

SUBMISSION BY THE SCOTTISH LICENSED TRADE ASSOCIATION

The Scottish Licensed Trade Association (SLTA) represents the interests of over 1800 self-employed licensees throughout Scotland; primarily pubs but also a smaller number of hotels, restaurants, bars and nightclubs.

The SLTA is committed to improving the health, safety and welfare of the staff and customers of its members and supports the objective of reducing their exposure to Environmental Tobacco Smoke (ETS).

The SLTA was a founder member of the Charter Group in Scotland and campaigned vigorously for the adoption of the measures by its members. This enabled the group to exceed all of the targets agreed with the Scottish Executive on the provision of smoking restrictions, with the sole exception of a technical issue on the keeping of paper records (where the target was missed by 1%).

It became apparent at the end of the Charter evaluation that our achievement of the agreed targets was seen as insufficient and that more was required in a short timescale. We believed that it was unlikely that this accelerated uptake could be achieved by voluntary measures, as there were widely perceived commercial disadvantages to those operators restricting or banning smoking – specifically that their smoking customers would move to other outlets who had not adopted restrictions.

As a result we proposed legislation to the Executive that:

- Smoking should be banned at the bar counter in all licensed premises.
- Smoking should not be permitted in any area where and when hot food is being served.
- All licensed premises (whether or not they sell food) should be required to allocate a minimum of 30% of total floor space as a non-smoking area and this percentage would be ratcheted upwards to 40% in year 2 and 50% in year 3.
- Every licensed premise should have a smoking policy sign at the entrance.
- Smoking should not be permitted in any area of licensed premises from which the public are excluded (i.e. back of house).

At the end of year 3 a review of progress would be made and appropriate further steps taken in the light of public opinion prevailing at that time.

We were very disappointed that this proposal did not appear to be seriously considered by the Executive – which then, with minimal consultation, began vigorous promotion of a total ban in all pubs.

We believe that our proposal has been given no serious consideration by the Executive and that it has substantially more merit than the outright ban proposed in the Smoking, Health and Social Care (Scotland) Bill.

Our specific concerns with the Bill are:

1. Proportionality to any health threat posed by ETS

The Scientific Committee on Tobacco and Health (SCOTH) in its 'Secondhand Smoke: Review Of Evidence Since 1998' (www.advisorybodies.doh.gov.uk/scoth/PDFS/scothnov2004.pdf) set the increased risk of lung cancer from non-smoker exposure to ETS as 'marginally reduced' from their previous estimate of 24%. This can be expressed as a relative risk of 1.24, or the risk of contracting lung cancer in any given year as 12.4 in 100,000.

In other words, in a group of 100,000 non-smokers exposed to spouses' ETS an extra 2.4 people a year may contract lung cancer.

It should be noted that these conclusions are drawn from studies based upon spousal exposure to ETS – not the occasional exposure that customers may get from occasionally visiting a bar or the many staff who work in the industry for a matter of months. In both cases any risk is likely to be much diminished.

It is also worth noting that Baroness Jay in a Commons Written Answer stated that "...A stronger association - of greater than 2 - is more likely to reflect causation than is a weaker association - of less than 2 - as this is more likely to result from methodological biases or to reflect indirect associations that are not causal...". In other words, if the relative risk was even three or four times higher than that claimed for ETS there would still be doubt as to whether the relationship was 'causal'.

Even taking no account of the usually low level of staff exposure (most pubs only have a significant amount of smoking in the evening on the later days of the week), and the uncertainty apparently shown by Baroness Jay – both of which we regard as highly relevant – this would equate to a very marginal impact on those employed in Scottish pubs. Assuming 20,000 people work in Scottish pubs and approximately half of whom smoke, 10,000 non-smoking staff could be at risk. This would equate to 0.24 non-smoking staff contracting lung cancer from ETS each year in Scotland. This is not a major or certain health threat; especially if exposure can be limited by the substantial control methods that we have proposed should be enacted.

We find the claims of hundreds of deaths a year of non-smoking bar workers as a result of ETS also to be incredible from our own observations. Across our

membership of nearly two thousand licensees we have had literally no feedback at all suggesting that their non-smoking staff or colleagues are dying of lung cancer, for example. If bar workers were at the level of risk indicated by the Executive's reports we would expect this to be a major issue and concern amongst our members – this is not the case. Our observations absolutely reflect, at worst, the numbers that we have calculated above, not the hundreds of deaths claimed.

