more robust than would be possible in secondary legislation. I am therefore alerting you to several minor changes to the policy previously agreed which will close potential loopholes in the ban.

There are also areas where I would wish for sound policy reasons to use this bill to progress my Department's broader tobacco control agenda. Our aim would be as far as possible to take powers to make regulations, thus avoiding lengthening the bill.

Advertising Ban

We wish to adopt the following minor changes to the existing policy:

(i) **brandsharing**: we will not seek to define "good faith" brandsharing, but specify a date (July 2001) by which time the branding of non-tobacco goods sharing tobacco branding will need to be "clearly distinct". We will seek to define "clearly distinct" as precisely as possible in the bill.

(ii) **Advertising at point of sale**: advertising at point of sale is exempted from the ban on advertising in the EC Directive. However,

this does leave open the possibility of point of sale advertising being expanded to an unacceptable level. We intend to take a power to define in regulations the terms under which such advertising would be allowed. Any such advertising would have to carry a health warning.

(iii) Specialist tobacconist: specialist tobacconists enjoy a derogation from the advertising ban in the EC Directive. This derogation was a compromise during the negotiations. We see no reason to maintain this derogation. Specialist tobacconists will still be able to advertise at point of sale, subject to the same constraints that apply to other retailers.

(iv) Transitional Arrangements: we intend to introduce the general ban on advertising as soon as possible. We propose to give three months grace to retailers, direct marketing schemes and coupon schemes. A schedule of proposed transitional arrangements is attached at Appendix 1.

(v) Secretary of State as Enforcement Authority: my Department has previously agreed that we would consult at a later date on making the Secretary of State for Health an enforcement authority as far as the regulations banning tobacco advertising were concerned. The point of doing this would be to enable the Secretary of State to step in to take over a particularly difficult prosecution, if it was felt that was in the public interest. We propose taking a power to do this in the bill and consulting on its implementation in due course.

Draft Directive on Labelling

We have recently reached a common position on the draft Directive on manufacture, presentation and sale of tobacco products. Although we could seek to implement this Directive in due course by secondary legislation under the European Communities Act, we have of course experienced considerable delay in using this route in trying to implement the advertising ban. Germany has already intimated that it will challenge the new Directive when agreed. We therefore propose to reduce the risk of successful challenge by taking powers in this bill to implement the Directive. The content of the draft Directive is attached at Appendix 2. A Regulatory Impact Assessment has been prepared for this proposal, which has passed through the Scrutiny Committees of both Houses.

Oral Tobacco

Abuse of oral tobacco is a particular problem in certain ethnic minority communities, not least certain products which are packaged as sweets and consumed by children. Although progress can be made through education, which we are taking forward by means of a dedicated education campaign, we believe that it would be sensible to take a power in the bill to specify the conditions under which oral tobacco should be stored. This would allow us at a future date to consult on regulations to require oral tobacco products to be stored away from sweets and other food items. We also propose to simplify



the existing regulations on oral tobacco products by stating simply that it is an offence to supply an oral tobacco product to a person aged under 16. This provision was suggested to us by the Local Authority Coordinating Body on Trading Standards as a means of aiding their enforcement efforts.

Vending Machines

There is consistent survey evidence that 30% or so of young smokers access cigarettes from vending machines, despite the fact that such machines should be in areas where an adult can supervise them. The National Association of Cigarette Machine Operators (NACMO) has a Code of Practice on the siting and supervision of machines; we are considering taking a power to make regulations to put this voluntary code into statute. Your views on this are invited.

Tobacco Regulatory Authority

We see advantages in setting up a body which would take over duties currently exercised by officials in my Department in terms of policing the use of tobacco additives under the Voluntary Agreement on Additives. We also propose that this body should have the power to approve the marketing of new tobacco products. It would also exercise the advisory function currently carried out by our Scientific Committee on Tobacco and Health (SCOTH).

I would be grateful for colleagues' agreement by 25 August to the above policy proposals. In asking you to agree to these proposals I wish to make clear that we believe we can have worked-up proposals and be ready to introduce the bill as planned. We will also of course consult and develop the proper regulatory assessments in due course before seeking to use any of the powers we are proposing to take in the bill.

I am writing in similar terms to the devolved administrations.

I am copying this letter to members of HS committee Sir Richard Wilson and Robert Hill.

ALAN MILBURN



TRANSITIONAL ARRANGEMENTS

General ban on advertising

No transitional period. The ban on posters and print advertising will come into force as soon as possible.

Retail outlets

Three months.

In-pack promotion schemes

Three months. [Note: In-pack promotion schemes are where coupons inserted into packs, or parts of a pack, are collected by customers who later redeem them for goods.]

Publications printed and published in other European Community Member States

July 2002 (this reflects the latest date in the Directive).

Sponsorship

Sponsored events may continue until July 2003 and sponsorship of exceptional global events may continue until October 2006, provided that the relevant contracts were established on or before the 6 July 1998 (the date of adoption of the Directive).

Direct marketing

Three months. However, tobacco manufacturers or marketing firms may only continue contracts which were set up before 8 October 1999.

In-flight magazines on non-European Community aircraft

July 2002.



DRAFT DIRECTIVE ON MANUFACTURE, PRESENTATION AND SALE OF TOBACCO PRODUCTS

MAIN PROVISIONS

The main proposals in the Commission draft are as follows. The Directive would:

- (i) Reduce the maximum tar content of cigarettes from 12 mg to 10mg; introduce a maximum nicotine level in cigarettes of 1mg; and introduce a maximum level of carbon monoxide in cigarettes of 10mg. These limits would apply to all cigarettes produced within the EU, whether or not intended for export to third countries;
- (ii) Allow Member States to require further tests of substances in tobacco products beyond the internationally agreed (ISO) standards required to measure tar, nicotine and carbon monoxide;
- (iii) extend the space devoted to health warnings and require that these warnings be printed black on a white background;
- (iv) require tobacco manufacturers and importers to inform Member States of all the non-tobacco ingredients by brand, together with relevant toxicological information demonstrating that the ingredients are safe;
- (v) ban the use of terms such as "low tar", "mild" etc which have the effect of conveying the impression that a particular tobacco product is less harmful than others; and
- (vi) require the Commission to report every two years on the working of the Directive.

Member States would have to implement the new Directive by 31 December 2001.



RESTRICTED

(1)

Fixed?

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at PV

The Rt Hon Margaret Beckett MP

PRIVY COUNCIL OFFICE
2 CARLTON GARDENS LONDON SW1Y 5AA

31

July 2000

Dear Alan,

TOBACCO ADVERTISING BILL

As you know, Cabinet agreed on 18 July that the Tobacco Advertising Bill should get a place in next Session's legislative programme. This letter confirms the extent of the authority given for this Bill, and sets the target date for it to appear before LP.

LP Committee agreed, and Cabinet confirmed, that the Bill should go ahead if the European Court of Justice confirmed the opinion of the Advocate General that the existing regulations banning tobacco advertising were based on a directive that was outside the scope of the EC Treaties.

The policy on tobacco advertising is settled in the existing regulations. LP agreed to a bill containing only the measures contained in those regulations (the ban on tobacco advertising with defined exceptions, the ban on tobacco promotion and the phasing out of tobacco sponsorship over time). There is no agreement to any further measures.

As the policy was settled before the original regulations were brought forward, it should be possible for you to make rapid progress with preparation and instructing Counsel on this Bill. We expect to see it at LP in the week beginning 6 November, though polishing can obviously continue if necessary between then and the Queen's Speech.

RESTRICTED

Cabinet agreed to grant your bill a slot on condition that it is ready for the start of the session. The Secretariat will be monitoring your Bill's progress towards introduction, and I hope that all goes smoothly on this important Bill.

I am copying this letter to the Prime Minister and members of LP, and to Sir Richard Wilson and First Parliamentary Counsel.

Regards

Margaret

MARGARET BECKETT

The Rt Hon Alan Milburn MP
Secretary of State for Health



Minister for the Cabinet Office
Chancellor of the Duchy of Lancaster

CABINET OFFICE
70 Whitehall, London SW1A 2AS
Telephone: 020 7270 0400
Email: mmowlam@cabinet-office.x.gsi.gov.uk

SA DN
CC: SA
P

Lord Whitty
Parliamentary Under Secretary of State
Department of the Environment, Transport and the Regions
Eland House
Bressenden Place
London
SW1E 5DU

31 July 2000

Dear Larry,

**ACoP : PASSIVE SMOKING IN THE WORKPLACE – MEETING OF PANEL
FOR REGULATORY ACCOUNTABILITY: 18 JULY**

The Panel for Regulatory Accountability met on 18 July and Yvette Cooper presented a paper on alternatives to the proposed Approved Code of Practice (ACoP) on Passive Smoking in the Workplace. I thought, as Minister for the Health and Safety Executive with the responsibility for recommending ACoPs to the Health and Safety Commission, you would be interested in the outcome of the meeting and the views of the Panel members. The meeting minutes are attached. The meeting went well and although we did not reach an agreement I think we made useful progress.

As a way of taking this forward Yvette agreed that the Department of Health and the Health and Safety Executive should carry out more work and that she would return to the next Panel meeting with revised proposals for further discussion.

The next Panel meeting has now been arranged for 19 September which I understand you are unable to attend. However, I would be very grateful for your views on this issue which I would be happy to report at the meeting.

I am copying this letter to the Prime Minister, Alan Milburn, Yvette Cooper, members of the Panel for Regulatory Accountability, and Sir Richard Wilson.

MARJORIE MOWLAM



PANEL FOR REGULATORY ACCOUNTABILITY

Minutes of a Meeting held in Conference Room A
70 Whitehall

On Tuesday 18 July 2000 at 2.30pm

PRESENT

The Rt Hon Marjorie Mowlam MP
Minister for the Cabinet Office
(In the Chair)

Lord Falconer
Minister of State, Cabinet Office

Graham Stringer MP
Parliamentary Secretary, Cabinet Office

David Irwin
Chief Executive, Small Business Service

Lord Haskins
Chairman, Better Regulation Task Force

Patricia Hewitt MP
Department for Trade and Industry

Michael Dawson
Official, Treasury

Yvette Cooper MP
Department of Health

Secretariat
George Gordon
Pamela Armitage
Lisa Wand

Officials in attendance

Chris Hayes	Dominic Hutchings	John Hobday
Vanessa Carpenter	Siobhan Gretka	David North
Sue Cunningham	Tim Baxter	Robert Dedman

Item 1: FORWARD LOOK REPORT

The Chair introduced the second Forward Look Report and explained this has been produced using a new database of regulations produced and maintained by the RIU. She invited panel members to suggest any issues of interest within the report at the next panel meeting.

Concern was expressed that this report would cause problems if leaked and it proposed that the panel develop lines to take. It was also agreed that the next report contained bunching of regulations.

Item 2: PASSIVE SMOKING IN THE WORKPLACE

The Health and Safety Executive have been consulting on an Approved Code of Practice (ACoP) dealing with Passive Smoking in the Workplace and are to make recommendations to the Health and Safety Commission in the Autumn. Following concerns being raised by Number 10, Cabinet Office, Treasury, Small Business Service, Better Regulation Task Force, CBI and FSB - Yvette Cooper, Public Health Minister, was invited to attend the July Panel meeting to present a paper giving details of less regulatory alternatives options to the ACoP.

Prior to the presentation of the paper, the following **comments** were made by Panel Members :

- The (initial) RIA shows costs outweighing the benefits
- The ACoP adds costs and may also add additional burdens through the increased energy use (Climate Change levy)
- There is disagreement with the DoH paper claim that the proposals will mean merely buying a fan for businesses
- The measures are clearly disproportionate to small businesses
- There is already a trend of businesses moving towards Passive smoking protection for employees, although mainly limited to big businesses. There should be progress with voluntary arrangements first
- The hospitality sector and small business cannot be differentiated

Yvette Cooper presented the paper making the following points :

- The issues involved in setting an ACoP for Passive Smoking appear analogous to those in introducing, and setting the level for, the National Minimum wage.

- The panel should *not* be considering whether or not to have an ACoP, but rather, as with the minimum wage, the level at which it should be set.
- An ACoP was needed to prevent employer's unreasonableness. There is currently no support for employees at risk from Passive smoking at work, short of taking employers to court – which is rarely done and is a costly process.
- Other Measures and voluntary codes have not improved this situation, so an ACoP is the only solution.
- The ACoP should be set on what is 'reasonably practicable' for employers, offering sensible ways forward (which does not mean small pubs have to invest in expensive air condition systems). This will also provide protection for 'good' employers by clarifying what the law requires.
- In assessing non-legislative options (which has been carried out by the HSE) it was decided that on the basis of previous experience :
 - An Awareness Campaign alone would have little affect and its results difficult to measure. However, there is no reason why a Campaign couldn't be used as a supplementary measure.
 - Better Guidance was thought unlikely to pick up poorly performing businesses, but again has its place.
- It is important to do something tangible – there is an equality issue as the employees most at risk are on lower incomes.

In discussion, the following points were raised by Panel members :

Costs / Burdens to Business :

- It is unclear how well the alternative options to the ACoP would reduce passive smoking, how much they would cost and whether placing a £3Bn costs on business (*via* an ACoP) was the appropriate way to do this.
- The wild jump in RIA benefits from the 1st version to the 2nd version of the RIA gives little confidence in the process. Also, the costs of enforcement are not included. The ACoP shouldn't be recommended without producing a more convincing business plan.
- The BRTF report on the Hotels and Restaurants outlines an unreasonable regulatory burden on the hospitality sector. The government has not yet responded to this report and shouldn't add to the burden in the hospitality sector until the current problems are sorted out.
- Costs to offices are minimised by simply banning smoking, unless they invest in a smoke room.

Alternatives to an ACoP :

- Couldn't employers known to be putting employees at risk be targeted and tackled under existing legislation ?
- Emerging Case Law can act as a vehicle for changing business behaviour without the need for an ACoP (in terms of protecting vulnerable employees such as pregnant women and asthmatics).
- A small business / hospitality sector task force should be set-up with the objective of reducing the impact of passive smoking on employees. It could consider different approaches to regulation and recommend practical solutions. **Lord Haskins** offered to organise a meeting of business representatives to take forward this suggestion.
- Pubs / Restaurants could most easily make changes as new premises were being constructed or existing ones refurbished. A set of new measures could be included in the planning process.

Timescale :

- Key issue is giving sufficient time to allow business to make changes, and this might be more effectively done using a voluntary code as an initial measure.
- The introduction of an ACoP should be delayed for a period of around 5 years to allow businesses to prepare for changes.

In summing up, the following points were made :

- In addressing the PM's concerns over an ACoP and the various issues discussed during the meeting, **the Chair** suggested that following the meeting :
 - The Government could make a public commitment to reducing employees exposure to passive smoking
 - This could be achieved initially through a voluntary scheme along with targeted enforcement of existing legislation
 - It could be monitored over 2 – 3 years after which time the extent and content of an ACoP could be decided
 - This would allow the DoH / HSE to work on outstanding issues like minimum standards for the hospitality sector
- **Ms Cooper** explained that all of these aims could be achieved via pressing ahead with an ACoP, but indicated that the content of an ACoP must be sensible and it could be phased in allowing more practical solutions to be found for difficult sectors such as nursing homes and pubs.

Conclusion :

- The current situation with the ACoP is not acceptable to the Panel.
- **Ms Cooper** and **Panel members** agreed that the Dept. of Health and the Health and Safety Executive should carry out more work and that the issue should return to the next Panel meeting for further discussion.

Item 3: NEXT MEETING

The Chair suggested that the Panel will not meet again until September and explained that dates for future meetings will be confirmed shortly.

It had been planned to suggest that September's meeting cover the issue of Small Abattoirs and the Financial Services Authority with Sir John Krebs and Howard Davies, respectively.

However, given the fact that Passive Smoking will return to the Panel at the next meeting it may be more appropriate to cover only one of these new issues.



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Richmond House 79 Whitehall London SW1A 2NS Telephone 0171 210 3000
From the Secretary of State for Health

Rt Hon John Prescott
Deputy Prime Minister
Department of the Environment, Transport and the Regions
6th floor, Eland House,
Bressenden Place,
LONDON
SW1E 5DU

28 July 2000

Dear John

TOBACCO CONTROL BILL

This letter seeks your and HS colleagues' agreement on the policy content of the above bill. I would be grateful for responses by 25th August.

Agreement has been reached on the legislative programme for the next session, including a bill to ban tobacco advertising. This policy has HS clearance, although pursuing the advertising ban via primary legislation does allow us to make the advertising ban more robust than would be possible in secondary legislation. I am therefore alerting you to several minor changes to the policy previously agreed which will close potential loopholes in the ban.

There are also areas where I would wish for sound policy reasons to use this bill to progress my Department's broader tobacco control agenda. Our aim would be as far as possible to take powers to make regulations, thus avoiding lengthening the bill.

Advertising Ban

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(ii) Advertising at point of sale: advertising at point of sale is exempted from the ban on advertising in the EC Directive. However,

this does leave open the possibility of point of sale advertising being expanded to an unacceptable level. We intend to take a power to define in regulations the terms under which such advertising would be allowed. Any such advertising would have to carry a health warning.

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the existing regulations on oral tobacco products by stating simply that it is an offence to supply an oral tobacco product to a person aged under 16. This provision was suggested to us by the Local Authority Coordinating Body on Trading Standards as a means of aiding their enforcement efforts.

Vending Machines

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I would be grateful for colleagues' agreement by 25 August to the above policy proposals. In asking you to agree to these proposals I wish to make clear that we believe we can have worked-up proposals and be ready to introduce the bill as planned. We will also of course consult and develop the proper regulatory assessments in due course before seeking to use any of the powers we are proposing to take in the bill.

I am writing in similar terms to the devolved administrations.

I am copying this letter to members of HS committee Sir Richard Wilson and Robert Hill.

A handwritten signature in dark ink, appearing to read "Alan Milburn", written over the printed name.

ALAN MILBURN



TRANSITIONAL ARRANGEMENTS

General ban on advertising

No transitional period. The ban on posters and print advertising will come into force as soon as possible.

Retail outlets

Three months.

In-pack promotion schemes

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In-flight magazines on non-European Community aircraft

July 2002.



DRAFT DIRECTIVE ON MANUFACTURE, PRESENTATION AND SALE OF TOBACCO PRODUCTS

MAIN PROVISIONS

The main proposals in the Commission draft are as follows. The Directive would:

- (i) Reduce the maximum tar content of cigarettes from 12 mg to 10mg; introduce a maximum nicotine level in cigarettes of 1mg; and introduce a maximum level of carbon monoxide in cigarettes of 10mg. These limits would apply to all cigarettes produced within the EU, whether or not intended for export to third countries;
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- (iii) extend the space devoted to health warnings and require that these warnings be printed black on a white background;
- (iv) require tobacco manufacturers and importers to inform Member States of all the non-tobacco ingredients by brand, together with relevant toxicological information demonstrating that the ingredients are safe;
- (v) ban the use of terms such as "low tar", "mild" etc which have the effect of conveying the impression that a particular tobacco product is less harmful than others; and
- (vi) require the Commission to report every two years on the working of the Directive.

Member States would have to implement the new Directive by 31 December 2001.

Ref:
C01104100

Rt Hon John Prescott MP
Deputy Prime Minister
Department of the Environment
Transport and the Regions
Eland House
Bressenden Place
London SW1 5DU

20 July 2000

Dear John,

PASSIVE SMOKING AT WORK: PROPOSAL FOR AN APPROVED CODE OF PRACTICE

Thank you for your letter of 5 July. I shall of course ensure that the Commission is aware of the Prime Minister's views and that careful consideration is given to exploring different options when it comes to discuss the issue of passive smoking later in the summer.

I was pleased to see that Alan Milburn in his letter of 20 June addressed the misunderstanding in the letter of 11 May from David North. Since you wrote to me I have received a copy of a further letter from the Prime Minister's office (3 July) to officials in the Department of Health with some modified options. It is these latest suggestions that I shall ask the Commission to consider.

I shall also ensure that the Commission is aware of the different Minister's interests in this issue. I shall particularly bring to its attention the regulatory impact that any ACoP would make and I have told Chris Haskins in my letter 24 November 1999 that the Commission will give careful consideration to the points that he has raised.

I am grateful for the support you and your ministerial colleagues are providing as we work on this issue.

I am copying this letter to the Prime Minister, Alan Milburn, John Fuller and Sebastian Wood at the Cabinet Office and to Richard Wilson.

Yours sincerely

Bill Callaghan

BILL CALLAGHAN
Chair



Minister for the Cabinet Office
Chancellor of the Duchy of Lancaster

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CABINET OFFICE
70 Whitehall, London SW1A 2AS
Telephone: 020 7270 0400
Email: mmowlam@cabinet-office.x.gsi.gov.uk

The Rt Hon Stephen Byers MP
Secretary of State
Department of Trade and Industry
1 Victoria Street
London
SW1E 6RE

17 July 2000

Dear Steve,

**PANEL FOR REGULATORY ACCOUNTABILITY
THE TIMING OF PROPOSALS FOR REGULATION**

As you know, at the meeting of the Panel for Regulatory Accountability in April, Graham Stringer presented a paper on the bunching of regulations. As an action from that meeting he was asked to carry out further work with the Regulatory Impact Unit to look in more detail at the potential problems which might occur in July and January and consider whether departments should be approached about the possibility of changing implementation dates. Graham has now provided me with an update on that work.

