

BRITISH
Hospitality
ASSOCIATION

Our ref JAL/smi/BRI084.0001
Your ref

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21 September 2004

Dear Sirs

Response of BHA to Smoking in Public Places

INTRODUCTION

The British Hospitality Association is the national association for the hotel, restaurant and catering industry, representing some 3000 establishments in Scotland. Hospitality and tourism is one of the largest industries in Scotland, employing some 190,000 people and contributing £4 billion to the economy (5 per cent of GDP.)

OUR PREFERRED APPROACH

The BHA is one of the signatories to the Scottish Voluntary Public Places Charter, which has made a valuable contribution to reducing the impact of smoking in hospitality establishments. Our preference would be to continue with the voluntary approach, which we agree needs to be accelerated.

We acknowledge that public opinion has changed in recent years, and significantly in recent months, and that the experience in the Irish Republic has contributed to that process. The public in Scotland, as elsewhere in the United Kingdom, has shifted its position and would be considerably more inclined to support legislation now than even a year ago.

This does not mean that the legislative route is the right one for Scotland. The Bill presented to the Parliament by Stewart Maxwell MSP shows the dangers of ill-thought out legislation.

If, despite the benefits which a well managed extension of the voluntary approach could bring, the Executive still wishes to go down the legislative route, we would strongly recommend that it follows the following principles:

1. Any legislation must, at the very least, be Scotland-wide and introduced under health and safety legislation. Indeed, our understanding is that any legislation based on employee health and safety linked to environmental tobacco smoke would have to be UK-wide: this would eliminate any

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cross-border confusion in a UK-wide industry. There must not be any powers given to local authorities to decide their own rules, as currently being proposed in Tayside, the result of which would be confusion to customers, tourists and operators.

2. There is no justification for legislation designed to determine customer choice, for example a ban where food is served, which would be compounded by the need to provide a precise definition of food. The only justifiable legislation would be based on the health and safety of employees.
3. It follows that, if any ban is introduced, it must apply to all enclosed workplaces. (There might be some exceptions as mentioned in the consultation paper. In the Irish Republic, hotel bedrooms are exempted from the ban on the basis that they are not a "public place," even though they are workplaces because employees service those rooms in the course of their employment.)

RESPONSE FORM

In the light of the above, we now respond to the specific questions in the response form:

1. *Having considered the health risks associated with passive smoking, do you think that further action needs to be taken to reduce people's exposure to second-hand smoke?*

Yes, but we believe that the focus should be on employees' exposure and that the continuation of voluntary action, as outlined in the consultation paper should remain the first option.

2. *Would you support a law that would make enclosed public places smoke-free?*

We remain concerned that there would be a loss of revenue (resulting in loss of jobs and even closure of some businesses) across much of the hospitality industry. If the Irish experience to date were to be repeated on the introduction of legislation in Scotland, losses in the hotel and restaurant sectors would be less significant than in pubs, but no legislation should be attempted without a serious assessment of the likely economic cost.

We would not favour the introduction of legislation and would be concerned if, as we understand the position to be in Norway, hospitality proprietors faced criminal charges if a customer smoked, but the customer could not be prosecuted. Any legislation must split responsibility and penalties equitably between operators and customers.

We would be particularly concerned if such a law lacked even-handedness, for example if it applied to hospitality establishments and not other workplaces, or it applied only where food was served (as with the Maxwell Bill), or if, as mentioned above in connection with Tayside, it applied differently in each local authority area.

3. *If a law was introduced, do you think there should be any exemptions to it (i.e. any enclosed public places where smoking should be allowed)?*

No, except for those exemplified in the consultation paper (care homes, etc) and, for the avoidance of doubt, hotel bedrooms.

4. *If we decide not to introduce a law, what more could be done to encourage individual businesses to take voluntary action to become smoke-free or to provide more smoke-free provision?*

The Voluntary Charter has made considerable inroads on the problem, as the consultation paper acknowledges in the statistics for the growing percentage of Scottish leisure businesses with some

2

form of non-smoking provision. We believe the Charter or a successor campaign would make further good progress.

The industry proposals put to the Health Minister Tom McCabe on 20 May stressed the preferred voluntary approach but if this was not acceptable asked him to consider introducing legislation to greatly improve the comfort of staff and non-smokers customers in licensed premises. The proposal had five key elements:

1. Smoking should be banned at the bar counter in all licensed premises.
2. Smoking should not be permitted in any area where and when hot food is being served.
3. All licensed premises 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 (at the end of this period a further review of the wider issue would take place).
4. Every licensed premise should have a smoking policy sign at the entrance.
5. Smoking should not be permitted in any area of licensed premises from which the public are excluded (i.e. back of house).

5. *What else could we do to reduce people's exposure to second-hand smoke?*

It would be inappropriate for us to comment on specific approaches which might be taken outside hospitality. Within hospitality, we are of the view that extension of the current Charter approach (see above) would assist in reducing exposure and in achieving the Executive's aims.

CONCLUSION

I confirm that we have no objection to this response being made publicly available.

Yours sincerely

John Loudon
Secretary, BHA Scotland