Lastly the Health and Safety Executive was tasked to develop an Approved Code of Practice on Passive Smoking at Work. The draft (11 October 1999) stated that (Paragraph 8) 'Although there is emerging evidence that exposure to tobacco smoke *in the workplace* may be of itself sufficient to give rise to ill health we cannot, at the present time, be certain of the size or extent of the risk. However we do know that for some people exposure to tobacco smoke can make a pre-existing health problem, like asthma or chronic bronchitis, worse'. The expertise of the HSE in evaluating scientific evidence and risk is substantial and this would appear to be a far more reasonable claim of the health effects of ETS and one that can be borne out by our own experiences.

Whilst staff are seen as having no choice over their exposure, clearly non-smoking customers can choose whether or not to be exposed. With the increasing availability of non-smoking venues, smoking bans where and when hot food is served and the proposed major increase in non-smoking areas we believe that this exposure will be increasingly limited and will pose little or no health threat.

We conclude that action is required to remove or reduce ETS exposure as a source of aggravated medical conditions and annoyance, but that this action should be proportionate to the risks involved and that our proposed regulations cover this very adequately.

2. Reduction in Smoking Incidence

It is clear from Ireland that there has been a substantial reduction in the duty paid sales of tobacco products and presumably a reduction in consumption following the ban (although this may be affected by some smuggling due to the higher duty). It does not follow however that there is a similar drop in the incidence of tobacco usage (the proportion of the population that smoke) – especially amongst heavier users. In fact the evidence shows that there is little or no effect on smoking incidence amongst regular users.

In Ireland according to independent research agency Millward Brown (November 2004 see Appendix) the incidence of smoking (5+cigarettes a day, adults 18-64) has increased for both men and women after the ban (March 2004).

	Oct/Dec 2003	Jan/Mar 2004	Apr/Jun2004	Jul/Sep 2004
Men	33%	35%	35%	37%

Women 36% 37% | 37% 38%

In Norway the Directorate of Health and Social Affairs website shows daily smoker incidence (aged 16-74) reducing from 26.3% to 26% from 2003 to after the ban in 2004, a drop of 0.3%. In the year before that (2002-3) the drop in incidence was from 29.4% to 26.3% a drop of 3.1%. Taken over the five years before the ban the annual average decrease was 1.3%.

In 2003-4, the incidence of smokers aged 16-24 actually increased by 0.9% from 22.8% to 23.7%. From these data you could conclude that the smoking ban markedly decreased or reversed the decline in smoking incidence that was being achieved previously.

Percentage daily smokers, by age. 1995-2004. Observed result and estimated three-year sliding average

	Daily smoker 16-74 years	Daily smoker 16-24 years
1995	32.6%	28.7%
1996	33.1%	28.6%
1997	33.6%	30.6%
1998	33.0%	31.2%
1999	32.0%	27.7%
2000	31.9%	31.5%
2001	29.8%	26.8%
2002	29.4%	27.8%
2003	26.3%	22.8%
2004	26.0%	23.7%

Source: http://www.ssb.no/vis/english/subjects/03/01/royk_en/main.html

This suggests that whilst smoking bans may stop the light and very light social smokers to give up, and probably reduce the tobacco consumption of heavier users, it does little if anything to cause regular users to stop. The conclusion must be therefore that those regular users that choose not to visit pubs as the result of a ban will continue to smoke elsewhere – especially in the home.

3. Displacement of Activities

Although it is too early to assess the Irish ban it is clear that there has been a shift away from using hospitality outlets. This can be seen most clearly in the employment trends.

The Irish Central Statistics Office shows that employment in pubs, bars, hotels and restaurants had been steadily growing up to the ban – average +3.2% over the previous year. In the first six months after the ban employment dived by 6%. The rest of the private sector continued to grow at an increased rate from 0.9% to 2.9% in the same period.



From the November 2004 Millward Brown study (see Appendix) it appears that the total proportion of the population using pubs is more or less stable. From this, given the heavy reliance of the pub sector on 'regular' (frequent) users, it is logical to conclude that regulars (who include a high proportion of smokers) are being replaced by other users (who tend to be non-smokers) who visit less frequently. Although we are unaware of any specific data on this it is logical that a high proportion of these people now using pubs less or not at all are spending their time at home – and drinking and smoking there. This has health consequences:

Increase in fire risk: In Ireland this is clearly a problem. Batt O’Keeffe TD, Minister of State at the Department of the Environment, Heritage and Local Government stated (6 December 2004, press release from his Department) ‘I am very concerned about the dangers of cigarette smoking in the home, particularly when combined with alcohol consumption. Initial indications are that the percentage of fire fatalities where the confirmed cause is cigarettes is expected to rise again this year. This is a worrying trend and one which we need to nip in the bud as quickly as possible, particularly following the ban on smoking in public places.’ In recent years we are unaware that there have been any fire fatalities in Scottish pubs, so this is a new danger that would result from the Bill becoming law - not a displacement of a current danger.