A further departmental trawl for the Forward Look of Regulatory Activity has just been completed. There are still some gaps in the information, particularly regarding the likely financial impact of measures, but the much improved range of data has allowed a much more detailed analysis of regulation in prospect.

The paper Graham presented to the April Panel meeting identified twelve significant regulatory proposals that were expected to come into force during June and July, and a further nine measures that were listed as coming into force at the turn of the year (either in December 2000 or January 2001). Attached at Annex A are tables setting out the latest position regarding these different measures. From these it can be seen that only half of the measures will in fact take effect at the critical times; few of them are significant on cost grounds; and they impact on a variety of different sectors, with no one sector being particularly badly hit. Consequently, I do not believe that there

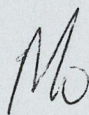


will be a problem either next month or at the turn of the year with bunching of regulations affecting all business.

At the April Panel meeting the RIU was also asked to provide retrospective analysis to see if bunching has occurred in the last two years. Annex B contains details of all regulations introduced on a month-by-month basis in 1998 and 1999; this analysis is not confined to significant regulations but includes deregulatory measures as well as those having a minimal impact on business. As predicted, March is always a busy month because of Budget related measures. A large number of regulations also tend to be introduced at the end of the year, and either side of August. This suggests that departments aim to introduce new measures before the Summer recess – which explains why the Forward Look shows a large number of regulations due to be implemented in June or July – but in practice a substantial number of these are delayed until September.

Although the more detailed analysis that has now been carried out suggests that bunching of regulations in general should not occur later this year, I am still concerned that specific sectors may be hit by a number of regulations within a short space of time. I therefore have asked the RIU to focus on the possibility of sector-specific bunching occurring as part of the second Forward Look Report which should be presented to the Panel during July. The Report will also include an analysis of the significant measures, on cost and topicality grounds, that are due to be implemented in the Autumn, at the turn of the year, and next Spring.

I am copying this letter to members of the Panel for Regulatory Accountability, Sir Richard Wilson and the Prime Minister.

A handwritten signature in dark ink, appearing to be 'M' followed by a stylized 'o'.

MARJORIE MOWLAM

Significant regulations identified as being due for implementation in June/July 2000

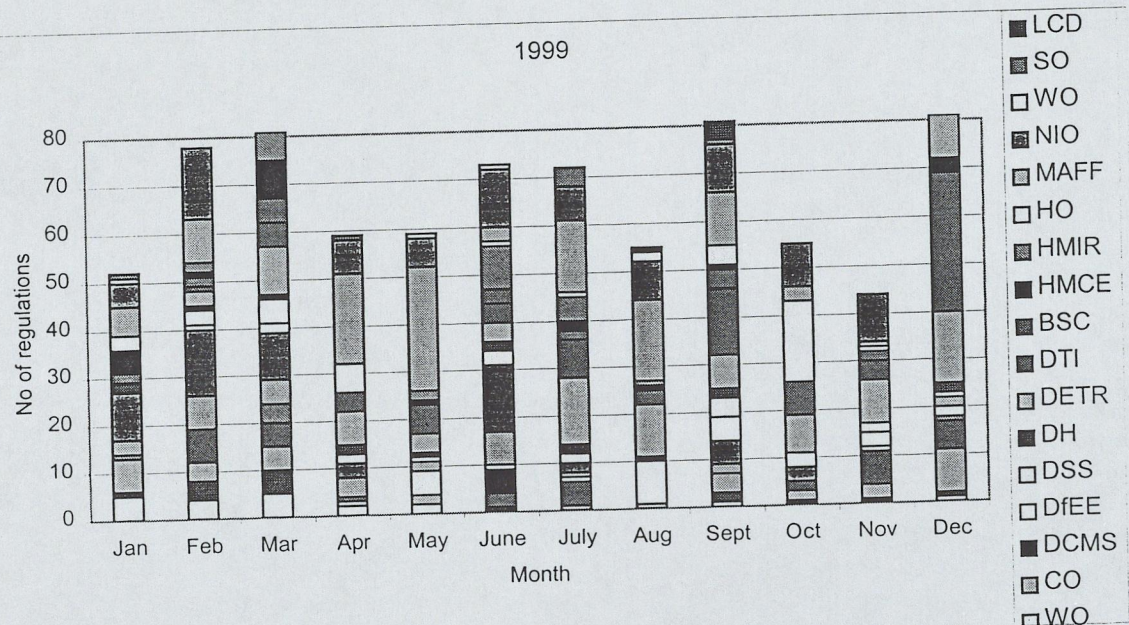
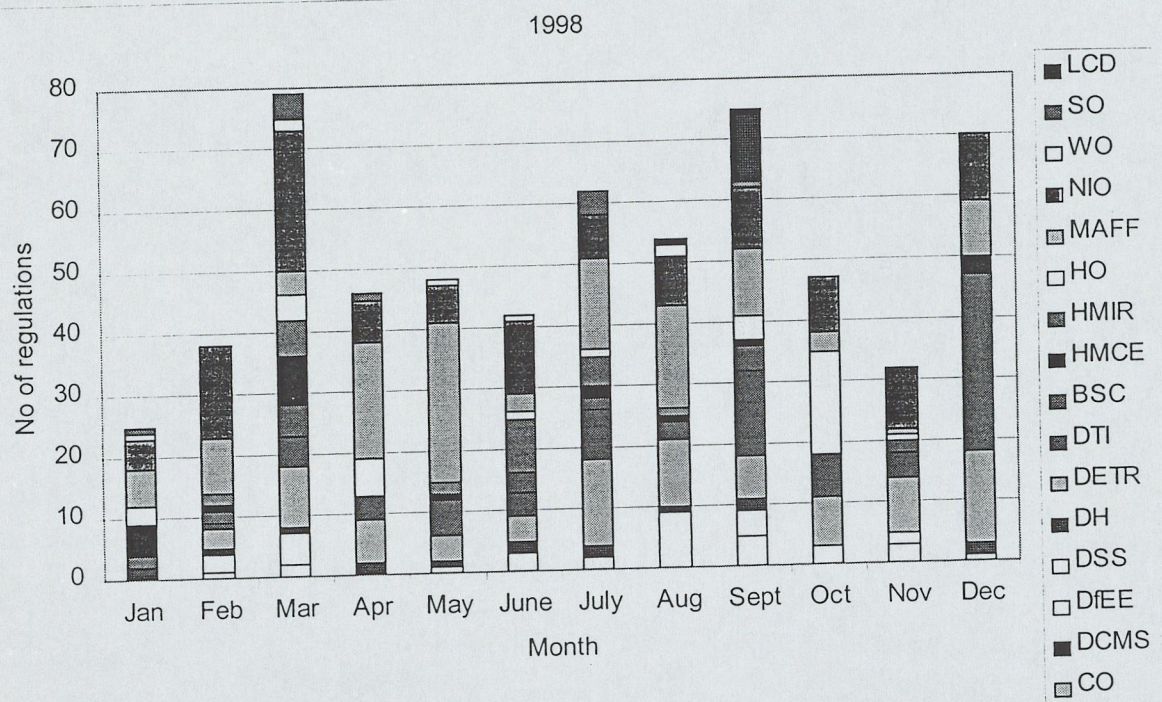
Dept.	Regulation	Sector	Impact	Timing
DTI	Employment Agencies: Revisions to the 1973 Employment Agencies Act	Business and public sector using agencies. Employment agencies.	Expected to be broadly neutral for the employment agency industry and clients.	Further limited consultation under way. Now expected to come into force late Summer 2000.
	Giving workers the right to be accompanied at disciplinary hearings. ACAS to revise their statutory code of practice to complement the statutory right in the Employment Relations Act.	All sectors (although most currently give these rights)	Recurring annual costs to business in the order of £2m	Code already laid before Parliament Into force Summer 2000
	End of Life Vehicles Directive. Proposals for recycling targets.	Vehicle manufacturers; scrap metal dealers.	£391m p.a. by 2015; £315m by 2005. If EP amendments accepted could add another £2-13m p.a. Small car producers exempt from main provisions.	Conciliation process with European Parliament expected to finish this month. Directive likely to come into force July/August 2000 with 18 months for UK implementation (late 2001/early 2002)
	Legal protection of biotechnological inventions Directive	Biotechnology.	Details not available, but not anticipated to be high. (Significant because deemed to be topical)	Directive adopted July 1998 and must be implemented in UK within 2 years, ie by July 2000. Consultation ended 12 May 2000.
	Spectrum Pricing Stage 3 (annual regulations) – third and final phase	Users of radio spectrum	Lower fees for most. For those paying more, fees will be proportionate to spectrum use.	Into force: Part 1 July 2000. Part 2 July 2001. Annual adjustments thereafter
	Postal Services Bill	Postal services, parcels/couriers, business.	Bill overall should have beneficial effects. Main impact is on the Post Office.	Currently in Parliament – Royal Assent expected July 2000. Not due to come into force until March 2001.

	National Minimum Wage Regulations. Young persons rate to be upgraded to £3.20 an hour.	Potentially all employers and all low paid workers under 22.	Details not available. (Significant because deemed to be topical)	Order laid March 2000 to come into force June 2000
	Distance Selling Directive: e-mail provisions	Businesses involved in distance selling, but particularly the direct marketing industry.	No reliable figures yet available. There will be some burdens but unlikely to be significant as most businesses already comply with most of the provisions. (Significant because disproportionate impact on particular sector)	Intend to lay regulations by end July but to allow a two month transitional period until end September 2000
DETR	Building Regulations – update fire safety provisions	Construction	Annual recurring costs in the order of £20m, with recurring benefits slightly higher.	Regulations laid before Parliament December 1999 to come into force July 2000
	Directive on the incineration of waste	Various industrial	Not available.	Directive already applies to new plant. Existing plants must comply by end June 2000.
	Pollution Prevention and Control Regulations	Various	Not available because charging regime yet to be established. In general, there will be an increase in the gross cost to industry as IPPC covers a wider range of environmental impact and will apply to a wider range of industries than the old IPC regime.	Directive should have been implemented in UK by October 1999. Regulations expected to be laid before Summer recess to come into force July 2000. Long term charging scheme not expected to be in place until March 2001 (interim scheme will apply in meantime)
DH	Directive on <i>in vitro</i> diagnostic medical devices.	IVD manufacturers	Recurring costs - £400,000; non-recurring costs £1,400,000	

Significant regulations identified as being due for implementation in December 2000/January 2001

Dept.	Regulation	Sector	Impact	Timing
DSS	Welfare reform and pensions Bill; pension sharing on divorce	Financial services	Costs to business will be recoverable from individuals	Regulations made April 2000: effective from 1 December 2000
DETR	Transport Bill 1999 (road user charging and workplace charging levies)	All businesses	Depends on take-up by local authorities and how schemes are structured	Bill currently progressing through Parliament, but impact will not be felt until local authorities introduce schemes (unlikely to be for some years)
	EU Directive on Conventional Rail Interoperability	Railways	Not available	Not expected to come into force until 2002.
	Hedgerows Regulations 1997 (improved protection)	Agriculture	Not yet available	Expected to come into force early 2001
	Climate Change (range of measures)	Industrial	All individual measures that take forward climate change programme will be assessed separately.	Final Climate Change Programme due to be published late 2000, but won't in itself introduce any new measures
HSE	Control of Asbestos at Work – regulations and Approved Code of Practice	All business	Costs assessed over 50 year period at £5.4b (outweighed by benefits). Costs will be directly proportional to risk, and for many individual businesses will be quite low.	Due to come into force early 2001
HMCE	Simplification of Intrastat - statistics relating to the trading of goods between Member States	Various	A reduction in business compliance costs.	May come into force early 2001, but may be delayed for a year.
HO	Representation of the People Bill – electoral register sale	Credit Reference, direct marketing	Not yet available	
MAFF	Retailers' records for Veterinary Medical Product regulations 1999	Veterinary practices, medical suppliers	Recurring costs - £6m Non-recurring costs - £4m	Came into force February 2000

All regulations introduced on a month-by-month basis in the last two years





Minister for the Cabinet Office
Chancellor of the Duchy of Lancaster

Top - SV
cc ~~SON~~
PJ

CABINET OFFICE
70 Whitehall, London SW1A 2AS
Telephone: 020 7270 0400
Email: mmowlam@cabinet-office.x.gsi.gov.uk

Ret to SV

(F)

David Irwin Esq
Chief Executive
Small Business Service
DTI
1 Victoria Street
London
SW1H 0ET

17 July 2000

Dear David,

**IMPROVING REGULATORY PERFORMANCE: MEETING OF THE PANEL
FOR REGULATORY ACCOUNTABILITY
18 JULY, 2.30 p.m., CONFERENCE ROOM A, 70 WHITEHALL**

The Panel for Regulatory Accountability meets on Tuesday 18 July. Yvette Cooper from the Department of Health has been invited to present a paper to the Panel on alternative options to the proposed Approved Code of Practice (ACoP) on Passive Smoking in the Workplace.

I enclose the relevant papers for the meeting and look forward to the Panel discussion on Tuesday.

A copy of this letter goes to the Prime Minister, members of the Panel for Regulatory Accountability and Sir Richard Wilson.

Mo

MARJORIE MOWLAM





Minister for the Cabinet Office
Chancellor of the Duchy of Lancaster

CABINET OFFICE
70 Whitehall, London SW1A 2AS
Telephone: 020 7270 0400
Email: mmowlam@cabinet-office.x.gsi.gov.uk

Lord Christopher Haskins
65/3 HorseGuards Road
London
SW1P 3AL

17 July 2000

Dear Chris,

**IMPROVING REGULATORY PERFORMANCE: MEETING OF THE PANEL
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18 JULY, 2.30 p.m., CONFERENCE ROOM A, 70 WHITEHALL**

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MARJORIE MOWLAM





Minister for the Cabinet Office
Chancellor of the Duchy of Lancaster

CABINET OFFICE
70 Whitehall, London SW1A 2AS
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Email: mmowlam@cabinet-office.x.gsi.gov.uk

The Rt Hon Stephen Byers MP
Secretary of State
Department of Trade and Industry
1 Victoria Street
London
SW1H 0ET

17 July 2000

Dear Stephen,

**IMPROVING REGULATORY PERFORMANCE: MEETING OF THE PANEL
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Mx

MARJORIE MOWLAM





Minister for the Cabinet Office
Chancellor of the Duchy of Lancaster

CABINET OFFICE
70 Whitehall, London SW1A 2AS
Telephone: 020 7270 0400
Email: mmowlam@cabinet-office.x.gsi.gov.uk

The Rt Hon Andrew Smith MP
Chief Secretary
Department of Trade and Industry
1 Victoria Street
London
SW1H 0ET

17 July 2000

Dear Andrew,

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MARJORIE MOWLAM





Minister for the Cabinet Office
Chancellor of the Duchy of Lancaster

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70 Whitehall, London SW1A 2AS
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Graham Stringer Esq MP
Parliamentary Secretary
Cabinet Office
70 Whitehall
London
SW1A 2AS

17 July 2000

Dear Graham,

**IMPROVING REGULATORY PERFORMANCE: MEETING OF THE PANEL
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Mo

MARJORIE MOWLAM





Minister for the Cabinet Office
Chancellor of the Duchy of Lancaster

CABINET OFFICE
70 Whitehall, London SW1A 2AS
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Email: mmowlam@cabinet-office.x.gsi.gov.uk

Lord Falconer of Thoroton QC
Minister of State
Cabinet Office
70 Whitehall
London
SW1A 2AS

17 July 2000

Dear Charlie,

**IMPROVING REGULATORY PERFORMANCE: MEETING OF THE PANEL
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A copy of this letter goes to the Prime Minister, members of the Panel for Regulatory Accountability and Sir Richard Wilson.

M

MARJORIE MOWLAM



PANEL FOR REGULATORY ACCOUNTABILITY
MEETING 18 JULY 2000

PASSIVE SMOKING IN THE WORKPLACE
- A Background Note by the Regulatory Impact Unit

Summary

The Health and Safety Executive have been consulting on an Approved Code of Practice (ACoP) dealing with Passive Smoking in the Workplace and are to make recommendations to the Health and Safety Commission in the Autumn. This would require employers either to ban smoking on their premises or provide ventilation systems. Concern has been expressed by the Better Regulation Task Force, the Small Business Service, CBI and the FSB about the potential impact of an ACoP on business, particularly smaller business in the hospitality sector. Yvette Cooper, Public Health Minister, has therefore been invited to attend the July Panel meeting to present a paper giving details of less regulatory alternatives options to the ACoP.

Background

1. The 1998's '*Smoking Kills*' White Paper considered ways of reducing the risk caused by passive smoking. The Health and Safety Commission carried out an initial consultation exercise on an Approved Code of Practice (ACoP) on passive smoking in the workplace in 1999. The consultation paper made clear that the HSC had not yet reached a decision on the best way forward and acknowledged that the proposals could be seen as limiting personal choice.
2. Minister for the Cabinet Office (MCO) wrote to Yvette Cooper on 5 November 1999, expressing major concerns, particularly that, according to the consultation RIA, the costs would outweigh benefits by between two to four times. It was also felt that the proposals would have a disproportionate impact on small business, and the hospitality industry, which had recently introduced a voluntary Public Places Charter¹ (with the support of the Department of Health). DCMS, Treasury and the Better Regulation Task Force shared these concerns.
3. The HSE/HSC amended the RIA in the light of their first consultation which ended on 29 October 1999, including long term health benefits e.g. benefits from reduced lung-cancer deaths among non-smokers and health benefits from smoking cessation. In this revised RIA the benefits outweighed the costs. A summary of the key points on the RIA is included in Annex I.

1. ¹ The Public Places Charter (PPC) is a voluntary code agreed between the Department of Health and leading hospitality industry groups on smoking in public places such as hotels, restaurants, pubs and other leisure venues. It was launched in September 1999.

4. Alan Milburn wrote to the Prime Minister on 20 June, seeking to clarify some points of detail regarding the ACoP, and to claim that no new regulatory burden was being imposed by the ACoP, and urging support. David North (No.10) replied to this letter (dated 3 July) restating concerns over the impact upon small businesses, particularly those in the hospitality industry. The reply asked DoH to prepare a paper for Yvette Cooper to present at the July Panel meeting regarding alternative options to the ACoP.

RIU Concerns

The RIU have a number of concerns, which are shared by Lord Haskins and the Better Regulation Task Force:

- The current legislation requires employers to ensure, so far as reasonably practical, the health, safety and welfare of all their employees at work. Non-statutory guidance urges employers to adopt a smoking policy, in consultation with their workers. The RIA provided for the passive smoking ACoP dismisses the option of stricter enforcement of the current law on the grounds that Inspectors would have to prove a risk existed which "*given the state of the current scientific evidence*" would be "*difficult*". The RIA goes on to say that an ACoP is much more persuasive "*People tend to do what an ACoP says because if they do they avoid the risk of Court proceedings or enforcement notices*".
- According to the initial RIA, the potential cost to business (over a ten year period) arising from publication of the ACoP are between **£3.1 and £8.9 billion** with the benefits between £1.4 and £2.1 billion (and some of the benefits included are fairly dubious). Following the first run of consultation the HSC added in large extra health benefits many of which are rather dubious (e.g. people living longer from being forced to give up smoking, less lung cancer, etc). However, in discussion with RIU economists they have now agreed to produce more realistic benefit estimates.
- **Just over half a million businesses would be affected. (90% of these are small businesses.** For example, a country pub could be faced with installing expensive ventilation equipment costing the equivalent of several weeks or even months profits or banning smoking altogether.
- A number of other options are put forward in the RIA although not considered in any detail:

Ordinary Guidance – this would suggest employers who consider there be potential risk to take action

A Voluntary Scheme – possibly along the lines of the 'public places charter'

A High Profile Campaign – to win businesses over

Department of Health Position

Discussions at official level have indicated that the Department of Health are likely to raise a number of alternative options in their paper to the Panel. These seem likely to include:

- Delaying implementation of the ACoP, with a lengthy lead in / transitional period.
- Introducing a new voluntary scheme, similar to the Public Places Charter, but extended to cover employee, as well as customer protection, and applicable to a wider range of business premises.
- Providing of new general guidance, similar to the ACoP but without the statutory footing. This could be sector specific and produced in collaboration with business.
- High profile health education / awareness campaign, including TV commercials, poster campaigns etc aimed at employees and / or employers.
- Targeted enforcement of the existing Health and Safety legislation.
- Exemptions for hospitality industry or small premises/businesses.

A package/bundle of a number of the above options, e.g. awareness campaign plus extended voluntary scheme with procedure for measuring effectiveness, coupled together with an agreed timetable for demonstrating success or failure in achieving policy aim. This time-tabled package could include a stepped and increasing regulatory approach if progress is not made in achieving the policy aims.

In considering the options put forward by the Department of Health, the Panel will wish to consider:

- **Is an ACoP the appropriate recommendation to give the Health and Safety Commission at this time (given the current level of concern over its impact) ?**
- **Whether a combination of more innovative and business-friendly non-legislative measures could be used to achieve the policy objectives ?**
- **How the Department of Health (and / or the Health and Safety Executive) currently measure the performance of the Public Places Charter and how they could extend to this to assess the success of non-legislative options ?**

Summary of Regulatory Impact Assessments

The main points are summarised below.

	1 st RIA (1999)	2 nd RIA (2000)
Costs	£3.1-8.9bn	£2.8 – 3.3bn*
Benefits	£1.4-2.1bn	£12.5-23.4bn**

**total net costs to society over a 25 year period, in present value terms.*

*** total benefits to society over a 25 year period*

The HSE/HSC amended the RIA in the light of their first consultation, including long term health benefits e.g. benefits from reduced lung-cancer deaths among non-smokers and health benefits from smoking cessation. In the revised RIA the benefits outweighed the costs (see table above).

The revised RIA attempts to quantify costs and benefits. This involves making some rather arbitrary assumptions, for many of which the RIA provides no argument or justification (e.g. percentage of UK smokers who work for an organisation which will implement a smoking ban in response to an ACoP). This means that the stated ranges of both costs and benefits are far narrower than the underlying analysis would warrant.

A number of less aggressive options are put forward in the RIA, including a voluntary scheme, guidance for employers and a high profile campaign to win businesses over. Unfortunately, none of these are fully appraised or considered in any detail.

Within the Approved Code of Practice option, there has been little analysis of alternative variants. The RIA itself mentions the possibility of excluding the hospitality industry, but does not consider it as an option. Similarly an exemption for small businesses is not fully explored. (Californian passive smoking laws provide substantial exemptions for businesses with less than five employees).

Reaction to the initial RIA from the Better Regulation Task Force was that a passive smoking ACoP would impose an enormous enforcement burden on local authorities, who would bear the brunt of enforcement. The RIA mentions this but then simply says that it is impossible to predict the costs, which, effectively, means setting them at zero as far as the total costs figure goes.

Just over half a million businesses would be affected by the proposals (90% of these are small businesses). For example, a country pub could be faced with installing expensive ventilation equipment costing the equivalent of several weeks or even months profit, or banning smoking altogether.

FROM THE DEPUTY PRIME MINISTER



Bill Callaghan Esq
Chair
Health and Safety Commission
Rose Court
2 Southwark Bridge
LONDON
SE1 9HS

DEPARTMENT OF THE ENVIRONMENT
TRANSPORT AND THE REGIONS

ELAND HOUSE
BRESSENDEN PLACE
LONDON SW1E 5DU

TEL: 020 7944 3011
FAX: 020 7944 4399
E-Mail: john_prescott@detr.gsi.gov.uk

(P)

*I wrote on this -
did you see?
I like X, by the
way!*

DW

*DA - I think we should keep
the pressure up on this
we don't want to concede an*

*Top-SV
CCP
✓*

*AcCoP on passive
smoking.*

SV 10/7

- 5 1111 2000

Bill

PASSIVE SMOKING AT WORK: PROPOSAL FOR AN APPROVED CODE OF PRACTICE

I understand that the Health and Safety Commission (HSC) will shortly be considering the results of its consultation exercise on a proposed Approved Code of Practice (ACoP) on passive smoking at work. I have been asked by the Prime Minister to ask you to explore an alternative range of options at the same time you consider the advice from HSE on this issue. His views are set out in the attached letter from his Private Secretary to mine.

I also enclose a copy of Alan Milburn's helpful response to that letter, in which he cleared up some of the misunderstandings in it. I fully endorse Alan's comments, the proposal for an ACoP and the hospitality industry's Public Places Charter (PPC) are two distinct initiatives. Nevertheless it is important that there should be no conflict between the two measures and I see no reason why the proposed ACoP cannot complement the PPC.

I understand that Chris Haskins has already written to you about this proposal and that HSE has agreed to ensure that HSC is fully aware of the Better Regulation Task Force's views when it considers this matter. I also understand that the regulatory impact assessment for this proposal is being redrafted to take on board comments made during and after the formal consultation exercise, and that it is now likely to suggest that the benefits of an ACoP are now likely to outweigh the costs. Nevertheless this will still be a significant proposal in regulatory impact terms and



INVESTOR IN PEOPLE

OFFICE OF THE DEPUTY PRIME MINISTER
FROM THE PRIVATE SECRETARY



David North Esq
Private Secretary
10 Downing Street
LONDON
SW1A 2AA

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Handwritten: *PN*

Handwritten: *11*

DEPARTMENT OF THE ENVIRONMENT
TRANSPORT AND THE REGIONS

ELAND HOUSE
BRESSENDEN PLACE
LONDON SW1E 5DU

TEL: 020 7944 3011
FAX: 020 7944 4399
E-Mail: john_prescott@detr.gsi.gov.uk

- 5 JUL 2000 *Handwritten:* *faxed?*

Handwritten: *Dear David-*

PASSIVE SMOKING AT WORK: PROPOSAL FOR AN APPROVED CODE OF PRACTICE

In your letter of 11 May, you asked for the Health and Safety Executive to be made aware of the Deputy Prime Minister's views on a proposal for an Approved Code of Practice (ACoP) on passive smoking at work. As a result the Deputy Prime Minister has written to the Commission Chair, Bill Callaghan; a copy of his letter is attached.

The Deputy Prime Minister has also seen a copy of Alan Milburn's helpful response, in which he clarified some of the misunderstandings in your letter. The Deputy Prime Minister would like to reinforce his comments. The proposal for an ACoP and the hospitality industry's Public Places Charter (PPC) are two distinct initiatives. The former is targeted at protecting employees who have to work in smoky environments, whereas the PPC is all about giving a better choice for smokers and non-smokers in pubs and restaurants. Furthermore, although the PPC makes some reference to the industry's staff, they were not consulted when it was drawn up. Nevertheless, it is important that there should be no conflict between the two measures and the Deputy Prime Minister sees no reason why an ACoP cannot complement the PPC.



INVESTOR IN PEOPLE

The Deputy Prime Minister also shares the Prime Minister's and Alan Milburn's concerns about burdens on business. I understand that Chris Haskins has already written to Bill Callaghan about this proposal and HSE has agreed to ensure that HSC is fully aware of the Better Regulation Task Force's views when it considers this matter. But it will also be aware that HSE first issued voluntary guidance on this issue in 1988 and that as a result many employers have adopted sensible workplace smoking policies. The proposal for an ACoP was aimed at stimulating the small but significant minority of employers who have refused to respond to this approach and whose employees have to work in other people's tobacco smoke.

I am copying this letter to Janet Grauberg, John Fuller and Sebastian Wood at the Cabinet Office, Sir Richard Wilson and to Bill Callaghan.

Yours ever,

N Willey

NICOLA WILLEY
Private Secretary

FROM THE DEPUTY PRIME MINISTER



Bill Callaghan Esq
Chair
Health and Safety Commission
Rose Court
2 Southwark Bridge
LONDON
SE1 9HS

DEPARTMENT OF THE ENVIRONMENT
TRANSPORT AND THE REGIONS

ELAND HOUSE
BRESSENDEN PLACE
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TEL: 020 7944 3011
FAX: 020 7944 4399
E-Mail: john_prescott@detr.gsi.gov.uk

- 5 JUL 2000

PASSIVE SMOKING AT WORK: PROPOSAL FOR AN APPROVED CODE OF PRACTICE

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I also enclose a copy of Alan Milburn's helpful response to that letter, in which he cleared up some of the misunderstandings in it. I fully endorse Alan's comments, the proposal for an ACoP and the hospitality industry's Public Places Charter (PPC) are two distinct initiatives. Nevertheless it is important that there should be no conflict between the two measures and I see no reason why the proposed ACoP cannot complement the PPC.

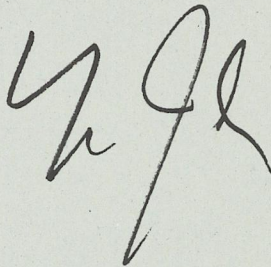
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INVESTOR IN PEOPLE

Larry Whitty, in his role of DETR's Regulatory Reform Minister, will need to clear it with colleagues, including Chris Haskins' Task Force, should you decide to seek my consent for an ACoP.

I am copying this letter to the Prime Minister, Alan Milburn, John Fuller and Sebastian Wood at the Cabinet Office and to Sir Richard Wilson.

A handwritten signature in black ink, appearing to be 'JP' with a stylized flourish extending downwards.

JOHN PRESCOTT



10 DOWNING STREET
LONDON SW1A 2AA

From the Private Secretary

3 July 2000

Dear Janet

PASSIVE SMOKING

The Prime Minister has seen your Secretary of State's letter supporting the introduction of an Approved Code of Practice (ACoP) on passive smoking.

The Prime Minister is concerned that, despite your Secretary of State's assurances that no new regulatory burden on employers would be imposed, the Health and Safety Commission Regulatory Impact Assessment estimates the cost to business to be between £3.1 billion and £8.9 billion. It also estimates that just over half a million, mainly small businesses, would be affected.

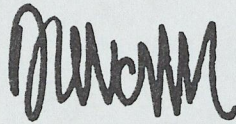
The Prime Minister is also aware that the Better Regulation Task Force is concerned about the impact that an ACoP would have on the hotel and restaurant sector. The Task Force plans to highlight this in its forthcoming report on the cumulative burden on business.

The Prime Minister's view is that further consideration should be given to other ways of encouraging employers to adopt policies on passive smoking to protect employees at risk. These might include further guidance designed to persuade employers to take action where they assess that there is a risk, a voluntary scheme (possibly along the lines of the Public Places Charter, and a high-profile campaign to win business over. The Prime Minister thinks that all of these should be given further consideration, and that we should encourage voluntary arrangements before the raising the stakes via an ACoP.

The Prime Minister is aware that Yvette Cooper has been invited to attend the Panel for Regulatory Accountability in July and would be grateful if you could arrange for a paper discussing alternatives to an ACoP to be provided for discussion at the panel meeting.

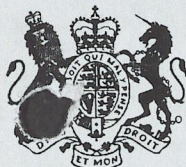
I am copying this letter to Peter Unwin (DETR), John Fuller and Sebastian Wood (Cabinet Office).

Yours ever

A handwritten signature in dark ink, appearing to read 'David North', with a stylized, cursive script.

DAVID NORTH

Janet Grauberg
Department of Health



Minister for the Cabinet Office
Chancellor of the Duchy of Lancaster

CABINET OFFICE
70 Whitehall, London SW1A 2AS
Telephone: 020 7270 0400
Email: mmowlam@cabinet-office.x.gsi.gov.uk

Ms Yvette Cooper MP
Parliamentary Under Secretary for Public Health
Department of Health
Richmond House
79 Whitehall
London
SW1A 2NL

3 July 2000

Dear Yvette,

APPROVED CODE OF PRACTICE: PASSIVE SMOKING IN THE WORKPLACE

I wrote to you on 16 May outlining my concerns regarding the current draft proposals from the Healthy and Safety Executive for an Approved Code of Practice (ACoP) dealing with passive smoking in the workplace. My letter highlighted concerns held by business and the Better Regulation Task Force about the cost of the ACoP to business, particularly the disproportionate cost to be borne by the hospitality industry. It also suggested that less burdensome alternatives should be explored such as amending or extending the current voluntary scheme.

I understand that our officials have since met but there does not appear to have been any significant movement on this important issue. Given our concerns and those of the Better Regulation Task Force the Ministerial Panel for Regulatory Accountability would like to discuss the matter with you at our meeting on July 18 at 2.30pm.

I would be grateful if you could confirm that you will be able to attend.

I am copying this letter to the Prime Minister, Alan Milburn, Lord Whitty, members of the Panel for Regulatory Accountability, and Sir Richard Wilson.

MARJORIE MOWLAM





MATRIX

cc
CS
DW
PV
PRESS

The Rt Hon Margaret Beckett MP

PRIVY COUNCIL OFFICE
2 CARLTON GARDENS LONDON SW1Y 5AA

30 June 2000

Dear Alan,

TOBACCO BILL - ANNOUNCEMENT

I am writing in response to your letter of 26 June seeking agreement on lines to take on the introduction of primary legislation to ban tobacco advertising. I can agree to the first option that you proposed, but not the second.

You wrote to seek agreement on lines to take concerning the introduction of primary legislation to ban tobacco advertising. The lines will be necessary because of the recent opinion of the Advocate General of the European Court of Justice that the Directive implementing the ban should be annulled. In the light of this opinion, the House of Lords will not lift the current stay on our implementation of the directive, and we need to explain how we will respond to this.

You proposed two options. The first was to state that primary legislation was being prepared and would be introduced when Parliamentary time allowed. The second was to give a commitment that such legislation would be implemented during the lifetime of this Parliament.

The first option is consistent with the long standing convention that commitments to legislation are not given in advance of the Queen's Speech. The existence of this convention, and the fact that it has been adhered to for many years, by Governments of all parties, provides a robust and credible response to questions about when the Government will have time to legislate on particular issues. I can therefore agree to this line being used.

The second option makes a much firmer commitment. However, we cannot pre-empt the Queen's Speech, and slots next Session – as for all Bills – are contingent on Bills being properly ready. For these reasons I cannot agree with the second option that you propose. I would however be content for you to say that we intend to legislate as soon as Parliamentary time allows, and that the Government attaches great priority to this.

I am copying this letter to the Prime Minister, members of LP committee, Robin Cook, Stephen Byers, Sir Richard Wilson, Robert Hill and First Parliamentary Counsel.

Reynde

Margaret

MARGARET BECKETT

The Rt Hon Alan Milburn MP
Secretary of State for Health



Richmond House 79 Whitehall London SW1A 2NS Telephone 0171 210 3000

From the Secretary of State for Health

The Rt Hon Margaret Beckett MP
President of the Council
2 Carlton Gardens
London
SW1Y 5AA

(f)

DN
C: CS
R

26 June 2000

Dear Margaret

TOBACCO ADVERTISING BAN

This letter seeks agreement to a line to take on the Government's intention to introduce primary legislation to fulfil our manifesto pledge to ban tobacco advertising.

You will recall that the UK tobacco industry challenged our decision to implement Directive 98/43/EC banning tobacco advertising, promotion and sponsorship in advance of the European Court of Justice (ECJ) ruling on the German challenge to the legality of the Directive. Last year the High Court granted the UK companies a stay on making the Regulations implementing the Directive; the Government appealed successfully to the Court of Appeal, but the Court did not lift the stay on implementation so as to allow the industry to petition the House of Lords for leave to appeal that decision. The House of Lords granted them leave to appeal; the hearing took place on 22-24 May. A further hearing was arranged for 6 July, so that their Lordships could hear further submissions in the light of the Advocate General's opinion on the case.

The Advocate General (AG) delivered his opinion on 15 June. In his judgment the Directive is not soundly based and should be annulled. I spoke to you at Cabinet about this; my Department then issued a press release saying that the Government was now preparing primary legislation.

Clearly there is no practical point in continuing with the litigation in the House of Lords, as there is no possibility in the light of the AG's opinion of their Lordships lifting the stay on us implementing the advertising ban before the ECJ rules. This is irritating, given that the Government was successful in the Court of Appeal, but we recognize that we cannot now



succeed via this route. That said, we do need a robust line to take for the media, given that the industry may seek to make much of this reverse.

I see two options. One is to repeat that we are preparing primary legislation, which we will introduce when Parliamentary time allows. The problem is the supplementary question: will the Government have time to legislate on this issue in the current Parliament? We need to have a robust response to that question.

Which brings me to the second option, namely to state that the Government plans to implement the ban in the lifetime of this Parliament. This does not commit us to the content of the Queen's Speech, but it does indicate our readiness to act.

I would be grateful for your views.

I am copying this letter to members of QFL, Robin Cook, Stephen Byers, Sir Richard Wilson, Robert Hill and First Parliamentary Counsel.

A handwritten signature in black ink, appearing to read "Alan Milburn", written in a cursive style.

ALAN MILBURN



(1)

Top-DN
cc-JAH
✓

Secretary of the Cabinet and Head of the Home Civil Service

DAVID NORTH

David
is this what we
have been waiting all
these weeks for! I
have no objection to point
i) but on point ii) I suggest
we ignore as he is contradictory. Probably
a good idea to share informally with Fritchie.

RH
Agree?
DN

RESPONSE TO FRITCHIE REPORT ON NHS APPOINTMENTS

Robert

I don't think the response is too bad in substance, and I personally don't object to their continuing to seek local authority suggestions of names at the start of the appointment process. But:

- i. I think the tone of the response somehow manages to be a bit unrepentant; and
 - ii. it is a little on the short side, although not too much so. I personally favour short replies to recommendations.
2. Perhaps the way through would be to ask DoH to show the response informally to Rennie Fritchie and to make sure that she is 'on side' before they publish it.

RW.

RICHARD WILSON

23 June 2000

(Me)

FROM: M E Donnelly
DATE: 23 June 2000

MICHAEL TATHAM
No 10

cc: Jeremy Heywood
John Sawers
David North
Robert Hill
Roger Liddle
Sebastian Wood

for 24/6

Prime Minister

Schroeder may try to phone you about this over the weekend. The suggested line to take reflects DoH / Robert Hill views on the merits of the directive. You may not want to sound quite so unhelpful given Schroeder's broadly helpful position on tax and your dinner with him next week.

TOBACCO

Michael Tatham.

**UK and most Member States support the draft tobacco Directive.
Germany is isolated. Schroeder may ring the PM to lobby.**

You asked for a quick background note and stalling line to take for use if needed over the weekend. A fuller line will be available for the Health Council on 28 June.

David North's note of 4 April 2000 recorded the Prime Minister's agreement to support the draft Directive on the Manufacture, Presentation and Sale of Tobacco Products; and indicated that this was the sort of issue on which the UK should be seeking to provide leadership in Europe. The draft Directive **limits tar, nicotine and carbon monoxide levels**; requires **additives** to be **identified**; and imposes **larger warning signs** on packs.

The UK is in a good position and most Member States support the Directive. Germany is opposed and has been seeking every means to get the Directive struck down. Germany has tried to use a read-across to the recent Advocate-General Opinion to strike down the Tobacco Advertising Directive to suspend consideration of this new measure. But this was over-ruled by the Council Legal Service, the Presidency and most Member States.

Germany also objects to UK/Finnish proposals to ban "light" and "mild" brands. Finally Germany would like to amend Article 3 which prevents cigarettes being manufactured for export from the EU if they do not meet the new stringent standards.

There is a potential QMV in favour of the proposal. But signs are that France will look to find a compromise Germany could support, if only because they want to strengthen links with the Germans ahead of their Presidency. The Portuguese have not demonstrated a very determined streak on this issue to date and the Netherlands and Spain may end up supporting compromise.

No compromise is likely to satisfy the Germans. But there may be pressure on us to move towards them on the light/mild issue and export question. DH Ministers are considering.

Cabinet Office View

Our view is that the UK should push for QMV agreement to as much of the Directive as we can get. We should stay firm on banning light/mild brands. But there may be scope for compromise on the export trade.

One way would be to adopt the Parliament approach of extending the derogation for exports. The other would be to ask the Commission Legal Service to find a way to allow export conditions to be different. Job losses are threatened over the export condition, but not the light/mild ban so it is presentationally slightly easier to make if required. UKRep support this analysis.

DH may suggest avoiding any concessions and hoping for a better outcome under the Swedish Presidency next year. This has the advantage of preserving our health policy; but the QMV could crumble around us under French attempts to assist Germany, producing a worse outcome in health terms.

German phone call.

The Germans are likely to argue that this proposal should await the final ECJ view on the Advertising Directive and that the Directive is not trade compliant. If necessary, we suggest the following reply:

- **Aware of Germany's concerns**
- **Reducing smoking a priority for UK health strategy. This Directive is very important to us.**
- **Have carefully considered trade implications and are satisfied, as is Commission, Parliament and Council legal Service that this is OK.**

- No read-across to Advertising Directive since this draft Directive is based on earlier, unchallenged legislation and is not a new measure. So consideration should continue.
- If Germany has specific compromise proposals we will look at them before the Health Council. But we need a good agreement quickly.

M E DONNELLY
European Secretariat
Room 323 70W
☎270 0177



Richmond House 79 Whitehall London SW1A 2NS Telephone 0171 210 3000

From the Secretary of State for Health

Restricted - Policy

MATRIX

need by
DW
cc PN
Gue

PRIME MINISTER

PASSIVE SMOKING AT WORK: APPROVED CODE OF PRACTICE ON SMOKING IN THE WORKPLACE (ACOP)

I have seen a copy of your Private Secretary's letter re the proposal for an ACOP dated 11 May, Andrew Smith's letter of the same date to Yvette Cooper and Dr Mowlam's letter of 16 May, also to Yvette. I am also aware of a recent meeting at official level. I would like to comment briefly on the way forward in this difficult area.

There seems to be a misunderstanding about the status and purpose of the Public Places Charter and that of an ACOP. The Public Places Charter is an excellent initiative on the part of the licensed hospitality industry, and one which we have encouraged, but it involves just one business sector. It is also focused on providing a better service to non-smoking customers, not on the health and safety of employees. There is in fact no general "voluntary scheme of accreditation" for employers in this area.

Furthermore, the introduction of an ACOP does not shift the balance from a voluntary approach to a regulated statutory one. An ACOP would clarify existing legal requirements for employers to protect the welfare of their staff. There is no new regulatory burden being placed on businesses, although I understand that some businesses might wish to take action on health, safety and welfare grounds once an ACOP had clarified the situation. The introduction of an ACOP is, in our view, justified by the scale of the problem – some 3m workers exposed to tobacco smoke at work. The clarity an ACOP would give in a difficult legal area would in our view actually work in employers' favour by setting out the steps they would need to take to comply with the law, thereby avoiding but also offering them a sound defence in any litigation.

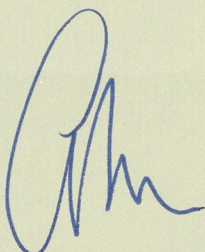
I understand completely and share the concerns about burdens on business, particularly small business. I also agree we need to provide a boost to the Public Places Charter with a view to widening its scope. But I am also very conscious that failure to agree to any HSC recommendation

to introduce an ACOP would leave us in a difficult and perhaps damaging position.