Increased ETS exposure of minors and other family members: Small children are rarely present in pubs where there is a significant degree of smoking. By contrast they are highly likely to be present in the home. In the event

of a ban their exposure can be expected to increase substantially, as is the exposure of other family members. Young children with developing respiratory and other systems could be expected to be particularly vulnerable. Any risks from exposure in the home will typically be greater than in a pub as the space per person is generally smaller and the ventilation worse - leading to less dilution of the ETS.

Increased home drinking: Evidence from Ireland suggests that some drinking has been transferred from the on-trade to take-home. This drinking in an uncontrolled environment is associated with health and social problems.

Uptake by children: children of smokers are more likely to take up smoking than children of non-smokers. A rise in smoking in the home associated with a smoking ban will increase the likelihood that their children will also take up smoking. This is directly against any public health objectives that may underpin this Bill.

Street activity: a high proportion of Scottish pubs, especially those in city centres, are in tenemented blocks with no areas that could potentially be used by smokers outside. The options for the pub user who chooses to smoke are to use another pub that does have an outside area or to stand outside in the street. In some areas, those standing in the street may represent a public nuisance to other pavement users, and will be vulnerable to traffic especially if they spill over the pavement into the roadway.

This is likely to be much more of a problem in Scotland than in Ireland due to the higher density of buildings and the relatively high level of street violence in some city centres.

These people are much better controlled inside a pub than outside it and we envisage substantial public order difficulties and potential injuries as a result.

4. Impact of alternative measures

We are concerned that this Bill implicitly rejects all of the other control mechanisms available. These should have been carefully considered before coming to the conclusion that a smoking ban was the only way forward. We note that harm from ETS is believed to be directly related to the dosage/level of exposure. It therefore follows that techniques that reduce exposure should have a corresponding impact on any harm, however small, from ETS.

Ventilation: Ventilation is a widely used control mechanism against contaminants across all industries. There is no reason why this should not apply to ETS and the pub industry – especially as the vast majority of ETS constituents can be found from other processes.

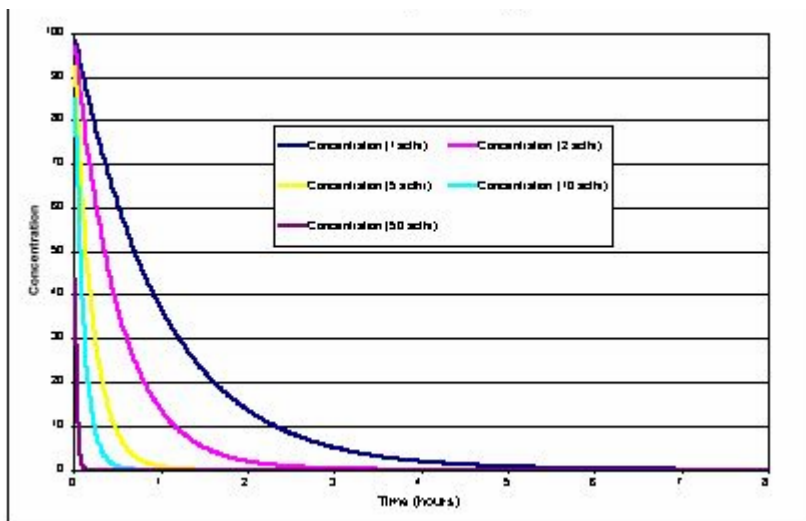
The 1998 White Paper *Smoking Kills* (www.archive.official-documents.co.uk/document/cm41/4177/4177.htm) explicitly endorses its effectiveness (Para 7.23) *'ventilation systems can improve the comfort and welfare of public and employees. The best systems can, provided they are properly operated and maintained, protect non-smokers from exposure to carcinogens'*.

Research commissioned by the Association into the effectiveness of ventilation at the Doublet Bar in Glasgow demonstrated conclusively that even relatively inexpensive ventilation greatly reduces the contamination from ETS gases and particles. There are similar studies available from the University of Glamorgan, which demonstrate the same effect in a number of pubs in England and Ireland. Where ETS constituents have known occupational exposure limits (for example particles and carbon monoxide), these are kept well within the acceptable levels.