I therefore am in broad agreement with your proposed range of options as reported in Mr North's letter, and agree with the Chief Secretary's wish to see robust costings. A meeting at official level has made a number of helpful suggestions on how the ACOP could be simplified and clarified to give very clear guidance to employers on what precisely they would need to do to comply with an ACOP. The Regulatory Impact Assessment will be revisited and the hospitality industry invited to participate in drawing up guidance on an ACOP for the hospitality sector. We will continue to give the Public Places Charter every support. We are also fully at one with other departments who wish to see a transitional period of at least a year after the introduction of an ACOP to ensure that time was given to make any necessary changes.

However, I would urge you to support any HSC recommendation for an ACOP which would help reduce workers exposure to tobacco smoke at work. My main concern here is not pubs, bars and restaurants where people choose to smoke, and where simple steps can be taken to protect employees. My prime concern is with the many people who work in workplaces where they are exposed to tobacco smoke for no good reason. I believe an ACOP would provide a proportionate response to the problem.

I am copying this letter to Peter Unwin (DETR), John Fuller and Sebastian Wood at the Cabinet Office and to Sir Richard Wilson.

A handwritten signature in blue ink, appearing to be "A M".

A M

20 June 2000



Minister for the Cabinet Office
Chancellor of the Duchy of Lancaster

Yvette Cooper
Department of Health
Richmond House
79 Whitehall
London
SW1A 2NS

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α:5U
PU

MATEIX
CABINET OFFICE
70 Whitehall, London SW1A 2AS
Telephone: 020 7270 0400

Reference
Number:
55718

Dear Yvette,

16 May 2000

PASSIVE SMOKING AT WORK

Thank you for your letter dated 20 April regarding the Approved Code of Practice (ACoP) on smoking in the workplace.

I am aware of the criticism faced by the revised ACoP, particularly from business who have concerns over the costs and benefits of these proposals. I understand that the revised ACoP and RIA, together with the results of the recent informal HSE consultation, will be presented to the HSC for recommendation at their August meeting.

I agree with your statement that Smoking Kills may have been interpreted by some as a promise of action on this important public health issue. Progress has been made with actions identified in the white paper, we have agreed a new charter on smoking with the licensed trade and have also continued to work with the industry on a new signage system to help customers identify easily the smoking policies in hotels, restaurants and pubs, and allow them to make an informed choice. The Smoking Kills White Paper made only a commitment to consult on an ACoP, which has been carried out. However, I am also very aware and sensitive to the criticisms from business that they face ever greater administrative and regulatory burdens. We will need to reach a careful balance on this issue.

The Better Regulation Task Force remain very concerned about these proposals (this was originally picked up in their hotel review, but their concern is more widely about small firms). Although this is clearly an important public health issue, and action is required to achieve our policy aims, I am not convinced that the currently proposed ACoP is indeed the only option left available to us. The preferred option must be to find alternative and less burdensome options to achieve the stated policy aims in the

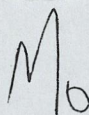
first instance e.g. improving and expanding upon the current voluntary charter and allowing it adequate time to bed down. If in the future we are able to demonstrate that the voluntary charter is not able to achieve our aims we should then look to introduce more regulatory or statutory options.

The Government may be able to help by delivering a further boost to the Charter, so as to allow it every chance of success. Prior to progressing onto more burdensome options we will need collect evidence and demonstrate that any voluntary scheme or charter is not adequate to achieve our policy aims. I am not yet convinced that sufficient time has passed to allow such evidence and conclusions to be drawn.

Given the concern over the potential impact of the proposed ACoP on business, I agree with your suggestion that further exploration is required to ensure that unnecessary burdens are not imposed. I suggest this could be taken forward by discussing the issue at the Panel for Regulatory Accountability on 26 June, which Larry Whitty, Regulatory Reform Minister responsible for HSE has agreed to attend. I hope that you will be able to join us.

In addition to this, due to the significant cost and interest in these proposals, and as you say in your letter, the need 'for Government to agree a way forward', I propose that in the event of any recommendation being made by the HSC to DETR, we must ensure that the recommendation is subject to Collective Ministerial Agreement at that time.

I am copying this letter to the Prime Minister, the Deputy Prime Minister, Stephen Byers, Alan Milburn, Andrew Smith, Lord Haskins, Lord Whitty, Sir Richard Wilson, Peter Unwin at DETR and [David North](#) and Robert Hill at No.10.



MARJORIE MOWLAM

RESTRICTED

From: Robert Hill
Date: 26 May 2000

PRIME MINISTER

cc: Lord Falconer
Jonathan Powell
Jeremy Heywood
David Miliband
David North
Sir Richard Wilson

DEPARTMENT OF HEALTH RESPONSE TO THE FRITCHIE REPORT

You will recall that earlier in the year Rennie Fritchie produced a fairly critical report on the NHS appointments process. Attached (Flag A) is the draft DH response.

The big reform Alan is making is to delegate appointments of non-execs to NHS trust boards to chairs of local health authorities – so de-politicising much of the process. All appointments will still have to comply with Nolan rules.

On Dame Rennie's specific recommendations Alan is generally going with the grain of them. For example, he is to stop MPs commenting on draft shortlists. I have some minor and drafting points I think DH need to clarify (see Flag B) but generally I support what Alan is proposing.

However, before you sign this off you should be aware that Alan is rejecting two of the recommendations.

First, Dame Rennie wanted him to stop allowing local authorities to make nominations for appointments and second, to consider cutting back on the number of councillors on NHS boards.

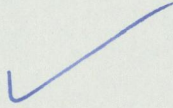
This is an area where there has been some abuse but I am sure Alan is right to reject Dame Rennie's approach. If we were to cut local government entirely out of involvement in NHS boards we would not only lose some able people we would also sour the health/local government relationship at the time when we are moving them to work more and more closely together. Moreover councillors only constitute around 10% of non-execs on trust boards.

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- 2 -

Alan is clear that appointment must be on merit and, that any notion of jobs for the boys must be rooted out. We need to get DH to monitor the situation closely but I recommend we go with Alan's proposed course of action.



A handwritten signature in blue ink, which appears to read "Robert", is located below the checkmark.

ROBERT HILL

RESTRICTED



Richmond House 79 Whitehall London SW1A 2NS Telephone 0171 210 3000

From the Secretary of State for Health

David North
10 Downing Street
LONDON SW1A 2AA

24 May 2000

JP
cc: PU
Aph.

RH

A

Dear David

**DEPARTMENT OF HEALTH'S RESPONSE TO DAME RENNIE FRITCHIE
REPORT ON NHS APPOINTMENTS**

You will recall that Dame Rennie Fritchie, Commissioner for Public Appointments, published a report on 22 March in which she was critical of some aspects of the appointments process for non-executives on NHS boards. She made 28 recommendations for improvement.

On the same date my Secretary of State announced plans for the delegation of appointments of non-executives to NHS trusts to the chairs of health authorities.

Since then Dame Rennie has defended her report before the Public Administration Select Committee and Gisela Stuart has similarly presented the Department's view.

The attached draft letter, approved by my Secretary of State, sets out our response to the 28 recommendations. You will note that we have responded positively to all but one of Dame Rennie's major recommendations, particularly those relating to the involvement of MPs in the process. We have also agreed to allow uncontested reappointments, in line with the recommendation of the Neill Committee earlier in the year, as well as Dame Rennie's.

However, we have decided not to follow Dame Rennie's recommendation to stop seeking recommendations from local authorities. Our stance, we believe, is consistent with our approach to community involvement and has widespread support. Nevertheless, we will be taking steps to make clear that a nomination from an LA is not a passport to an appointment.

A number of Dame Rennie's recommendations relate to management and procedural arrangements. These are currently being viewed in their entirety as we develop the new procedures necessary for delegating trust appointments to health authorities. Dame Rennie's suggestions will be helpful as we shape the new processes.

I would be grateful if you could let me know if the Prime Minister is content with this draft response. We would intend to make the contents of the letter public and place



a copy in the library of the House.

I am copying this letter to Johnathan Powell and Sir Richard Wilson's office.

A handwritten signature in cursive script, reading "Karen Robinson".

KAREN ROBINSON
Assistant Private Secretary



Dame Rennie Fritchie
Commissioner for Public Appointments
Room 62/2
Horse Guards Road
London
SW1P 3AL

May 2000

RESPONSE TO OCPA REPORT ON PUBLIC APPOINTMENTS TO NHS TRUSTS AND HEALTH AUTHORITIES

I am writing to set out more fully our response to the many recommendations in your comprehensive report on Public Appointments to NHS trusts and Health Authorities.

We share a common agenda to ensure that these appointments to NHS boards are made in a way which is seen to be both open and fair.

As you will know, Alan Milburn has already announced his consideration of substantial changes to the appointments system for non-executive directors of NHS trusts and non-officer members of Primary Care Trusts. In future Health Authority Chairs will take the lead in these appointments.

We will of course be putting procedures in place to ensure that the OCPA guidance is followed for these devolved appointments and will be reviewing our arrangements for management accountability of the appointments process in the light of these changes. I will let you have details of these procedures as they are developed.

I have set out below our detailed response to each of your 28 recommendations. For clarity I have included your recommendations along with our reply and grouped them according to the action we propose to take.



Recommendations We Will Implement Immediately

- Rec 4. *In line with OCPA's guidance, MPs should continue to be offered the opportunity to nominate candidates, but the NHS Executive should do more to explain the nature of the nomination process and make sure interview panels are more robust in taking decisions about nominees at the borderline.*

We believe that MPs have valuable local knowledge and may usefully nominate people for consideration. We will therefore continue to seek their nominations. We already make it clear that nominees are treated in exactly the same way as candidates from other sources, but will ensure that this message is even clearer to all those involved in the appointment process.

- Rec 5. *The practice of systematically inviting MPs to comment on the shortlists for chair appointments should cease.*

We will be writing to all MPs explaining that they will no longer be asked to comment on shortlists for chair appointments. This practice dated from the previous Government and although we believe it provided useful input, it is evident that it has been perceived as politicising the process.

- Rec 11. *Ministers should review the current approach to re-appointments. A more suitable approach might be to introduce the expectation that serving members will be re-appointed for one further term provided their performance merits it. Second re-appointments should only be considered on an exceptional basis and should be subject to open competition.*

We do not see any place for automatic reappointment. However we will adapt our current procedures so that an incumbent non-executive or chair, who has had a satisfactory appraisal for the previous year, and who has only served one term, will be considered for reappointment without further interview, advertisement or competition from other candidates.

- Rec 28. *The NHS Executive should publish all its guidance relating to public appointments, if only on its Website.*

We will be taking steps to put more information about NHS Appointments onto the Internet. The names of all those appointed are already on the Net at www.cabinet-office.gov.uk/central/1998/pa/pau/paupoint.htm.



Recommendations On Which Action Has Already Been Taken

- Rec 1. *Ministers should commission a fundamental look at the role and purpose of NHS boards and the range of skills and experience required in appointees.*

The role and purpose of NHS boards was set out in August 1999 in a joint understanding between the NHS Confederation and the Department of Health. It is being further developed in a Handbook for Non-Executives currently being prepared by a Working Group chaired by Janet Trotter, Chair of South and West Region and due for publication later this year.

- Rec 2. *In the light of that review, Ministers should draw up fresh job descriptions and person specifications for chairs and non-executive directors together with weighted selection criteria.*

The job description and person specifications have been satisfactory in recruiting the people currently on NHS boards. They continue to reflect our view of the type of person needed and put a premium on community involvement. The Handbook for Non-Executives will provide further details of the tasks facing our non-executives.

- Rec 3. *Once this has been done, the NHS Executive should review its public appointments process, to make sure it delivers a quality outcome, that is, the right people to do the right job for the NHS.*

We have introduced a system of regular appraisal to assess the performance of those who have been appointed. We are keen to ensure that the appointment process delivers people who can make a real contribution to the work of NHS boards.

- Rec 8. *In line with OCPA's guidance, interview panels should explore the issue of how much time a candidate can devote to their duties.*

Candidates already indicate their time availability on the application form and are questioned further on the issue at interview.

- Rec 12. *More courtesy should be shown to chairs and non-executive directors who are stepping down or not being re-appointed.*

We believe that all non-executives are now treated courteously. Wherever possible chairs and non-executives are given at least four weeks notice when they are not being re-appointed. On the rare occasions where this is not possible they are given a three month extension. They all receive a valedictory letter from Ministers.



- Rec 13. *Ministers should consider what more can be done to speed up the decision making process.*

The decision making process is now much quicker than in the 1998 round, which provided the background to the criticisms in the Scrutiny. The devolution of some appointments to HA chairs will speed the process and of course we are always seeking further improvement.

- Rec 16. *The NHS Executive should do more to keep the Regional Chairs notified about the progress of individual appointments, for example, by ensuring that they receive a copy of the final submission to Ministers.*

NHS Executive HQ in Leeds already copy all final submissions to the Regional Offices of the Regional Chair.

- Rec 22. *Ministers should consider introducing more flexibility into the current residency qualification.*

It is important that non-executives have strong links with the community served by their trust or Health Authority. In most cases this link is best provided by residency. However, we have always been prepared to consider people who work in the area but reside outside it and such exceptions will continue to be made. We believe the system is now sufficiently flexible.

- Rec 26. *The practice of introducing late entrants into the appointments process should stop except in the very rare circumstances where there has been such a significant change in the needs of board since the process began that the shortlist no longer meets the new requirement.*

It is already very rare that new candidates are introduced into the process at a late stage. It only arises when new requirements have been identified since the shortlisting process began. All candidates must satisfy an interview panel with an independent member. This recommendation is already embedded in our process.

Recommendations Which We Do Not Intend To Implement

- Rec 10. *The practice of seeking nominations from local authorities should cease.*

We do not agree. Local authorities have valuable knowledge about the local community and its healthcare needs. The local health economy is a very important part of any local community and local authorities naturally have a close interest which we would wish to encourage. Indeed we want to see health services and local government services such as social



services, using more and not less, cooperation. We would therefore wish to continue to seek their nominations for NHS boards. However, we will further emphasise to LAs and everyone connected with the appointments process that all candidates must follow the same procedures and that appointments are made on merit regardless of any declared political affiliation.

- Rec 9. *The NHS Executive should take stock and consider whether or not the presence of so many councillors on NHS boards is healthy. Any automatic assumption that local councillors instinctively make good non-executive directors should be questioned.*

Councillors only constitute 10.6% of non-executives on NHS boards. There is no assumption that councillors instinctively make good non-executives. They are appointed on merit in the same way as other non-executives. They often have a useful background of community activity and skills which can be valuable to an NHS board and can also strengthen the interface between NHS and social services responsibilities. Boards are expected to have a balance of skills to reflect local needs. We do not intend to be prescriptive about any group or section of the community.

Recommendations - For Which Work Is In Hand

Conflict of interest issues

- Rec 6. *In line with OCPA's guidance, interview panels should explore the issue of potential conflicts of interest and assure themselves that candidates have thought through the implications and formed a satisfactory approach for dealing with them, and this should be recorded.*

Candidates are already asked to identify any conflicts of interest on their application form. These are explored with the candidate at interview and recorded on the interview assessment form. This may need to be modified in the light of further guidance we are preparing.

- Rec 7. *The NHS Executive should consider what would constitute a conflict of interest for non-executives and issue guidance on how it should be handled.*

Advice on what constitutes a conflict of interest already exists in the Codes of Conduct and Accountability given to all non-executives on appointment. It also sets out the requirement for each board to have a Register of Members Interest and the need for people to withdraw from discussion in certain circumstances.

We are currently developing further guidance.



Recommendations - Under Review

The following recommendations will be reviewed in the light of the significant changes to the process already proposed by the Secretary of State.

Management and operational arrangements

- Rec 17. *The NHS Executive should consider whether in the interests of ensuring a consistent approach in the regions, it gives the Headquarters a stronger role. For example, by auditing the appointments process in the regions to ensure compliance with the Executive's guidance or by assuming direct management responsibility for the administrative staff in the regional offices.*
- Rec 18. *The NHS Executive should review regional office involvement in the appointments process, including the level of staffing and the reporting lines.*
- Rec 27. *The NHS Executive should audit the appointments process in the regions to ensure its guidance is being followed. The audit should also assess whether or not the process continues to be fit for purpose and delivers a quality outcome.*

We will ensure that proper arrangements are in place for the day-to-day management and operation of the appointments system. Lines of responsibility and accountability will be clarified. Arrangements will need to be made to ensure that all HA chairs follow standard national procedures in line with OCPA guidance.

Role of Regional and Local Chairs

- Rec 14. *Ministers should review the role of the regional chair.*
- Rec 15. *The NHS Executive needs to communicate its role more effectively to local and regional chairs.*
- Rec 19. *The NHS Executive should review the role of local chairs in the appointments process, including the question of whether local chairs, in concert with others, should interview candidates for vacancies on their boards.*

The roles of regional and local chairs in the process will be reviewed to ensure proper accountability for the new arrangements.

Use Of National And Local Advertisements



- Rec 20. *The NHS Executive should consider moving to a regional or even an individual appointment based system of advertising vacancies.*
- Rec 21. *If a national advertisement is retained, the NHS Executive should consider setting up a means by which potential candidates can find out if there are vacancies in their area before they apply.*
- Rec 25. *If a national advertisement is retained, the NHS Executive should consider advertising every second year to match the length of time a candidate can now spend on a register or stipulate that candidates will remain on the register for only one year.*

Local advertisements and national advertisements both have their virtues and place in recruitment. They have been found to attract different types of people. We will ensure that we use the medium or combination of media which best attracts the people we need in a cost-effective way. It is however most likely that there will be a shift to local advertising, already used for PCT recruitment, as responsibility for appointments is devolved to HA Chairs.

Use of a Regional Register of approved candidates

- Rec 23. *The NHS Executive should consider whether or not the use of regional registers continues to serve a useful purpose.*
- Rec 24. *If the registers are retained, the regions should consider varying their pass marks to make sure that a more realistic number of candidates are placed on the registers.*

We will be reviewing the use of regional registers under the new arrangements.

I would be most happy to discuss any of these issues with you if you think it might be helpful.

GISELA STUART



Richmond House 79 Whitehall London SW1A 2NS Telephone 0171 210 3000

From the Secretary of State for Health

David North
10 Downing Street
LONDON SW1A 2AA

24 May 2000

JP
cc: PU
Apt.

Dear David

**DEPARTMENT OF HEALTH'S RESPONSE TO DAME RENNIE FRITCHIE
REPORT ON NHS APPOINTMENTS**

You will recall that Dame Rennie Fritchie, Commissioner for Public Appointments, published a report on 22 March in which she was critical of some aspects of the appointments process for non-executives on NHS boards. She made 28 recommendations for improvement.

On the same date my Secretary of State announced plans for the delegation of appointments of non-executives to NHS trusts to the chairs of health authorities.

Since then Dame Rennie has defended her report before the Public Administration Select Committee and Gisela Stuart has similarly presented the Department's view.

The attached draft letter, approved by my Secretary of State, sets out our response to the 28 recommendations. You will note that we have responded positively to all but one of Dame Rennie's major recommendations, particularly those relating to the involvement of MPs in the process. We have also agreed to allow uncontested reappointments, in line with the recommendation of the Neill Committee earlier in the year, as well as Dame Rennie's.

However, we have decided not to follow Dame Rennie's recommendation to stop seeking recommendations from local authorities. Our stance, we believe, is consistent with our approach to community involvement and has widespread support. Nevertheless, we will be taking steps to make clear that a nomination from an LA is not a passport to an appointment.

A number of Dame Rennie's recommendations relate to management and procedural arrangements. These are currently being viewed in their entirety as we develop the new procedures necessary for delegating trust appointments to health authorities. Dame Rennie's suggestions will be helpful as we shape the new processes.

I would be grateful if you could let me know if the Prime Minister is content with this draft response. We would intend to make the contents of the letter public and place



a copy in the library of the House.

I am copying this letter to Johnathan Powell and Sir Richard Wilson's office.

A handwritten signature in cursive script, reading "Karen Robinson".

KAREN ROBINSON
Assistant Private Secretary



Dame Rennie Fritchie
Commissioner for Public Appointments
Room 62/2
Horse Guards Road
London
SW1P 3AL

May 2000

RESPONSE TO OCPA REPORT ON PUBLIC APPOINTMENTS TO NHS TRUSTS AND HEALTH AUTHORITIES

I am writing to set out more fully our response to the many recommendations in your comprehensive report on Public Appointments to NHS trusts and Health Authorities.

We share a common agenda to ensure that these appointments to NHS boards are made in a way which is seen to be both open and fair.

As you will know, Alan Milburn has already announced his consideration of substantial changes to the appointments system for non-executive directors of NHS trusts and non-officer members of Primary Care Trusts. In future Health Authority Chairs will take the lead in these appointments.

We will of course be putting procedures in place to ensure that the OCPA guidance is followed for these devolved appointments and will be reviewing our arrangements for management accountability of the appointments process in the light of these changes. I will let you have details of these procedures as they are developed.

I have set out below our detailed response to each of your 28 recommendations. For clarity I have included your recommendations along with our reply and grouped them according to the action we propose to take.

Recommendations We Will Implement Immediately

- Rec 4. *In line with OCPA's guidance, MPs should continue to be offered the opportunity to nominate candidates, but the NHS Executive should do more to explain the nature of the nomination process and make sure interview panels are more robust in taking decisions about nominees at the borderline.*

We believe that MPs have valuable local knowledge and may usefully nominate people for consideration. We will therefore continue to seek their nominations. We already make it clear that nominees are treated in exactly the same way as candidates from other sources, but will ensure that this message is even clearer to all those involved in the appointment process.

- Rec 5. *The practice of systematically inviting MPs to comment on the shortlists for chair appointments should cease.*

We will be writing to all MPs explaining that they will no longer be asked to comment on shortlists for chair appointments. This practice dated from the previous Government and although we believe it provided useful input, it is evident that it has been perceived as politicising the process.

- Rec 11. *Ministers should review the current approach to re-appointments. A more suitable approach might be to introduce the expectation that serving members will be re-appointed for one further term provided their performance merits it. Second re-appointments should only be considered on an exceptional basis and should be subject to open competition.*

We do not see any place for automatic reappointment. However we will adapt our current procedures so that an incumbent non-executive or chair, who has had a satisfactory appraisal for the previous year, and who has only served one term, will be considered for reappointment without further interview, advertisement or competition from other candidates.

- Rec 28. *The NHS Executive should publish all its guidance relating to public appointments, if only on its Website.*

We will be taking steps to put more information about NHS Appointments onto the Internet. The names of all those appointed are already on the Net at www.cabinet-office.gov.uk/central/1998/pa/pau/paupoint.htm.

Recommendations On Which Action Has Already Been Taken

- Rec 1. *Ministers should commission a fundamental look at the role and purpose of NHS boards and the range of skills and experience required in appointees.*

The role and purpose of NHS boards was set out in August 1999 in a joint understanding between the NHS Confederation and the Department of Health. It is being further developed in a Handbook for Non-Executives currently being prepared by a Working Group chaired by Janet Trotter, Chair of South and West Region and due for publication later this year.

- Rec 2. *In the light of that review, Ministers should draw up fresh job descriptions and person specifications for chairs and non-executive directors together with weighted selection criteria.*

The job description and person specifications have been satisfactory in recruiting the people currently on NHS boards. They continue to reflect our view of the type of person needed and put a premium on community involvement. The Handbook for Non-Executives will provide further details of the tasks facing our non-executives.

- Rec 3. *Once this has been done, the NHS Executive should review its public appointments process, to make sure it delivers a quality outcome, that is, the right people to do the right job for the NHS.*

We have introduced a system of regular appraisal to assess the performance of those who have been appointed. We are keen to ensure that the appointment process delivers people who can make a real contribution to the work of NHS boards.

- Rec 8. *In line with OCPA's guidance, interview panels should explore the issue of how much time a candidate can devote to their duties.*

Candidates already indicate their time availability on the application form and are questioned further on the issue at interview.

- Rec 12. *More courtesy should be shown to chairs and non-executive directors who are stepping down or not being re-appointed.*

We believe that all non-executives are now treated courteously. Wherever possible chairs and non-executives are given at least four weeks notice when they are not being re-appointed. On the rare occasions where this is not possible they are given a three month extension. They all receive a valedictory letter from Ministers.

- Rec 13. *Ministers should consider what more can be done to speed up the decision making process.*

The decision making process is now much quicker than in the 1998 round, which provided the background to the criticisms in the Scrutiny. The devolution of some appointments to HA chairs will speed the process and of course we are always seeking further improvement.

- Rec 16. *The NHS Executive should do more to keep the Regional Chairs notified about the progress of individual appointments, for example, by ensuring that they receive a copy of the final submission to Ministers.*

NHS Executive HQ in Leeds already copy all final submissions to the Regional Offices of the Regional Chair.

- Rec 22. *Ministers should consider introducing more flexibility into the current residency qualification.*

It is important that non-executives have strong links with the community served by their trust or Health Authority. In most cases this link is best provided by residency. However, we have always been prepared to consider people who work in the area but reside outside it and such exceptions will continue to be made. We believe the system is now sufficiently flexible.

- Rec 26. *The practice of introducing late entrants into the appointments process should stop except in the very rare circumstances where there has been such a significant change in the needs of board since the process began that the shortlist no longer meets the new requirement.*

It is already very rare that new candidates are introduced into the process at a late stage. It only arises when new requirements have been identified since the shortlisting process began. All candidates must satisfy an interview panel with an independent member. This recommendation is already embedded in our process.

Recommendations Which We Do Not Intend To Implement

- Rec 10. *The practice of seeking nominations from local authorities should cease.*

We do not agree. Local authorities have valuable knowledge about the local community and its healthcare needs. The local health economy is a very important part of any local community and local authorities naturally have a close interest which we would wish to encourage. Indeed we want to see health services and local government services such as social

services, using more and not less, cooperation. We would therefore wish to continue to seek their nominations for NHS boards. However, we will further emphasise to LAs and everyone connected with the appointments process that all candidates must follow the same procedures and that appointments are made on merit regardless of any declared political affiliation.

- Rec 9. *The NHS Executive should take stock and consider whether or not the presence of so many councillors on NHS boards is healthy. Any automatic assumption that local councillors instinctively make good non-executive directors should be questioned.*

Councillors only constitute 10.6% of non-executives on NHS boards. There is no assumption that councillors instinctively make good non-executives. They are appointed on merit in the same way as other non-executives. They often have a useful background of community activity and skills which can be valuable to an NHS board and can also strengthen the interface between NHS and social services responsibilities. Boards are expected to have a balance of skills to reflect local needs. We do not intend to be prescriptive about any group or section of the community.

Recommendations - For Which Work Is In Hand

Conflict of interest issues

- Rec 6. *In line with OCPA's guidance, interview panels should explore the issue of potential conflicts of interest and assure themselves that candidates have thought through the implications and formed a satisfactory approach for dealing with them, and this should be recorded.*

Candidates are already asked to identify any conflicts of interest on their application form. These are explored with the candidate at interview and recorded on the interview assessment form. This may need to be modified in the light of further guidance we are preparing.

- Rec 7. *The NHS Executive should consider what would constitute a conflict of interest for non-executives and issue guidance on how it should be handled.*

Advice on what constitutes a conflict of interest already exists in the Codes of Conduct and Accountability given to all non-executives on appointment. It also sets out the requirement for each board to have a Register of Members Interest and the need for people to withdraw from discussion in certain circumstances.

We are currently developing further guidance.

Recommendations - Under Review

The following recommendations will be reviewed in the light of the significant changes to the process already proposed by the Secretary of State.

Management and operational arrangements

- Rec 17. *The NHS Executive should consider whether in the interests of ensuring a consistent approach in the regions, it gives the Headquarters a stronger role. For example, by auditing the appointments process in the regions to ensure compliance with the Executive's guidance or by assuming direct management responsibility for the administrative staff in the regional offices.*
- Rec 18. *The NHS Executive should review regional office involvement in the appointments process, including the level of staffing and the reporting lines.*
- Rec 27. *The NHS Executive should audit the appointments process in the regions to ensure its guidance is being followed. The audit should also assess whether or not the process continues to be fit for purpose and delivers a quality outcome.*

We will ensure that proper arrangements are in place for the day-to-day management and operation of the appointments system. Lines of responsibility and accountability will be clarified. Arrangements will need to be made to ensure that all HA chairs follow standard national procedures in line with OCPA guidance.

Role of Regional and Local Chairs

- Rec 14. *Ministers should review the role of the regional chair.*
- Rec 15. *The NHS Executive needs to communicate its role more effectively to local and regional chairs.*
- Rec 19. *The NHS Executive should review the role of local chairs in the appointments process, including the question of whether local chairs, in concert with others, should interview candidates for vacancies on their boards.*

The roles of regional and local chairs in the process will be reviewed to ensure proper accountability for the new arrangements.

Use Of National And Local Advertisements

- Rec 20. *The NHS Executive should consider moving to a regional or even an individual appointment based system of advertising vacancies.*
- Rec 21. *If a national advertisement is retained, the NHS Executive should consider setting up a means by which potential candidates can find out if there are vacancies in their area before they apply.*
- Rec 25. *If a national advertisement is retained, the NHS Executive should consider advertising every second year to match the length of time a candidate can now spend on a register or stipulate that candidates will remain on the register for only one year.*

Local advertisements and national advertisements both have their virtues and place in recruitment. They have been found to attract different types of people. We will ensure that we use the medium or combination of media which best attracts the people we need in a cost-effective way. It is however most likely that there will be a shift to local advertising, already used for PCT recruitment, as responsibility for appointments is devolved to HA Chairs.

Use of a Regional Register of approved candidates

- Rec 23. *The NHS Executive should consider whether or not the use of regional registers continues to serve a useful purpose.*
- Rec 24. *If the registers are retained, the regions should consider varying their pass marks to make sure that a more realistic number of candidates are placed on the registers.*

We will be reviewing the use of regional registers under the new arrangements.

I would be most happy to discuss any of these issues with you if you think it might be helpful.

GISELA STUART



FEDERATION INTERNATIONALE DE L' AUTOMOBILE

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Tel: +32-2-280.07.58 - Fax: +32-2-280.07.44

Fax for the attention of

**Mr Jonathan Powell
Chief of Staff to the Prime Minister
Rt Hon Tony Blair MP**

PRIVATE AND CONFIDENTIAL

Fax: 00-44-171-8399044

Page(s): 1 + 1

16 June 2000

DW/rc-155

Dear Jonathan

Following the Advocate General's opinion, this confirms what we have always believed, that the Directive was illegitimately based on single market regulations. I still cannot understand how the Department of Health overlooked the obvious legal difficulties.

The attached copy article from the European FT contains a comment from Max Mosley, the President of the FIA, which is trying to be constructive.

If you could spare me the time for a brief meeting, please give me a call on 01233 850 057 or 00 32 2 282 08 10 or try my mobile on 0370 743494.

With best wishes

David Ward
Secretary General

FT 16.6.00

EU legal adviser challenges ban on tobacco adverts

By Neil Buckley in Strasbourg

The European Union's controversial ban on tobacco advertising was thrown into question yesterday when a senior adviser at the European Court of Justice challenged its legality and said it should be struck down.

An EU advocate-general who advises the judges at the EU's highest court said the ban was wrongly adopted as a measure to strengthen the European single market when it was really a health measure, requiring a different legal basis.

The EU would have had difficulty adopting the ban on those grounds since powers on health remain mainly with national governments.

Though the opinion is not binding, the judges follow the advocate-general's advice in about 80 per cent of cases. A final ruling is expected in the autumn.

The opinion is a potential boost for the tobacco industry and sports such as Formula One motor racing that rely on its sponsorship. It is the most serious threat to the long-disputed ban, due to be phased in from next year. EU ministers adopted the measure by the slimmest possible majority in December 1997.

But Max Mosley, president of the Federation Internationale de l'Automobile, F1's governing body, said: "Tobacco advertising in the sport is diminishing all the time and will continue to do so

regardless of what Brussels decides." He forecast the sport would be free of all tobacco advertising within "five or six years".

Britain indicated it would rush through its legislation to ban tobacco advertising and sponsorship if the final ruling went against the EU directive.

The Labour government is bound by a manifesto pledge to ban tobacco advertising before the next election, expected next spring, and was depending on the EU directive to fulfil the promise.

Cigarette makers said the opinion raised questions over new EU proposals to clamp down on smoking, put forward on a similar single market basis.

The European parliament on Wednesday strongly backed moves to toughen those proposals, forcing manufacturers to cover more than a third of the surface of cigarette packets with stark warnings such as: "If you smoke, you are killing yourself."

The European Commission, which proposes EU legislation, said: "We are still confident of the legal base for the tobacco advertising ban."

In their legal challenge, Germany and four tobacco companies – said the EU had exceeded its powers by adopting the advertising ban it since it was really a health measure.

Additional reporting by Rosemary Bennett and Andrew Ward in London

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10 DOWNING STREET
LONDON SW1A 2AA

RL

From the Private Secretary

11 May 2000

PASSIVE SMOKING AT WORK

The Prime Minister is aware that the Health and Safety Executive is currently putting together advice on whether the Government should adopt an Approved Code of Practice (ACOP) to help deliver its public health objective to cut exposure to smoking in the workplace. We understand they will be putting advice to their Commissioners over the summer.

You will be aware that, following publication of the *Smoking Kills* White Paper, a voluntary scheme of accreditation was introduced. This encourages employers to adopt a range of standards for which, depending on whether they opt for a smoke-free, or smoker/non-smoker designation system, they receive a kite-mark. The scheme is voluntary and is still in its early days. There has not really yet been sufficient time for it to bed down or be evaluated.

The White Paper also made a commitment to consult on whether there should be an ACOP. The consultation response was mixed, but generally positive, and the HSE was asked to develop a draft ACOP. The ACOP would clarify the existing legal requirements for employers to protect the welfare of their staff by setting out explicit guidelines about what they have to do. Failure to adhere to the ACOP could result in being taken to court and fined or imposition of a court order requiring remedial action.

The Prime Minister is concerned that the introduction of an ACOP, which shifts the balance from a voluntary approach to a regulated statutory one, is premature, and presents a risk of our placing a potentially significant and unjustified regulatory burden on small businesses – particularly those in the catering and leisure industries.

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- 2 -

The Prime Minister therefore sees merit in exploring an alternative range of options that gives the voluntary approach a chance to prove itself as well as keeping the ACOP in reserve in case it is needed. He proposes:

- giving the voluntary accreditation scheme a further boost and allowing it time to bed down;
- encouraging HSE to revisit their current guidance to see whether it should be amended; and
- keeping the ACOP option open as a backstop if needed.

The Prime Minister would be grateful if these views could be conveyed to the HSE, so that they will be able to offer their Commissioners a choice when they present their findings over the Summer. The Prime Minister has added that, if the Commissioners choose to opt for a full ACOP, he would want Lord Haskins' task force to consider the proposals and report to him before proceeding with it.

I am copying this letter to Janet Grauberg (Department of Health) and to John Fuller and Sebastian Wood (Cabinet Office).

DAVID NORTH

Peter Unwin,
Department of the Environment, Transport and the Regions.

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RH

10 DOWNING STREET

PRIME MINISTER

In addition to the risks Robert identifies, there is also that of a public/consumer backlash. Depending on how the Code is drafted, and how it is interpreted by the Courts, there must be some risk that it would be a backdoor route to banning smoking in all pubs, restaurants etc, and accusations of nanny statism.

Robert's strategy - to give the voluntary scheme more time and to beef up the resources devoted to it - must be right. But we might also hold in reserve, in case DH and the HSE don't play ball - the idea of asking Chris Haskins' Task Force to look at the issues in the round and report to us. *U*

DN

DAVID NORTH

*That must
happen - I am against
th is unless it is
clear it is not big brother
or worry for S.B's.*

Prime Minister

From: Robert Hill

Date: 5 May 2000

**Cc: Lord Falconer
Jonathan Powell
Jeremy Heywood
David Miliband
David North
Sarah Thomas**

PASSIVE SMOKING AT WORK

Summary

Work is taking place on how to enforce the commitment to cut the health risk of smoking. The route being currently proposed is statutory and rather heavy-handed; it risks placing significant regulatory burden on small businesses (especially in the leisure industry). We should write to set out a way forward that builds on the voluntary scheme of accreditation and keeps the statutory option as a backstop.

Background

We know that smoking is very harmful and is the biggest preventable killer today. The issue is how to deter people from smoking and protect those exposed to passive smoking. The Health White Paper 'Smoking Kills' set out the Government's policies to combat smoking and came down strongly in support of a voluntary approach. For smoking in public places it opted, not for a legal route but, for a voluntary scheme of accreditation – i.e. the industry signed up to persuading its members to adopting a range of standards for which, depending on whether they went for a smoke-free, or smoker/ non-smoker designation system, they received a kitemark.

It also made a commitment to consult on whether there should be an Approved Code of Practice (ACOP) on smoking in the workplace. . ACOPs are like the Highway Code – not binding but can be cited in proceedings.

No. Following a mixed, but generally positive response the Health and Safety Executive was asked to develop a draft ACOP. This clarifies the existing legal requirements for employers to protect the welfare of their staff by setting out explicit guidelines about what they have to do. For example, employers would have to assess the risk of smoking to employees, and take appropriate action, possibly installing extractor fans or even banning smoking where they identified a risk. Failure to adhere to the ACOP could result in being taken to court and fined or a requirement to take remedial action.

The ACOP is being strongly pushed by Department of Health on health grounds, although it would actually come under HSE's welfare responsibilities. There are two main concerns:

- The Regulatory Impact Unit has some serious concerns about the impact that the ACOP would have on small businesses, particularly in the catering industry (e.g. pubs and cafes who would have to carry out a risk assessment and pay for any improvements needed e.g. cost of ventilation). HSE is fairly ambivalent about the issue – they have been instructed to draw up an ACOP and have done so, but feel it is really more about health than welfare.
- It is not at all clear how the statutory ACOP fits with the voluntary accreditation scheme (which has only just been set up and has not yet been evaluated).

My concern is that we appear to be going down the ACOP route without giving enough consideration to the other possible options, or giving the voluntary accreditation a chance to work. I would propose:

- giving the voluntary accreditation scheme time to bed down and put greater effort into promoting the voluntary approach;

- encouraging HSE to revisit their current guidance to see whether it should be amended;
- keeping the ACOP option open as a backstop if needed.

If we put the ACOP option on ice there is some risk that we could be accused of backtracking on our public health commitments. But if the voluntary scheme is given a financial and political boost and backed up by the potential threat of an ACOP this should be minimised.

HSE officials will be putting advice to their commissioners in the summer.

I suggest we write to DETR (who sponsor HSE) asking them to steer HSE to proceed as outlined above before they put advice to Ministers and Commissioners. We should also indicate that they should use common sense to strike the balance between protecting employees and putting unnecessary regulatory burdens on small employers.

Do you agree?

*Strongly. I am
hesitant on this*



(t)

Richmond House 79 Whitehall London SW1A 2NS Telephone 0171 210 3000

From the Parliamentary Under Secretary of State

Dr Mowlam
Minister for the Cabinet Office and Chancellor of the Duchy of Lancaster
Cabinet Office
70 Whitehall
London
SW1A 2AS

DW
see SV
R

Dear Mo

20 April 2000

PASSIVE SMOKING AT WORK

You wrote to me on 19 January about the Approved Code of Practice (ACOP) on smoking in the workplace. You pointed out that the estimated costs substantially outweighed benefits and queried whether an ACOP was a necessary or proportionate response to the problem of smoking in the workplace

Since then the HSE has produced a revised draft ACOP and Regulatory Impact Assessment (RIA), based on very extensive consultation responses and discussions at official level. The revised draft ACOP itself has been simplified, which should make compliance easier, whilst the new RIA includes estimates of health benefits and has looked critically at precisely which costs should be attributed to the introduction of an ACOP. As a result the cost benefit analysis substantially favours the introduction of an Approved Code. I am aware that the new analysis has been criticized, but it does seem clear that for business in general an ACOP would not be a burden, and that for society as whole it would bring considerable benefits.

Although *Smoking Kills* promised only that the HSC would consult on an ACOP, this has been widely interpreted as a promise of action. Any move away from the proposal, especially now that the benefits so far outweigh the costs, would be seen as reneging on a key public health issue. The reduction of smoking prevalence is one of the key targets set out in the White Paper *Smoking Kills* and is an essential element in the reduction of coronary heart disease and cancer, two of the targets in our White Paper, *Saving Lives*. More than any other identifiable factor, smoking contributes to the gap in healthy life expectancy between those most in need and those most advantaged. American experience suggests that workplace bans reduce smoking prevalence amongst workers by about 19%. Without an ACOP achievement of the targets in our White Papers will become much more difficult and far more costly.

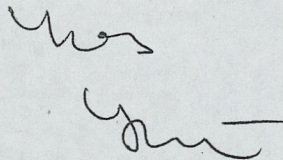
I appreciate that the ACOP proposals pose problems for some small businesses, particularly in the hospitality industry. I fully recognise this and, whilst I welcome the efforts made to simplify the Code, I still believe we need to do more to ensure that an

ACOP does not represent an undue burden. I think the new draft ACOP should stress more that employers are merely required to do what is "reasonably practicable". The HSE could also help by producing further guidance alongside an ACOP giving more examples to business sectors on how to comply with a Code. The hospitality industry would be an obvious place to start.

Whilst it is for the HSC to decide whether or not to recommend the introduction of an Approved Code, the Government does need to reach an agreed view on the way forward. I believe that, with appropriate modifications to meet the needs of small businesses and the hospitality industry, the revised ACOP and RIA do represent a proportionate and important response to passive smoking in the workplace which the Government could and should support.

There is also the broader political context. In the context of negotiations on a new Directive on the labelling of tobacco products the Prime Minister has indicated that he wishes to see the UK take a very strong lead. But we cannot play a strong role in Europe if we do not deliver at home. The idea of an ACOP to protect the millions of workers exposed to passive smoking in the workplace represents a key part of our overall tobacco control strategy; if we do not support an ACOP we will be seen to have failed in a key area of policy, which will only increase the pressure for draconian legislation.

I am copying this letter to the Prime Minister, and to John Prescott, Stephen Byers, Alan Milburn, Andrew Smith, Lord Haskins, and to Sir Richard Wilson and Robert Hill at No.10.


YVETTE COOPER



be RH

10 DOWNING STREET
LONDON SW1A 2AA

From the Private Secretary

4 April 2000

Dear Richard,

**DRAFT DIRECTIVE ON THE MANUFACTURE, PRESENTATION AND
SALE OF TOBACCO PRODUCTS**

The Prime Minister was grateful for your Minister's letter of 30 March, summarising progress on negotiating the above draft Directive.