The peer-reviewed Black Dog study (December 2001 Regulatory Toxicology <http://www.ingentaconnect.com>) clearly demonstrates that a well-managed ventilation airflow can prevent ETS drifting from a smoking area to a non-smoking area. The synopsis concludes that *'ventilation techniques for restaurants/pubs with separate smoking and nonsmoking areas are capable of achieving nonsmoking area ETS concentrations that are comparable to those of similar facilities that prohibit smoking outright.'*

Separation: Separation of smokers from non-smokers by a wall or partition is also a highly effective means of preventing the exposure of staff or non-smoking customers to ETS. This is especially so if the room is fitted with, even low level, 'extract' ventilation which will prevent any ETS from drifting out into the rest of the premises.

Concerns have been expressed that staff would be exposed to ETS if they entered such a room at the end of an evening to collect glasses. In reality there is little problem. ETS contamination is subject to exponential decay as the chart below shows (prepared by the Building Services Research and Information Association – BSRIA). Most pubs have a 'natural' leakage rate of 1 or more air changes per hour with air seeping through the fabric of the building. This means that the equivalent of all of the air in the room is replaced once each hour with fresh outside air. At this rate – with no mechanical ventilation – the concentration would reduce by about 85% in two hours. At even a low rate of ventilation such as 5 air changes per hour, the contamination would be reduced to this level in about 30 minutes and effectively to zero within an hour.



5. Loss of jobs and amenity

Research commissioned by the AOB Group, of which the Association is a member, carried out by the Centre for Economics and Business Research (London) to review the economic impact of the proposed ban on both the licensed trade and the beer industry in Scotland found that:

- Employment in the licensed trade can be expected to decline by 2,300 jobs initially (page 5 refers)
- About 142 average sized licensed premises may close as a result of decreased trade (page 5 refers)

The loss of employment is likely to have a negative effect on the health and welfare of the people involved. This will be especially so for the c.140 licensees who will lose not just their jobs, but also their homes and their savings.

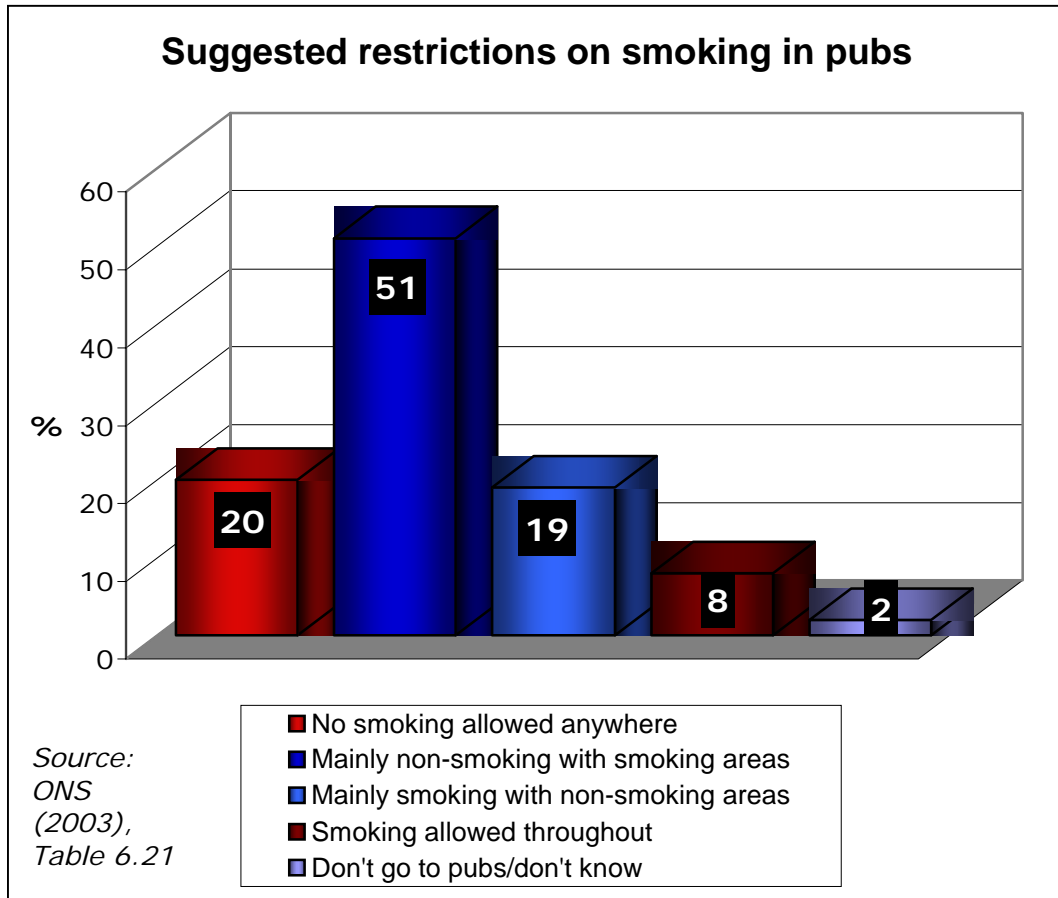
The loss of the pubs, which are likely to be in remote or economically deprived areas with few centres for community life, will have a marked and negative impact upon the lives of their regular customers who use it as an extension of their own home. This would be especially true of older people and some people who are emotionally disturbed for whom the pub is the only place at which they can meet other people. We believe that the health (physical and psychological) of these marginalised groups will be significantly and negatively affected by a ban that will force the closure of their 'local'.

Evaluating alternatives to the ban

We are very concerned that the Executive appears not to have considered our alternative proposals seriously, if at all, in developing the draft Bill.

Our proposals are far more in line with public sentiment than the proposed ban. The Scottish Executive's own research (MRUK 2004) found that just 18% of those surveyed supported a total smoking ban.

This percentage is borne out by the annual research carried out by the Office of National Statistics at the UK level in its latest (2003) report, which showed just 20% in favour of a ban in pubs, as the graph below indicates.



Our proposals will deliver the result that voters want at the moment. Our plan allows for a review of progress to be taken in the light of public opinion prevailing at the end of the third year. Our further plans would clearly reflect these public preferences.

In our view this is both reasonable and sensible.

Summary

The S.L.T.A. welcomes the introduction of measures to restrict smoking in public places. Our concerns are with the approach adopted by the Scottish Executive and are broadly divided into four areas as follows:-

1. this legislation assumes, without adequate research and contrary to recent international reports that the best way to improve public health is to impose an outright ban.

2. the outright ban will lead to public disorder, litter and extra public nuisance incidents, particularly at weekends and in city centre bars.
3. no research has been conducted into similar bans worldwide, since Ireland, Norway and New Zealand are the only countries where such a ban exists.
4. it is too early to assess the impact in Ireland.
5. The public does not want, and is not ready for, a ban on smoking in all pubs.

We are concerned at the speed with which the Executive has proceeded with this measure since announcing its decision to introduce a total smoking ban in enclosed public spaces on 10th November 2004. We support increasing smoking restrictions and increasing the number of smoke free areas, but we believe the Executive should take more time to truly consider whether an outright ban is the most effective way to tackle the smoking issue, particularly given the ban's intended introduction in Spring 2006. Given that the public is opposed to the move, it would be prudent to commission additional research and afford the decision due time and deliberation.

At the Finance Committee meeting which The S.L.T.A. attended in February 2005, it was stated that the Police in Scotland will not enforce the ban, that local councils will require substantial additional funding to enforce the ban and that a major recruitment exercise will need to be undertaken to ensure that officials can patrol pubs the length and breadth of Scotland. The only measures that local councils and the Police have for controlling noise in the street, and litter, are already inadequate to meet current demand. They will require a massive additional investment to solve these problems. We believe that sufficient research is required to assess the cost of implementation.

The Executive's own MRUK opinion poll demonstrated that the majority of the Scottish public are not in favour of an outright ban on smoking in pubs, despite a majority favouring increased restrictions on smoking – but the public do not want, and are not ready for an all-out ban. Even the Executive's own consultation on a Smoking Ban showed only 18% in favour of a total ban on smoking in pubs. The importance of public acceptance cannot be overstated. Compliance is crucial in terms of enforcing a ban and avoiding public confrontation with officials.

Certainly we must reach a stage where non-smoking is the norm in public places and it is smokers that must choose which venue to attend. But we must adopt a compromise position that will safeguard the nation's health, avoid the shift in smoking to the home, protect the hospitality and licensed trade industries and will prove enforceable. Approximately 85% of health problems caused by Environmental Tobacco Smoke are derived from domestic situations and it is quite possible that the outright ban approach will result in greater health problems as a consequence.

We urge the Committee to reconsider exemptions for the licensed trade and to take the time to adequately research the implications of this legislation before it is rushed through the Parliament.

Yours sincerely,

Colin A. Wilkinson
Secretary