The Prime Minister welcomes the progress achieved by your Minister and your Department, and endorses the negotiating position set out in the minute. He believes that this is precisely the sort of issue on which the UK should be looking to provide leadership in Europe, and proposes that we should be even more active and positive in pushing for our position.

I am copying this letter to the Private Secretaries to the Foreign Secretary, the Secretary of State for Trade and Industry, the Minister of Agriculture, Fisheries and Food, the Secretary of State for Scotland, the Secretary of State for Wales, the Secretary of State for Northern Ireland, the Paymaster General, and to Sebastian Wood and Martin Donnelly (Cabinet Office).

Yours ever,

DAVID NORTH

Richard Carter Esq,
Department of Health.

AB

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(f)

From: Robert Hill
Date: 31 March 2000

PRIME MINISTER

cc: Lord Falconer
Jonathan Powell
Jeremy Heywood
David Miliband
David North
Martin Donnelly

DRAFT EU DIRECTIVE ON TOBACCO PRODUCTS

I have been pushing DoH to consult you formally about the EU Directive that is under discussion on tobacco products. Attached is a note from Yvette Cooper describing what the Directive – as currently drafted will do – and the negotiating stance being adopted by the UK.

Smoking, as we know, continues to be the biggest preventable cause of premature death. The steps proposed while not dramatic will give further impetus to the drive to reduce tobacco consumption.

The negotiating position (support the Directive in principle but push for some changes on the detail) looks very sound and it is the sort of issue on which the UK could provide leadership. I have checked with Martin Donnelly in the Cabinet Office. He supports this approach and says we should encourage the Department to take a stronger more proactive role in pushing for our position.

Subject to this proviso do you agree that we support the DoH approach to the Directive?

Robert

✓

RESTRICTED

30 MAR '00 14:54 DOH M(PH)ROOM 422

P.2



Richmond House 79 Whitehall London SW1A 2NS Telephone 020 7210 3000
From the Parliamentary Under Secretary of State

PRIME MINISTER
10, Downing Street,
LONDON,
SW1A

DN
cc: MY
PU
RM

30 March 2000

Dear Tony

**DRAFT DIRECTIVE REGARDING THE MANUFACTURE,
PRESENTATION AND SALE OF TOBACCO PRODUCTS**

The purpose of this letter is to update you with progress on negotiating the above Draft Directive.

The Government's White Paper on smoking, "Smoking Kills", published in December 1998, welcomed the Commission's plans to bring forward a directive on tar, nicotine and carbon monoxide levels in cigarettes, on labelling and on tobacco additives. A proposal for a directive in this area is currently under discussion in the Health Working Group (HWG) to prepare a common position for the Health Council on 29 June.

The main elements of the Commission's proposed directive are as follows:

- (i) a reduction in the maximum tar yield from 12 to 10 mg per cigarette;
- (ii) new requirements for maximum nicotine and carbon monoxide yields of 1mg and 10mg per cigarette respectively;
- (iii) a requirement on tobacco manufacturers to carry out new tests on tobacco products and to disclose the results;
- (iv) new, larger health warnings (up to 25% of the most visible pack face);
- (v) a new requirement for manufacturers to provide a list of additives by brand and relevant toxicological data to Member States for onward transmission to the Commission;
- (vi) a prohibition on misleading terms such as "low tar" and "light", with a derogation for Member States to authorize such terms.

The UK thus far has supported the draft Directive, whilst pressing to make changes in a number of areas:

- (i) **scientific review.** Recent evidence has suggested that the longstanding policy of reducing the tar content of cigarettes has had little benefit to public health: smokers compensate to obtain their usual dose of nicotine (eg by inhaling more deeply), which means that their exposure



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- (ii) to tar and therefore harmful carcinogens is far greater than suggested by the nominal tar yield as measured by machines. The UK therefore has been critical of the current draft which extends this policy further. However, other Member States and the Commission support the current draft. We are therefore pressing instead for an independent scientific review mechanism which would advise the Commission on future action to strengthen regulation in this and other areas.
- (iii) **Maximum transparency.** The UK is arguing that information required by the Directive on test results, additives and relevant toxicological data should be made public, unless compelling reasons dictate otherwise.
- (iv) **EU-wide ban on misleading descriptors.** There is much evidence that consumers believe "low tar" and "light" cigarettes are significantly safer than other cigarettes. In fact, for reasons outlined above, the health benefits are probably negligible at best. The Directive as drafted bans misleading descriptors, but permits individual Member States to authorize the use of such terms. The UK is arguing that this is contrary both to single market and public health interests, and is pressing for a genuine EU-wide ban on such terms.

The UK has considerable support in all three areas, particularly from France. Ireland, Sweden and Finland are also strong supporters of the Directive. Looking across the Directive as a whole, support for the Directive is reasonably balanced. Germany appears to have the most problems with the text, but countries such as Netherlands, Luxembourg and Denmark need to be convinced of the Directive's merits. Southern European countries such as Italy and Greece still have some way to go, but are expected to support the Directive if their particular concerns are met.

There remains one issue to be resolved between my Department and the DTI. This concerns a perceived discrepancy between the Directive as drafted and GATT rules. The Directive at present applies the new tar, nicotine and carbon monoxide maximum yields to all tobacco products manufactured within the Community, including those destined for export to third countries. Officials from both departments agree that the chance of a challenge to the Directive on WTO grounds is remote, particularly as WHO is currently preparing an international convention on tobacco control, but officials from the DTI are concerned to ensure that no precedents are set. I do not believe that presentationally or ethically the UK could support the "dumping" of lower quality products on third countries. This is even more important with the imminent negotiations on the WHO convention. While this issue is not my highest priority for the directive, the UK is rightly seen as a leader in tobacco control and we need to be careful about sending mixed signals.

We are seeking assurances from the Commission that WTO issues have been considered. Subject to what is said, we hope to avoid any need to seek clearance from Ministerial colleagues for the policy within the Directive.

Finally I should stress that we have been under some pressure to introduce new mechanisms at the UK level to regulate tobacco products. We have resisted such

**RESTRICTED - POLICY**

pressure, not because we do not see stronger regulation of tobacco products as important (we do), but because existing regulation in this area is largely carried out at the EU level, and it there that we should concentrate our efforts to achieve progress. I believe the UK can achieve a credible result through the above negotiating strategy; failure to achieve a strong Directive will leave us vulnerable to criticism and increased pressure to introduce new and untested arrangements at the national level. In the short term we must recognize we are somewhat limited by what other Member States are prepared to sign up to, but in the longer term we will look to the Commission to make proposals to develop and strengthen regulation of tobacco products. The independent scientific review mechanism the UK has proposed should ensure that any new proposals are based on the best possible scientific advice.

I am writing in similar terms to Susan Deacon and Jane Hutt.

I am copying this letter to FCO, DTI, MAFF, HMT, Customs and Excise, the Secretary of State for Scotland, the Secretary of State for Wales and the Secretary of State for Northern Ireland.

YVETTE COOPER



Richmond House 79 Whitehall London SW1A 2NS Telephone 020 7210 3000
From the Parliamentary Under Secretary of State

PRIME MINISTER
10, Downing Street,
LONDON,
SW1A

30 March 2000

Dear Tony

**DRAFT DIRECTIVE REGARDING THE MANUFACTURE,
PRESENTATION AND SALE OF TOBACCO PRODUCTS**

The purpose of this letter is to update you with progress on negotiating the above Draft Directive.

The Government's White Paper on smoking, "Smoking Kills", published in December 1998, welcomed the Commission's plans to bring forward a directive on tar, nicotine and carbon monoxide levels in cigarettes, on labelling and on tobacco additives. A proposal for a directive in this area is currently under discussion in the Health Working Group (HWG) to prepare a common position for the Health Council on 29 June.

The main elements of the Commission's proposed directive are as follows:

- (i) a reduction in the maximum tar yield from 12 to 10 mg per cigarette;
- (ii) new requirements for maximum nicotine and carbon monoxide yields of 1mg and 10mg per cigarette respectively;
- (iii) a requirement on tobacco manufacturers to carry out new tests on tobacco products and to disclose the results;
- (iv) new, larger health warnings (up to 25% of the most visible pack face);
- (v) a new requirement for manufacturers to provide a list of additives by brand and relevant toxicological data to Member States for onward transmission to the Commission;
- (vi) a prohibition on misleading terms such as "low tar" and "light", with a derogation for Member States to authorize such terms.

The UK thus far has supported the draft Directive, whilst pressing to make changes in a number of areas:

- (i) **scientific review.** Recent evidence has suggested that the longstanding policy of reducing the tar content of cigarettes has had little benefit to public health: smokers compensate to obtain their usual dose of nicotine (eg by inhaling more deeply), which means that their exposure

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We are seeking assurances from the Commission that WTO issues have been considered. Subject to what is said, we hope to avoid any need to seek clearance from Ministerial colleagues for the policy within the Directive.

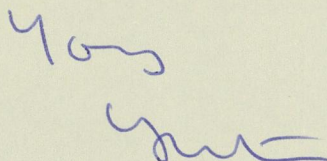
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RESTRICTED - POLICY

pressure, not because we do not see stronger regulation of tobacco products as important (we do), but because existing regulation in this area is largely carried out at the EU level, and it there that we should concentrate our efforts to achieve progress. I believe the UK can achieve a credible result through the above negotiating strategy; failure to achieve a strong Directive will leave us vulnerable to criticism and increased pressure to introduce new and untested arrangements at the national level. In the short term we must recognize we are somewhat limited by what other Member States are prepared to sign up to, but in the longer term we will look to the Commission to make proposals to develop and strengthen regulation of tobacco products. The independent scientific review mechanism the UK has proposed should ensure that any new proposals are based on the best possible scientific advice.

I am writing in similar terms to Susan Deacon and Jane Hutt.

I am copying this letter to FCO, DTI, MAFF, HMT, Customs and Excise, the Secretary of State for Scotland, the Secretary of State for Wales and the Secretary of State for Northern Ireland.

A handwritten signature in blue ink, appearing to be "Yvette Cooper".

YVETTE COOPER

C99/27184/12061

Bill Callaghan
Chair, Health and Safety Commission
Rose Court
2 Southwark Bridge
London SE1 9HS



31 January 2000

Top ON
cc: TV

Dear Bill,

PROPOSAL FOR AN APPROVED CODE OF PRACTICE ON PASSIVE SMOKING AT WORK

Thank you for letter of 21 December, in response to my letter of 10 December, about the Commission's proposals. I have also seen Chris Haskins' latest letter to you of 18 January, which I endorse.

I understand that the meeting of officials mentioned in your letter has been held and that HSE will now review options for the way ahead. I remain concerned that these proposals should not bear disproportionately on the hospitality and leisure industries. I am grateful for your assurance that in preparing its advice the Commission will take full account of my concerns and those of the industry. In due course, I would like to know the Commission's conclusions.

I am copying this letter to Chris Haskins and the other recipients of his letter.

Best wishes,

JANET ANDERSON MP





Minister for the Cabinet Office
Chancellor of the Duchy of Lancaster

Ms Yvette Cooper MP
Parliamentary Under Secretary of State for Public Health
Department of Health
Richmond House
79 Whitehall
London
SW1A 2NS

PS | Cabinet Office Ministers
PS | Sir Richard Wilson
PS | Mr Bender
Mr Wynn Owen (B)
Mr Hayes
Mr Richardson
Mr Warner
Mrs Gurry + papers
Float
File + papers
Top-DN
CCPJ
1. OS
2. file

19 January 2000

Dear Yvette,

PASSIVE SMOKING AT WORK

Thank you for your letter of 12 January, following our discussion about the Approved Code of Practice (ACoP) on smoking in the workplace during our meeting on 8 December 1999.

I think we are agreed that, as with any other regulations, any ACoP which we introduce to reduce the harmful effects of passive smoking needs to be proportionate in the sense that there is the correct balance between costs and benefits. I am not entirely convinced that the ACoP included in the Health and Safety Commission's consultation document currently achieves this balance or that it is sufficiently targeted at the problem areas. The Regulatory Impact Assessment carried out by the HSC suggested that the costs from introducing this ACoP would be between two and four times larger than the benefits, with cost falling disproportionately on small firms.

Whilst, then, I agree that in principle the Government might wish to support any measures in this area recommended by the HSC, we would need to consider carefully the details of any ACoP proposed before deciding whether it would be appropriate to accept their recommendation.

I am copying this letter to the Prime Minister, and to John Prescott, Stephen Byers, Alan Milburn, Andrew Smith, Lord Haskins, Bill Callaghan (Chair, HSC), and to Sir Richard Wilson and Robert Hill at No 10.

MARJORIE MOWLAM

Better Regulation Task Force

Room 67a/3, Cabinet Office, Horse Guards Road, London SW1P 3AL
Telephone 0171 270 6014 Fax 0171 270 6991

Chairman: Lord Haskins

Bill Callaghan Esq
Chair, Health and Safety Commission
Rose Court
2 Southwark Bridge
London SE1 9HS

1 cc ~~ON~~
RU
JH.

Top ~~ON~~
cc PJ

18 January 2000

2f

Dear Bill

PROPOSAL FOR AN APPROVED CODE OF PRACTICE ON PASSIVE SMOKING AT WORK

This letter reiterates Task Force concerns over the proposed Approved Code of Practice on passive smoking at work.

Thank you for your letter of 24 November 1999. I have now had a chance to discuss with the Task Force. We see no reason to change our view that the proposals would impact disproportionately on small firms; lack transparency; and risk undermining progress being made by self-regulation.

I am grateful for your assurance that the Commission will give these concerns full consideration when making its decision.

I am copying this to relevant Ministers – Lord Whitty and Yvette Cooper; Mo Mowlam, Stephen Byers and Andrew Smith; and Nick Brown and Janet Anderson; and to **Owen Barder** at No 10. I would ask them to bear in mind the concerns set out in the attached letter when taking any subsequent decision on the way forward.

Copies of this letter also go to officials from relevant Departments who I understand are meeting shortly to discuss.

Lord Haskins

LORD HASKINS

Chris

RESTRICTED POLICY



Richmond House 79 Whitehall London SW1A 2NS Telephone 020 7210 3000

From the Parliamentary Under Secretary of State

Rt Hon Dr Marjorie Mowlam MP
Minister for the Cabinet Office
Cabinet Office
70 Whitehall

12 January 2000

Dear Mo

PASSIVE SMOKING AT WORK

I wrote to you on 8 December in response to your letter of 5 November about the Approved Code of Practice (ACOP) on smoking in the workplace. I attach my 8 December letter now for the benefit of those listed below who did not see it.

We discussed the issue when we met on 9 December. Our conclusion was that I would talk to Bill Callaghan, Chair of the HSC – which I have now done – to emphasise to him that the Government would fully support an ACOP in this area if the HSC decides to introduce one. I would reiterate the Government's view that an ACOP ought to be effective but without causing disproportionate costs to business.

I am copying this letter to the Prime Minister, John Prescott, Stephen Byers, Alan Milburn, Andrew Smith, Lord Haskins, Bill Callaghan and Sir Richard Wilson.

Best wishes,

YVETTE COOPER

RESTRICTED POLICY



Richmond House 79 Whitehall London SW1A 2NS Telephone 020 7210 3000
From the Parliamentary Under Secretary of State

Rt Hon Dr Marjorie Mowlam MP
Minister for the Cabinet Office
Cabinet Office
70 Whitehall

8 December 1999

Dear Mrs

PASSIVE SMOKING AT WORK

Thank you for your letter of 5 November about the Approved Code of Practice (ACOP) on smoking in the workplace. I hope we can discuss this when we meet tomorrow.

As you will be aware, we committed ourselves to pursuing this ACOP in the Smoking Kills White Paper. ACOPs can only be introduced following consultation by the HSC and once that process is underway an ACOP stands or falls depending on the outcome of the HSC's consultation. However, the relevant text in the White Paper was chosen with the deliberate intention of making it apparent that the Government fully advocates an ACOP in this area as a way of clarifying the requirements of existing health and safety legislation.

Evidence from surveys shows that some 3 million non-smokers are subjected to smoky conditions at work, according to a MORI poll published in March 1999. Large sectors of the population (such as two million asthma sufferers and those with chronic bronchitis and other respiratory conditions) are unduly affected by exposure to passive smoking. Previous guidance has not succeeded in resolving the problem. We need to be sensitive to this. Introducing smoking restrictions in the workplace will, international evidence suggests, lead to more people giving up smoking.

The current lack of legal clarity on smoking in the workplace is very unhelpful. The ACOP is not new law, merely a clarification of the existing Health and Safety at Work Act 1974. The danger is that, in the absence of an ACOP, the issue will be settled in the courts, with far greater uncertainty about achieving both our public health and more effective regulation policies.

Obviously the ACOP needs to be workable and proportionate. That is what the HSC is working on at the moment, and I hope we can discuss this further tomorrow. We have made a commitment to introducing an ACOP. It can tackle a real problem and would be politically problematic to drop.

I am copying this letter to Robert Hill at Number Ten.

Best wishes

YVETTE COOPER

cc 1 in writing
to ~~Cherie~~ Falconer
BTM



Postcard.

✓

1. 28/12

FEDERATION INTERNATIONALE DE L' AUTOMOBILE

Rue d'Arlon 50 - B-1000 Brussels - Belgium

File.

stop. 26/12

✓

Confidential
Fax for the attention of

Jonathan Powell
Chief of Staff
10 Downing Street
London SW1

From: David Ward
Tel: +44 1233 850 057

Page(s): 1 + 1

ref : dw/tv-

23 December 1999

Dear Jonathan

Mr Ecclestone has decided it is better to accept the summons to the Health Committee. (See letter enclosed).

I spoke to Max Mosley yesterday and I think it would be a very good idea for Lord Falconer to speak with him directly as soon as possible. His irritation at the summons is intense. This problem ultimately stems from Max's desire to be helpful to Labour originally during John Smith's leadership and later under Tony Blair. His numerous offers to help in key areas of UK interest relating to sport and transport policy made before and after the election in 1997 have never been followed up, despite the fact that he is one of the countries most influential figures in both areas. The wholly avoidable row over tobacco sponsorship has instead resulted in a succession of unpleasant setbacks, and negative publicity culminating in the Hearing in January.

In this context I have to say that his sense of exasperation is understandable. That is why I think that it is very important that Lord Falconer speaks to him as a matter of urgency.

Best wishes

David Ward
Director General

23-DEC-1999 11:05 FROM 0044 20 7589 1935

TO

WARD UK P.01/01



By fax and by post

23 December 1999

Frank McShane Esq
Committee Assistant
Health Committee
Committee Office
House of Commons
London SW1A 0AA

Dear Mr McShane

Further to my letter of 13 December 1999, I believe on reflection that although I have no direct knowledge of the matter under consideration it may nevertheless be useful if I attend.

I therefore look forward to seeing you at 12 noon on 20 January 2000.

Yours sincerely

pp Nicola Brice
Bernie Ecclestone

*(dictated by Mr Ecclestone
and signed in his absence)*

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PC

From: Jonathan Powell
Date: 22 December 1999

PRIME MINISTER

ECCLESTONE

The Tories will be looking for Labour sleaze stories in January.

Despite our best efforts through the whips to stop them, the Health Select Committee has summoned Bernie Ecclestone to give evidence on 20 January. The Tories on the committee will no doubt try to use the opportunity to re-open the Formula one/Tobacco issue. Robert will have one more go at dissuading them, but I fear it will not work because they want the publicity. We cannot rely on the chairman to control the discussion. Ecclestone will attend with Max Mosley who will endeavour to answer most of the questions.

Temporarily retained

THIS IS A COPY. THE ORIGINAL IS
RETAINED UNDER SECTION 3 (4)
OF THE PUBLIC RECORDS ACT

*I don't want
you to
speak to
AW.*

W

16 DEC 1999 16:56 FROM DOH SOFS

TO NO TEN URGENT

P.01/03

RESTRICTED POLICY

Richmond House 79 Whitehall London SW1A 2NS Telephone 0171 210 3000
From the Secretary of State for Health

David North
10 Downing Street
London
SW1A 0AA

pm *cc JTH, DM, DN*
This was a good outcome -
though events now turn
on the House of Lords.

*cc: PU**RH*
*LL**16* December 1999*Dear David**[Signature]**✓**1 cc RH (fpo)*
*2 cc DN olr.***TOBACCO LITIGATION****Summary**

This note alerts you to the Court of Appeal's judgment today, which supported our right to implement the tobacco advertising Directive (98/43/EC) and ban tobacco advertising in the UK, but stayed implementation of the regulations until the House of Lords had considered the matter.

Background

The Court of Appeal has today overturned the High Court judgment of 29 October, by 2 -1 in our favour. This High Court judgment had placed an injunction against the Government's implementing EC Directive 98/43/EC until the European Courts have ruled on the validity of the Directive.

The injunction obtained by the tobacco companies is quashed, but a stay has been granted that will prevent our making regulations to implement the Tobacco Advertising Directive (98/43/EC) before the tobacco companies have had the opportunity to petition the House of Lords for an appeal. The deadline for lodging this petition is 4 January 2000. It will be for the House of Lords to determine whether to hear the appeal, and whether to continue the stay on implementation of the Regulations.

Timing

The best case scenario would be for the Lords to make a rapid decision not to hear the case. We would be able to make the Regulations in late

**RESTRICTED - POLICY**

January/early February and the ban on tobacco advertising would come into force in late February.

If the Lords decide to hear the case, my Secretary of State will offer further advice on options and timing. The worst scenario would be if the Lords decided to keep the current stay on implementation in place, and refer further questions to the European Court of Justice. We would then have to wait for the European Court of Justice to rule on the validity of the Directive. This is unlikely to occur before late next year.

Lines to take

I have attached lines to take on the Court of Appeal's judgment.

I am copying this letter to private secretaries to members of HS, private secretaries to the First Ministers for Scotland, Wales and Northern Ireland, Sir Richard Wilson, and Robert Hill.

Heather Rogers
Private Secretary

RESTRICTED - POLICY

Lines to Take

This is a victory for public health. The Court of Appeal has upheld the Government's case.

On stay of implementation

We regret the stay on implementation but we will be asking the House of Lords to lift this as soon as possible.

The ban on advertising will save lives. It is a manifesto commitment which we will implement as soon as possible.

C99/24358/10444

Bill Callaghan
Chair, Health and Safety Commission
Rose Court
2 Southwark Bridge
London SE1 9HS

(F)



10 December 1999

Dear Bill Callaghan,

PROPOSAL FOR AN APPROVED CODE OF PRACTICE ON PASSIVE SMOKING AT WORK

Top IN
ccB

Chris Haskins copied to me his letter to you of 10 November about the Commission's proposals. I have also seen your reply of 24 November which helpfully sets out the background to the consultation exercise. Unfortunately this correspondence did not reach me until 3 December. My apologies therefore for the delay in writing to you.

As Tourism Minister, I am concerned about the effect these proposals may have on the hospitality and leisure industries. A careful balance needs to be made between ensuring decent conditions for those who work in these industries and meeting the needs of customers. Your consultative document recognises the difficulties for workplaces which, like pubs and restaurants, are also public places and I am pleased that your letter acknowledges the progress already made by the hospitality industry in its Public Places Charter.

I note that the Commission plans to give full consideration to these issues, including those of most concern to the hospitality and leisure industries. I would be grateful if you would ensure that the Executive involves my Department's officials in any further discussions, and copies any relevant correspondence to me personally.

- ▶ I am copying this letter to Chris Haskins and the other recipients of his letter.

Yours Sincerely,

JANET ANDERSON MP



Health & Safety Commission
From the Chair
Bill Callaghan



Top' on
cc: B

Rt Hon Marjorie Mowlam MP
Chancellor of the Duchy of Lancaster
Cabinet Office
70 Whitehall
London
SW1A 2AS

24 November 1999

Dear Mo

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

Thank you for copying me into your letter of 5 November to Yvette Cooper about the Commission's recent consultation exercise on passive smoking at work. I must admit to some surprise and a little disappointment with it. I thought it might be helpful if I reminded you of some of the background to the proposals.

In June 1998, Angela Eagle, then Parliamentary Under-Secretary of State in the Department of the Environment, Transport and the Regions wrote to us asking our advice on possible ways forward for a firmer approach to protecting the health of workers and the public from passive smoking. She was particularly concerned about new action to protect those who have to work in smoky environments. We replied in August 1998 to say that one option that might deliver the improvements Ministers sought was an Approved Code of Practice (ACoP) under the existing provisions of the Health and Safety at Work etc Act 1974. However, we were very clear at that time that there might be other, preferable options, and that the public might not yet be ready for an ACoP. Nevertheless, we considered that it might be helpful to test this out in consultation. Alan Meale and Tessa Jowell warmly welcomed the idea, and it was included in the Government's White Paper *Smoking Kills* (at paragraph 7.24) in December 1998. We emphasised in our consultative document (at paragraph 2) that adoption of the proposals should not be regarded as a foregone conclusion.

As you know, the consultation period on this document has only just ended, and HSE officials are now starting to analyse the 480 or so responses that we received. Because of the size of the response and the complexity of the issues, I do not expect that HSC will decide on a way forward until the spring. At that time, we will of course bear the comments of all consultees in mind, including those from officials in your own department. I am sure you and your Ministerial colleagues would not expect us to do anything less than take all relevant issues into consideration, whether they are in favour of an ACoP or other regulatory action, or against.

Copies of this letter go to the recipients of yours.

Yours sincerely

BILL CALLAGHAN
Chair

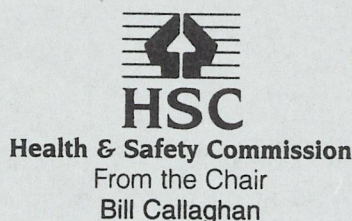
Best wishes.

*I'd welcome a chat sometime
about our new roles.*

Rose Court, 2 Southwark Bridge, London SE1 9HS
Direct Line: 0207 717 6610 Fax: 0207 717 6644
e-mail: chairmans.office.hsc@hse.gov.uk

Reducing risks - protecting people

CO/165/99



Top-03
cc: DJ
PJ
WJ / f

Lord Haskins
Better Regulation Task Force
Room 67a/3, Cabinet Office
Horse Guards Road
London
SW1P 3AL

24 November 1999

Dear Chris

**PROPOSAL FOR AN APPROVED CODE OF PRACTICE ON PASSIVE SMOKING
AT WORK**

Thank you for your letter of 10 November about the Commission's recent consultation exercise. Thank you, too, for your kind words on my appointment as Chair.

However, I must admit to some disappointment with much of your letter. I thought it might be helpful if I explained some of the background to our proposals.

In June 1998, Angela Eagle, then Parliamentary Under-Secretary of State in the Department of the Environment, Transport and the Regions wrote to us asking our advice on possible ways forward for a firmer approach to protecting the health of workers and the public from passive smoking. She was particularly concerned about new action to protect those who have to work in smoky environments. We replied in August 1998 to say that one option that might deliver the improvements Ministers sought was an Approved Code of Practice (ACoP) under the existing provisions of the Health and Safety at Work etc Act 1974. However, we were very clear at that time that there might be other, preferable options, and that the public might not yet be ready for an ACoP. Nevertheless, we considered that it might be helpful to test this out in consultation. Alan Meale and Tessa Jowell warmly welcomed the idea, and it was included in the Government's White Paper *Smoking Kills* (at paragraph 7.24) in December 1998. I am therefore a little surprised that you take us to task for issuing the proposals. We emphasised in the consultative document (at paragraph 2) that adoption of our proposals should not be regarded as a foregone conclusion.

In your letter you repeated some of the information about possible costs to small firms that we gave in our draft regulatory impact assessment. We were very conscious that the data in that assessment were uncertain, not least because we cannot be sure what action organisations would take in response to the code. While I agree with you that for some firms, banning smoking is not a zero-cost option, it would appear to be the most cost-effective solution for many.

Rose Court, 2 Southwark Bridge, London SE1 9HS
Direct Line: 0207 717 6610 Fax: 0207 717 6644
e-mail: chairmans.office.hsc@hse.gov.uk

Reducing risks - protecting people

I think the length of the draft code reflects the immense complexity of the issue. We are certainly aware that small firms want simple guidance, and we strive to give them it. What we aimed to do in this document was to explore how health and safety law applies to the issues around passive smoking, and thereby to highlight some of the challenges it raises. If we were to decide to move forward to an ACoP, we would fully expect to revisit the document. We will also consider issuing a simple guide to accompany it.

The hospitality industry's "public places charter" that it agreed with the Department of Health could certainly be a positive step forward if it is widely taken up and fully implemented. However, if we decide (with Ministers' consent) to approve a code of practice, I do not see that it would displace the charter. The two are complementary. In fact the charter goes further than our draft code because it seeks to protect the public and workers, whereas our draft code is aimed only at workers. A code would moreover apply to all workplaces, including residential care homes which are not, as I understand it, covered by the charter.

As you know, the consultation period on this document has only just ended, and HSE officials are now starting to analyse the 480 or so responses that we received. Because of the size of the response and the complexity of the issues, I do not expect that HSC will decide on a way forward until the spring. Of course, we will give your comments full consideration when making that decision.

Copies of this letter go to the recipients of yours.

Yours sincerely

Bill Callaghan

BILL CALLAGHAN
Chair

*It would be good to
meet in the next two days
further to talk about the
work of the Task Force.*



(f)

Richmond House 79 Whitehall London SW1A 2NS Telephone 0171 210 3000
From the Secretary of State for Health

David North
10 Downing Street
London
SW1A 2AA

David Why? no reason given. Can
we inquire -

Robert 22 November 1999

Dear David

TOBACCO LITIGATION: NEXT STEPS

I am writing further to my Secretary of State's note to the Prime Minister dated 16 November.

The hearing in the Court of Appeal, originally scheduled for 15th and 16th, overran into the 17th November. Although the Court undertook to give a judgement as quickly as possible, it is now apparent that the sheer volume of material to be considered the judges will prevent their returning a judgement before next week.

Consequently, in the event of success at appeal, we are unlikely to be in a position to bring Regulations into force before 17 December, and possibly not until a week later. Although it may appear odd to have the Regulations coming into force in the Christmas period, we believe it is preferable for the ban to be in place this side of the millennium.

I am copying this letter to Private Secretaries of members of QFL, Robin Cook, Stephen Byers, Sir Richard Wilson and Robert Hill.

Yours
Heather

HEATHER ROGERS
PRIVATE SECRETARY

22 NOV 1999 13:30 FROM DOH SOFS

TO NO TEN URGENT

P.01/02



Richmond House 79 Whitehall London SW1A 2NS Telephone 0171 210 3000

*From the Secretary of State for Health***RESTRICTED POLICY**

The Rt Hon Margaret Beckett MP
Privy Council Office
2 Carlton Gardens
London
SW1Y 5AA

20 November 1999

LITIGATION BY THE TOBACCO INDUSTRY: NEXT STEPS

I am replying to your letters dated 11 and 18 November on primary legislation to ban tobacco advertising.

I understand that you are concerned that primary legislation to ban tobacco advertising might prove incompatible with Community law following the ECJ's ruling on the validity of Directive 98/43/EC. I would like to reassure you that this is not the case.

Primary legislation would not be dependent on there being a Community legislation in the same way as Regulations made under the European Communities Act are. We would, however, still have to ensure that our primary legislation was compatible with general EC law.

A challenge by the tobacco industry on the grounds that the primary legislation was in breach of the EC provisions on free movement of goods could not be ruled out. They would no doubt say that the measures could not be justified on public health grounds because they were disproportionate. However, both Cabinet Office Legal Advisers and Department of Health lawyers believe that we have good grounds for resisting such a challenge. We would have to be careful not to present the primary legislation as another way of implementing the Directive, but as a means to fulfilling our public health policy and manifesto commitment.

Similarly, the validity of existing statutory bans on tobacco advertising in other Member States should not be threatened were the Directive ruled invalid.

22 NOV 1999 13:30 FROM DOH SOFS

TO NO TEN URGENT

P.02/02



I am grateful for your agreement to continue saying that primary legislation has not been ruled out. Of course we will have to take the pressures on Parliamentary time into account in determining our course of action in the event of defeat in the Courts.

I am copying this letter to the Prime Minister, members of QFL, Robin Cook, Stephen Byers, Sir Richard Wilson, First Parliamentary Counsel and Robert Hill.

Alan Milburn

18/11 '99 19:56 FAX 01712196845

PRESIDENT'S OFFICE

001/001

18/11 '99 18:10 FAX 0171 270 0511

PRESIDENTS OFFICE

→ ROOM FOUR

005



The Rt Hon Margaret Beckett MP

PRIVY COUNCIL OFFICE

2 CARLTON GARDENS LONDON SW1Y 5AA

DN
ce: JH+
R

18/11/99

Dear Man,

TOBACCO LITIGATION: NEXT STEPS

Thank you for copying me your minute of 16 November to the Prime Minister. I am content to agree that, if you lose the appeal, you may say that primary legislation had not been ruled out. If asked about its speed, you may continue to say it would be just as soon as Parliamentary time allows. I await your reply to my letter of 11 November, in respect of your proposals for work on emergency legislation.

I should add that, as Cabinet has been warned, the Session has got off to a bad start in terms of Bill preparedness. This adds to the pressures on an already extremely crowded Session, and we remain unable to be clear that Parliamentary time would be available for a Bill this Session. I must say the odds look against it.

I am copying this letter to the Prime Minister, members of QFL, Robin Cook and Stephen Byers, and to Sir Richard Wilson, Robert Hill and First Parliamentary Counsel.

Ry. Cook
H. Byers

MARGARET BECKETT

The Rt Hon Alan Milburn MP
Secretary of State for Health



Richmond House 79 Whitehall London SW1A 2NS Telephone 0171 210 3000

From the Secretary of State for Health

RESTRICTED - POLICY

Prime Minister

TOBACCO LITIGATION: NEXT STEPS

Our appeal against the interim injunction, which forbids the making of regulation banning tobacco advertising, will be heard in the Court of Appeal on 15 and 16 November. I am advised to expect a verdict at the end of the week. This note sets out my initial proposals on handling.

Victory for the Government

In the event that we are successful, I believe that we should proceed to make the regulations as soon as possible. Frank Dobson has already obtained policy clearance from HS colleagues and the text is at proof stage. So we can table the final version on the day of the verdict. At best, this will allow us to bring the ban into force to coincide with the launch of our major advertising campaign on 13 December. At worst, if the verdict is delayed, it may be that the ban does not come into effect for a further week.

Our public line in the event of victory should be that the Court's verdict shows that the government has law, as well as public, medical and scientific opinion on its side, in seeking to ban tobacco advertising. We have been resolute in making sure the ban is put into place and will be equally resolute in ensuring that our plans for public education and enhanced services deliver lower levels of cancer and heart disease by reducing smoking.

Government Defeat

If we are defeated at appeal, I believe that we should follow the same course as we agreed in relation to defeat in the High Court. That is:

- Subject to legal advice on the chances of success, seek leave to appeal to the House of Lords and seek expedition of that hearing - at best a hearing would take place in the New Year in January, with a final verdict later that month;
- Make clear publicly that we remain resolutely determined to introduce a ban and that we are confident of success on appeal.



If pressed, with Margaret's agreement, we would again say that primary legislation had not been ruled out;

- We continue to discourage our back benchers from producing Private Members Bills on the basis that the Government will act - I have already spoken to Kevin Barron on this basis;
- But that we continue with the work to develop emergency primary legislation which could be introduced in the event of defeat - I was grateful for your support for this idea and will separately be answering the points which Margaret made in her letter of 11 November.

We may need to revisit these proposals in the light of the detail of the judgement and final information on the timing of any appeal. Each of these could tilt the balance between pursuing the case through the courts and acting through primary legislation. I will advise separately if this proves necessary.

I am copying this minute to members of QFL, Robin Cook, Stephen Byers, Sir Richard Wilson, Robert Hill and First Parliamentary Counsel.

AM

16 November 1999



The Rt Hon Margaret Beckett MP

PRIVY COUNCIL OFFICE

2 CARLTON GARDENS LONDON SW1Y 5AA

11 NOV 1999

Dear Alan,

LITIGATION BY THE TOBACCO INDUSTRY: NEXT STEPS

Thank you for copying me your minute to the Prime Minister of 3 November, seeking authority to commence confidential internal work on emergency primary legislation, which might be introduced in the event of defeat on appeal.

As you say, we can take the decision whether or not to go ahead with legislation at a later stage, though I gather your appeal has now been fixed for 15 – 16 November. But drafting resources are tight, as well as Parliamentary time, and before deciding whether QFL can give drafting authority, I would like to know more about the background to your thinking. There would clearly be risks if the UK anticipated the results of the ECJ case. We could end up with incompatible legislation, and the Government's position would be embarrassing. It would be helpful to know what legal advice you have received on these issues, and whether, in view of the European dimension, you have consulted the Cabinet Office Legal Advisers.

I am copying this letter to the Prime Minister, members of QFL, Robin Cook and Stephen Byers, and to Sir Richard Wilson, First Parliamentary Counsel and Robert Hill.

Regards

Margaret

MARGARET BECKETT

The Rt Hon Alan Milburn MP
Secretary of State for Health

Better Regulation Task Force

Room 67a/3, Cabinet Office, Horse Guards Road, London SW1P 3AL
Telephone 0171 270 6014 Fax 0171 270 6991

Chairman: Lord Haskins

Bill Callaghan Esq
Chair, Health and Safety Commission
Rose Court
2 Southwark Bridge
London SE1 9HS

Dear Bill

PROPOSAL FOR AN APPROVED CODE OF PRACTICE ON PASSIVE SMOKING AT WORK

This letter sets out Task Force concerns over the proposed Approved Code of Practice on passive smoking at work. The Task Force is particularly concerned about the disproportionate impact on small firms, where we believe SIMPLE guidance is likely to prove more effective than a complex statutory code. We also think it important that within important sectors such as leisure and care, self-regulation is given a chance to prove itself before consideration is given to statutory intervention.

The attention of the Better Regulation Task Force has recently been drawn to this Consultation Document. But before commenting on this may I first of all congratulate you on your appointment as Chairman of the Health and Safety Commission. I know that you have a hard act to follow, but am well aware of the professionalism and expertise at your disposal.

Turning to the issue in hand, could I first of all say that the Task Force appreciates the scale of disease caused by smoking. We also understand the very real irritation and discomfort caused by passive smoking at work, although as you note it is not clear the extent to which this contributes to smoking related disease.

The Task Force's main concern is the impact on small firms. This is an area that we have been taking a close interest in – as I know the Commission has too. I attach a copy of our progress report on Regulation and Small Firms published in July. In it we discuss how regulations frequently place small firms at a competitive disadvantage. In this case it appears that most of the workplaces which have yet to institute a policy on passive smoking are small firms. We believe that in many of the 430,000 such firms which you estimate would need to take action the estimated 29 hours of compliance time would fall on the entrepreneur themselves. This is aside from your estimate of between £2000 and £7000 for an average small firm to install ventilation. And we are not convinced that your figures do not represent

Handwritten notes:
Is RM aware of this? 19.
I assume you are aware of this.
10 November 1999
Yes, I'm aware of it. No M has written to Health - we will need to see what they say.
F
① JHM
② F

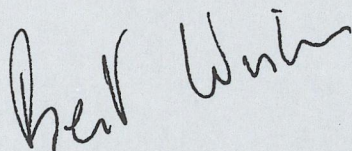
an underestimate: it seems to us that instituting a total ban on smoking in a small business may not necessarily be a zero cost option; and that those small employers who have already gone to the trouble of controlling passive smoking might still feel obliged to spend the time going through your proposals. We therefore believe these proposals are poorly targeted and disproportionate. In fact, we were surprised that the proposals had even been issued for consultation given your estimates of the disproportionate impact on small firms.

The proposals also lack transparency. The draft code of practice runs to 27 pages. It intersperses minimum legal requirements and guidance on good practice. It asks employers to "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" (which it concedes might be very difficult) and "to make judgements about the detriment to welfare from passive smoking". We believe that the key to improved control of passive smoking in small firms is SIMPLE guidance and advice on what practical steps they can take. This might helpfully be supported by the sort of promotional campaign which HSC/E have excelled at in recent years, as well as by inspectors on the ground giving practical advice.

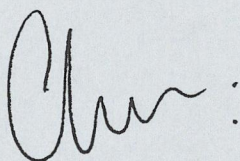
Of course the sectors most affected by these proposals will be those who operate "public places" such as pubs and care homes. These are important sectors of the economy, creating many new jobs. I understand that with Government encouragement they have already instituted a programme of voluntary action to control passive smoking – namely the Public Places Charter. This Charter takes a more holistic approach than the proposed ACOP in also dealing with exposure to the public. Work done by the Task Force suggests that such self-regulation can generate more ownership from the business community than statutory intervention, while allowing greater flexibility in how to comply. And given the responsiveness of these sectors to consumer demand there seems a good prospect that the market itself will drive through these changes. On the other hand, the introduction of a statutory code runs the risk of effectively displacing the Charter, with the public and business losing out.

I would be happy to meet with you to discuss this or wider regulatory issues if you would find this helpful.

I am copying this letter to Lord Whitty and Yvette Cooper; and to Mo Mowlam, Andrew Smith, Nick Brown, Janet Anderson, and to Owen Barder at No 10.



LORD HASKINS



The
RESTRICTED - POLICY



10 DOWNING STREET
LONDON SW1A 2AA

be LL CS

From the Private Secretary

8 November 1999

Dear Janet,

LITIGATION BY THE TOBACCO INDUSTRY

The Prime Minister was grateful for your Secretary of State's minute of 3 November.

The Prime Minister is content with the contingency action that your Secretary of State proposes to take in terms of working up possible primary legislation, provided this does not divert Parliamentary Counsel from preparing other key Bills that we will need to have ready for the beginning of the next Parliamentary Session. He has, however, emphasised that the real issue here is that of ensuring a properly enforceable ban, rather than focusing overly on the precise date of implementation.

I am copying this to Private Secretaries to members of QFL, the Foreign Secretary, the Secretary of State for Trade and Industry and to Sebastian Wood (Cabinet Office).

Yours ever,

David

DAVID NORTH

Janet Grauberg,
Department of Health.

RESTRICTED - POLICY

AS

1. CC RH
2. nt to me psc
TW

From: Robert Hill
Date: 5 November 1999

cc Lord Falconer
Jonathan Powell
Jeremy Heywood
David Miliband
David North
Clare Sumner

PRIME MINISTER

LITIGATION BY THE TOBACCO INDUSTRY

Attached is a note from Alan giving a fuller explanation of the Court's decision on the Government's attempt to implement the EU Directive ending tobacco advertising.

Our chances of reversing the judgement on appeal are 'at least 50/50'. However, Alan has begun to look at the options in the event that we lose on appeal and want to find other means to implement the manifesto commitment before the next election. He outlines a number of options.

As Alan says we do not need to take a decision now but he is seeking drafting authority in the event that a Parliamentary Bill proves necessary.

I propose that we are supportive of this, subject to waiting for Parliamentary Counsel to finish drafting the key Bills we have to have ready for the beginning of the next session. Alan will also need to try and address any other concerns Margaret Beckett may have.

Subject to these caveats do you agree with this approach?

Robert. Yes but let's not go OTT here.
Issues are bigger than the
precise timing of the ban.



Richmond House 79 Whitehall London SW1A 2NS Telephone 0171 210 3000

Direct line 0171 210

RESTRICTED – POLICY

PRIME MINISTER

LITIGATION BY THE TOBACCO INDUSTRY: NEXT STEPS

Summary

This note explains the basis of Mr Justice Turner's decision in favour of the tobacco companies' application for interim relief and our grounds for appeal. We are proceeding on the basis of my minute of 20 October and your Private Secretary's reply of 28 October: immediate appeal, emphasis on resolution in imposing the ban and seeking to shame the industry into implementing voluntary measures. My office has separately circulated lines to colleagues. But we need to prepare for all contingencies and I am seeking authority to commence confidential internal work on emergency primary legislation, which might be introduced in the event of defeat on appeal.

Background

Mr Justice Turner has this morning ruled in favour of the UK tobacco companies in their application for interim relief. The injunction precludes the making of regulations until the European Court of Justice has ruled on the companies' main application, challenging the legal base of the Directive.

The basis of the judgement is that it would be wrong to pass domestic legislation setting up a range of domestic enforcement measures and penalties, when the main Directive itself could still be overturned. The injunction blocks all secondary legislative activity. The judge has not sought to differentiate between the different provisions of the Directive. More helpfully for our case, while he accepts that the companies will suffer some financial loss as a result of any early implementation of the Directive, he concludes that this is "probably not irreparable".

Counsel considers in our favour our chance of reversing the judgement on appeal is at least 50/50. We will challenge on the grounds that the judgement contains a number of errors of law, in particular with regard to

the tests that have to be satisfied before an applicant can obtain suspension of legislation implementing EC law. It should not be presumed that a legal challenge precludes any action well in advance of the final implementation date. This is an important point for public policy generally.

We have been granted leave to appeal and are seeking to expedite any hearing in order to implement the regulations as close as possible to the 10 December deadline. Counsel is optimistic that we will manage an early hearing, although a delay of several months is not impossible.

Implications

The judgement confirms our earlier view that we are right to appeal, both on the specific point, but also because of the precedent, which could be set where a litigant alleges that a directive is invalid. This judgement could be prayed in aid by a number of other well-resourced litigants seeking to delay and oppose policies which command very broad public support. This could allow a litigant to stall government action on a Directive at any point until the final few months of the implementation timetable. This could set a very dangerous precedent in other areas.

Options in Event of Defeat on Appeal

Success at appeal remains the fastest way of guaranteeing delivery of the manifesto commitment. But we also need to consider our options in the event of defeat on appeal. There are two scenarios in terms of litigation:

- Victory for UK in the ECJ - under this outcome, domestic legislative action would be blocked throughout 2000, but we could introduce domestic secondary legislation early in 2001. This would meet the manifesto commitment, but would undoubtedly blunt the impact of our other anti-smoking measures in the interim period;
- Defeat for UK in the ECJ - in this event, primary legislation in 2000/01 would be the only way to meet the manifesto commitment. However, even this primary legislation could be subject to challenge. We would certainly see no practical impact from our action before the next election. We could not even guarantee that the necessary legislation would be in place.

Hence, relying on the courts alone is far from ideal.

Primary Legislation

I was grateful for Margaret's agreement in her letter of last night to our saying that primary legislation could not be ruled out. I also note her comments about the difficulties of fitting either a full bill (which might be 15 clauses or so in length) or even a small bill concentrating on "above the line" advertising (perhaps 5-7 clauses) into next session's programme. I will of course ensure that no hostages to fortune are given in public statements.

But we do need to consider the option of primary legislation seriously within government. I believe that primary legislation gives us a greater certainty of success in both meeting the manifesto commitment before the next election and maximising smoking cessation in the medium-term than relying on the courts alone. Whilst any primary legislation obviously has to be compatible with general European law, I am advised that the grounds for challenge in the courts are limited and our chances of success correspondingly higher. It is conceivable that a Bill could be passed and the resulting Act overcome any legal challenge by next summer. This would get the manifesto commitment in place six months earlier than relying on the ECJ and render the ECJ proceedings largely academic.

We also have to consider Parliamentary handling. Kevin Barron has promoted a Private Members' Bill to ban advertising, which has been talked out in this session. ASH, who drafted the Barron Bill, have indicated that they will seek to find a sponsor for such a Bill in the next session. Although the official opposition now support an advertising ban, it is probable that any Private Members' Bill will be talked out from the Opposition backbenches. We would then find ourselves facing calls to find government time for a private members' bill implementing a manifesto commitment. In handling terms, this looks more difficult than finding a slot in the programme for a new bill.

I am advised that the judgement of the Court of Appeal is unlikely to have a bearing on the practicability of primary legislation. The Court's judgement is likely to turn ultimately on its view of the legal base of the existing Directive. There is no reason why it should opine on the principal of the advertising ban itself. We will, of course, need to study the final judgement in detail to confirm this.

We do not need to form a final view now. But I am convinced that we need to be in a position to **introduce** legislation immediately after any adverse judgement. We should minimise the risk of further delay by beginning detailed internal work with Parliamentary Counsel on the drafting



of such a bill. The preparatory work in terms of instructions can be expedited. Other steps, such as policy clearance from colleagues, assessment of resource consequences and the regulatory impact assessment, have already been done in preparation for the regulations.

I am therefore seeking drafting authority from you and QFL colleagues to begin internal work on preparing a Bill now to allow us to be in a position to decide on near immediate introduction if that proves necessary. This would, of course, be a totally confidential exercise.

I would be happy to discuss this with you further.

I am copying this letter to members of QFL, Robin Cook, Stephen Byers and Sir Richard Wilson, First Parliamentary Counsel and Robert Hill.

A handwritten signature in dark ink, appearing to be "A.M.", written in a cursive style.

A.M.

3 November 1999



Minister for the Cabinet Office
Chancellor of the Duchy of Lancaster

Top: HAPS
SPU
CABINET OFFICE
70 Whitehall, London SW1A 2AS
Telephone: 0171-270 0400

Yvette Cooper MP
Parliamentary Under Secretary of State for Public Health
Department of Health
Richmond House
79 Whitehall
London
SW1A 2NS

1. 03
2. file
DN

5 November 1999

Dear Yvette,

PASSIVE SMOKING AT WORK

My attention has recently been drawn to the Health and Safety Commission's consultation document on passive smoking at work. I am writing to express my major concerns over the proposed introduction of an Approved Code of Practice (ACoP) to tackle the perceived problems caused by passive smoking in the workplace. The proposals are, in my view, poorly targeted, disproportionate and lack transparency, and will contribute little to the Government's efforts to improve public health.

I am fully aware of the scale of the problem set out in last year's *Smoking Kills* White Paper and agree that we must take steps to reduce the number of deaths caused by smoking. Your predecessor as Public Health Minister, Tessa Jowell, was instrumental in developing a package of measures both to persuade current smokers to give up and to discourage non-smokers from starting. The White Paper also contained a commitment to do more about the exposure of employees to tobacco smoke and the HSC have been tasked with taking this work forward.

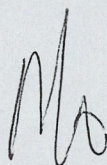
I appreciate that one of the main purposes behind the recent HSC consultation exercise was to gauge the extent to which people are ready for more action, however I believe it would be misguided to go down the route of an ACoP in this area. There is insufficient evidence to support this approach: as the HSC concedes, we cannot be certain of the size or extent of the risk arising from passive smoking in the workplace. 80% of workers already have some form of smoking ban or restriction in place; it is unclear whether the remaining 20% are actually exposed to tobacco smoke and, if so,

SKP 8/11/99

whether it affects their health or welfare. I am not convinced that any significant additional benefit would be derived from introducing a new ACoP, as opposed to issuing better guidance and encouraging employers to take steps to curb excessive exposure. Indeed, the HSC's own analysis suggests that the costs from introducing an ACoP will be between two and four times larger than the benefits. I do not believe we should countenance a measure that would impose such disproportionate costs, especially when the risks being addressed are far from clear and an alternative voluntary approach is available.

I know that the Better Regulation Task Force has particular concerns, which I share, about the impact of the proposals on small firms. I understand that Lord Haskins will be writing to the Chair of HSC setting out the Task Force's concerns in more detail, but our overall conclusions are the same, namely that these proposals are disproportionate and poorly targeted. The consultation period has now closed and the HSC will be considering the way forward over the next few months. In the meantime, we should take the opportunity to stress to the Commission that, although steps to reduce the effects of passive smoking in the workplace play an important part in our efforts to improve public health, the Government could not support the introduction of an ACoP which would bring so few benefits but would impose huge costs.

I am copying this letter to the Prime Minister, and to John Prescott, Stephen Byers, Alan Milburn, Andrew Smith, Lord Haskins, Bill Callaghan (Chair, HSC) and Sir Richard Wilson.



MARJORIE MOWLAM

lets talk —



Rec'd by me?
✓
Top - DN
cc JJH
PJ

Richmond House 79 Whitehall London SW1A 2NS Telephone 0171 210 3000
Direct line 0171 210

RESTRICTED - POLICY

PRIME MINISTER

LITIGATION BY THE TOBACCO INDUSTRY: NEXT STEPS

Summary

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the tests that have to be satisfied before an applicant can obtain suspension of legislation implementing EC law. It should not be presumed that a legal challenge precludes any action well in advance of the final implementation date. This is an important point for public policy generally.

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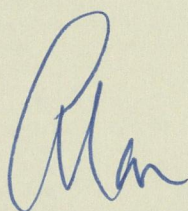
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I would be happy to discuss this with you further.

I am copying this letter to members of QFL, Robin Cook, Stephen Byers and Sir Richard Wilson, First Parliamentary Counsel and Robert Hill.

A handwritten signature in blue ink, appearing to be "A.M.".

A.M.

3 November 1999



(f)

Top: HA/PS
cc PPS
PL

Richmond House 79 Whitehall London SW1A 2NS Telephone 0171 210 3000
From the Secretary of State for Health

CONFIDENTIAL - BUDGET

Rt Hon Gordon Brown MP
Chancellor of the Exchequer
HM Treasury
Parliament Street
London, SW1

2 November 1999

Dear Gordon

TOBACCO TAXATION

I would welcome the opportunity to discuss with you the stance we should take in the Budget on tobacco excise duty in the light of the lobbying and advice you will be receiving shortly.

Price is probably the most important single factor in reducing smoking. Research evidence from this country and the US shows that a 10% increase in price leads to a fall in consumption of between 3% and 6%. Price levels particularly affect the smoking rate amongst poorer smokers and materially affects whether and at what age teenagers begin to smoke. There is increasing evidence that smoking can be the first step in other teenage risk behaviour, such as use of illicit drugs, binge-drinking and pregnancy. Against that background, the commitment made in 1997 to increase tobacco duties by at least 5% a year in real terms was warmly welcomed and continues to be a valuable weapon in our fight against smoking.

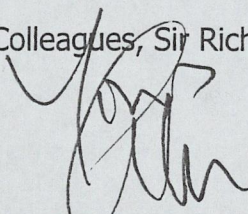
Your initiative in asking Martin Taylor to look at how best to constrain tobacco smuggling was a further welcome addition to cross-government action against tobacco. Mr Taylor has had helpful and constructive discussions with my Permanent Secretary and other officials in the process of formulating his views. It is clear that much work is needed to boost the operational priority given to tackling tobacco smuggling in law enforcement agencies, to ensure a proper strategic and co-ordinated approach both locally and nationally to this activity, to put sufficient sanctions and deterrents in place and, importantly, to help the general public recognise tobacco smuggling as a criminal activity. Restrictions on illicit supply can only help in our battle against tobacco addiction across the board.

SKP3/1/99

You will undoubtedly be lobbied by the tobacco industry with the argument that current levels of smuggling activity in the UK are largely the result of price differentials across the EU, that maintaining the escalator will incentivise smuggling still further and ultimately undermine our public health objectives. I recognise that there is a potential problem here and, for that reason, I am not renewing Frank Dobson's proposal of last year that the escalator increase should be stepped up to 7% pa. However, I do not believe that the case for a fundamental change of policy is proven. A change on duty policy may change the behaviour of the individual bootlegger at the margin, but it would not necessarily impact on organised smuggling. A large proportion of smuggled tobacco does not enter the EU taxation regime at all. To remove the incentive to smuggle tobacco from the Third World would require massive cuts in duty with disastrous public health consequences. Moving away from the escalator policy - or even suspending it for a year or revalorising using the RPI rather than a real terms increase - would therefore of itself not have a massive impact on the incentive structure. We need to tackle enforcement, sanctions and publicity in a much more concerted way before considering whether the public health benefits of the escalator should be put on one side.

We also need to consider the political credibility of any change of tack. A decision to halt or suspend the escalator, without demonstrated success in moving towards our public health targets and in reducing tobacco smuggling could with some creditability, be portrayed as removing one weapon in our armoury for a promise of "jam tomorrow". Our opponents and the health lobby will continue to point out that cigarettes remain relatively considerably more affordable than in the 1960s and would point to the apparently inconsistent messages being given in fiscal policy and health policy. They would also be able to point out - rightly - that there is no clear evidence that tobacco smuggling is causing an increase in cigarette consumption or that the street price of illicit tobacco is not itself tracking duty increases. Controversy here would be particularly damaging at a time when we are launching the biggest anti-tobacco advertising campaign ever, developing smoking cessation services in the NHS for the first time and gaining positive support for our attack on cancer and coronary heart disease. In short, I do not believe that we should abandon the current effective policy until we have taken a similar concerted approach to clamping down on illicit tobacco supplies.

I am copying this letter to Cabinet Colleagues, Sir Richard Wilson and Robert Hill.



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cc JP
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Globe House
 4 Temple Place
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 WC2R 2PG
 United Kingdom

To	The Prime Minister's Office	From	Simon Millson
Company		Tel	0171 845 1193
cc		Fax	0171 845 2117
Fax	0171 930 9572	Subject	
Date	2 November 1999	Total pages	3

Message

Please find attached a letter from the Chairman of British American Tobacco, Martin Broughton, together with a press release relating to the closure of a British American Tobacco factory in Spennymoor. Your constituency office has also been notified.

Sir Michael Scholar at the DTI was notified earlier this morning.

Confidentiality: The information in this fax is confidential. It is intended only for the use of the named recipient. If you are not the intended recipient, please notify us by telephone immediately and then return it by mail to the address shown above. You should not disclose the contents to any other person, nor take any copies.

British-American Tobacco (Holdings) Limited
 Registered office: Globe House 4 Temple Place, London, WC2R 2PG, United Kingdom
 Registered in England and Wales no. 262254



2 November 1999

The Rt. Hon. Tony Blair
Prime Minister
No 10 Downing Street
London
SW1A 2AA

Globe House
4 Temple Place
London WC2R 2PG
United Kingdom

Martin Broughton
Chairman

Tel +44 (0) 171 845 1901
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Dear Prime Minister

It is with regret that British American Tobacco announces today that we are closing our Spennymoor factory in the North East with some 460 job losses. A further 90 or so jobs will be lost across the UK following a restructuring of our UK manufacturing operations.

The factory closure is a result of tough competitive pressures and market conditions. All affected employees are now being informed. We are making every effort to provide outplacement assistance in addition to a limited number of alternative employment opportunities elsewhere in the company.

Enclosed with this letter is a copy of the press release which we are issuing today.

If you would like further information or to discuss this matter further, please do not hesitate to get in touch or have your officials contact Simon Millson, Government Affairs Manager, on 0171 845 1193.

Yours Sincerely

Martin Broughton



BRITISH AMERICAN
TOBACCO

news release

Globe House
4 Temple Place
London
WC2R 2PG
United Kingdom

For immediate release: 1300 hours GMT Tuesday 2 November 1999

BRITISH AMERICAN TOBACCO GROUP RESTRUCTURES UK MANUFACTURING

Company very much regrets 550 UK job losses

The British American Tobacco group is to restructure its UK manufacturing and supply operations, after a careful review of UK capacity following the merger in June of British American Tobacco and Rothmans International.

The group now has three UK factories: the two smaller former Rothmans factories at Darlington and Spennymoor in County Durham, and the larger British American Tobacco factory at Southampton, with a combined production capacity some 50% higher than demand in their UK and export markets.

All practical options for reducing excess capacity have been examined, against a background of continuing economic difficulties in parts of the world, particularly Asia; trends towards local production in emerging markets; the loss of European Duty Free; and a UK market increasingly affected by 'bootlegging'.

The company very much regrets that it is necessary to close the factory at Spennymoor, currently employing 460 people, as part of a series of changes across all sites which will reduce staff numbers by approximately 550 overall.

There will be staff reductions at Darlington, with opportunities for some Spennymoor factory staff to transfer to Darlington. There will also be staff reductions at Southampton, expected to be approximately 70 jobs over the next nine months. The two remaining UK factories will now have key skills in place to match their production profiles, and to seek a strong competitive position for the future.

The engineering workshop at Milton Keynes in Buckinghamshire is to close, and redeployment opportunities are to be pursued for its 40 staff. Supply chain and accounting activities currently at Darlington, Spennymoor, Aylesbury in Buckinghamshire, Woking in Surrey, London and Southampton will be consolidated into single units centred at Southampton.

In making difficult decisions, the aim has been to identify the most economically viable option for the future prosperity of the business, while giving full consideration to preserving jobs in the North East as far as possible. Production is to be reconfigured on the two sites at Darlington and Southampton. Darlington will handle specialised production, while Southampton will handle higher volumes and a less complex mix of products. This will deliver increased productivity and lower manufacturing costs.

p.2/

Tony Cain, Head of Manufacturing, said: "The decision to close Spennymoor has been taken with great reluctance. It has been a high performing factory for Rothmans, and has worked hard and successfully to maintain international competitiveness since production began 20 years ago. There have had to be difficult decisions across all UK manufacturing and supply.

"This is a sad day for many of our people, but we will be doing all we can to mitigate the impacts through severance packages, financial advice and outplacement. There will be selective voluntary severance, relocation, and redeployment where possible, but regrettably there will also be compulsory redundancies.

"We will now hold employee consultation on the best ways to minimise impacts. Final details will not be clear until later in the consultations, but we expect a total of around 550 job losses."

It is anticipated that Spennymoor will close by the end of 2000. British American Tobacco is not committed to sale of the site, and is open to exploring future uses with third parties.

The Milton Keynes engineering workshop is expected to close by the spring of 2000. The single units for supply chain and accounting support are expected to be in place at Southampton by the end of 2000.

- North East media are invited to a briefing at 3pm this afternoon.
Please see attached invitation and map.
- Southampton media: please contact Hallmark PR.

ENQUIRIES

North East / national media:

British American Tobacco
Press Office

Fran Morrison
Jody Humble
Brian O'Connell

0171 845 2888

Southampton media:

Hallmark PR for
British American Tobacco

Tom Roberts
Fiona Peters

01703 793370
01703 793163

Notes to Editors p.3/

Notes to Editors:

- **Spennymoor** has a volume capacity of 22 billion cigarettes p.a. It currently employs 460 people manufacturing brands such as *Rothmans King Size*, *Dunhill International* and *Peter Stuyvesant* for a wide variety of international markets, including duty free. Spennymoor production of virginia king size and 'twin-ten' packs will move to Darlington and Southampton.
- **Darlington** also has a volume capacity of 22 billion cigarettes p.a. It currently employs 500 people manufacturing brands such as *Rothmans King Size*, *Rothmans Royals King Size* and *Dunhill King Size* for the UK and international markets, including duty free. Darlington will now absorb some of Spennymoor's production of virginia king size and 'twin-ten' packs. Some of Darlington's virginia king size production will move to Southampton.
- **Southampton** has a volume capacity of 50 billion cigarettes p.a. It currently employs 880 people manufacturing *State Express 555*, *Benson & Hedges* and *John Player Gold Leaf* brands for export and international duty free markets. The site also houses one of British American Tobacco's four global research and development centres, which has begun a major expansion programme to accommodate the merged company's R&D team.
- **Milton Keynes:** the former Rothmans engineering workshop currently employs 40 people refurbishing machinery, manufacturing spare parts and providing technical support to factories overseas. These activities are carried out elsewhere in the merged company, and a separate workshop is no longer economically viable. Redeployment opportunities are to be pursued for the staff.
- **UK supply chain** activities include customer services, logistics and planning, currently based in the North East, Aylesbury and Southampton. Related accounting services are at Aylesbury, Woking, London and Southampton. Integration to single units at Southampton will involve staff selection and relocation options.
- **The global market** for cigarettes (about 5.5 trillion) is likely to decline by around 5% in 1999. The economic crises in Asia and Eastern Europe have adversely affected the businesses of many multinational companies, including cigarette manufacturers, and the outlook remains uncertain.
- **'Bootlegging'** in the UK is now estimated to account for some 20% of the tobacco market, impacting jobs and losing over £2 billion a year to the Treasury. The black market trade is encouraged by UK tobacco taxes which are amongst the highest in the world.

2 November 1999

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