

RESPONDEE INFORMATION FORM

Please complete the details below and attach it with your response. This will help ensure we handle your response appropriately:

1. Name: SCOTTISH CONSUMER COUNCIL

Address: ROYAL EXCHANGE HOUSE

100 QUEEN ST, GLASGOW

Consultation title: Smoking in Public Places

2a. IF YOU ARE RESPONDING AS AN INDIVIDUAL:

Do you agree to your response being made available to the public (in SE library and/or on SE website)?

Yes (go to 2b below)

No (go to 2c)

2b. Where confidentiality is not requested, we will make your response available to the public on the following basis (please tick one of the following boxes)

Yes, make my response, name and address all available

Yes, make my response available, but not my name or address

Yes, make my response and name available, but not my address

2c. IF YOU ARE RESPONDING ON BEHALF OF A GROUP OR ORGANISATION:

Your name and address as respondents *will be* made available to the public (in the SE library and/or on SE website). Are you content for your response to be made available also?

Yes

No

THANK YOU FOR COMPLETING THIS CONSULTATION DOCUMENT

response to Scottish Executive consultation on smoking in public places

September 2004

 **Scottish
Consumer Council**

Making all consumers matter

SCOTTISH CONSUMER COUNCIL

RESPONSE TO SCOTTISH EXECUTIVE CONSULTATION ON SMOKING IN PUBLIC PLACES

1 Introduction

The Scottish Consumer Council (SCC) welcomes the opportunity to respond to this important consultation. The purpose of the SCC is to make all consumers matter. One of our aims is to encourage the development of markets that work for everyone, by finding the right balance between free markets, regulation and self-regulation, a balance which lies at the heart of this consultation. The SCC is also the host organisation for several projects which aim to improve the health of people in Scotland, including the Scottish Community Diet Project and the Scottish Healthy Choices Award Scheme. The public health concerns of these projects are reflected in this response.

In preparing our response we have consulted with the SCC's Consumer Network, a network of volunteers across Scotland who correspond with us on a regular basis about issues of local concern, and who take part in small scale research projects. We drafted a short survey which was completed by 75 volunteers in the network. While they are not a representative sample, they do give us some feel for people's attitudes to this consultation.

Because we have adopted a consumer response to this consultation, much of what we say relates to the parts of the market which have not, up till now, introduced restrictions on smoking, and in particular restaurants and pubs, rather than to the workplace. The rights of workers are not within our remit.

2 The consumer perspective

The SCC believes that parts of the market in Scotland have failed to respond to the changing behaviour and attitudes of Scottish consumers. The proportion of people smoking in Scotland has fallen considerably, and is now around 30%. Almost three-quarters of people (73%) who responded to a BBC survey wanted a ban on smoking in all public places as a way to cut tobacco-related illness. This is supported by the findings from our Consumer Network, as described below. However, parts of the market have not responded to this consumer demand. While there has been significant change in policy and practice in areas such as public transport, cinemas and shops, the provision of smoke-free areas in the hospitality industry has remained poor.

The Scottish Voluntary Charter on Smoking in Public Places introduced in May 2000 has had very limited impact. In 2003, three years after the introduction of the voluntary charter, 21% of restaurants had banned smoking, but no pubs had done this.

The SCC considers that the pub and restaurant business has failed to respond to the majority of the Scottish population who do not smoke and who would prefer to eat in a smoke-free environment.

Externalities – evidence of market failure

A market can be described as failing if it has an impact on an economic activity outside its own market, for example if a factory creating pollution imposes costs on other enterprises. This is known as externalities, and it is possible to view the food and drink sector in Scotland as imposing costs on people and organisations not directly involved in the particular market transaction. For example, the NHS bears considerable costs resulting from smoking and passive smoking, while employees in pubs are at risk from their exposure to environmental tobacco smoke.

3 Public health and healthy living

The Scottish Consumer Council supports various initiatives to improve Scotland's public health, and to promote healthy living, including the Scottish Community Diet Project, and the Scottish Healthy Choices Award Scheme. The Scottish Diet Action Plan recommended that the SCC, in conjunction with the Health Education Board for Scotland, should explore the possibility of developing a national healthy eating award scheme. In response, the Scottish Healthy Choices Award Scheme was launched in October 1997. The award is open to all eating establishments in Scotland, from sandwich bars to five-star hotels and is based on comprehensive criteria for healthy food choice, food safety and hygiene and non-smoking areas. In addition, award recipients must be able to demonstrate their support for breastfeeding mothers.

In order to get the award at commended level, at least half the seating must be non-smoking. To obtain the highly commended level of award, at least two thirds of the seating area must be non-smoking. Customers must be informed of the smoking policy, and must be given a choice of where to sit. There must be no smoking near the kitchen or servery. People should not have to walk through a smoking area in order to reach the non-smoking area, and it is suggested that, where possible, a separate room or screened-off area is provided for smokers.

4 Consultation questions

Question 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?

The SCC believes that the balance of evidence does show that passive smoking contributes to poor health in Scotland. We support further action to reduce people's exposure to second-hand smoke.

A large majority of our Consumer Network agreed with the statement "More should be done to protect people from other people's smoking" with 95% agreeing or strongly agreeing, and the remaining 5% neither agreeing nor

disagreeing. However it should be noted that 87% of our sample never smoke, which is a slightly higher percentage than amongst the population as a whole. A higher percentage (98%) agreed or strongly agreed that people have a right to work in a smoke-free environment, with no-one disagreeing with this statement. Only 4% of our respondents agreed that people should be able to smoke wherever they want.

A large majority (90%) of those responding felt that even non-smoking areas are often not really smoke-free.

Question 2 Would you support a law that would make enclosed public places smoke-free? (Public places include workplaces and transport)

There are two issues here: whether legislation is required, and whether it should extend to all public places.

Alternatives to legislation?

In deciding whether to support the introduction of legislation it is important to consider whether there is an alternative. Regulation, in the form of legislation, should only be used when there is clear evidence that there is no alternative to this to achieve the policy goals.

The Better Regulation Task Force was established in September 1997. It is an independent body that advises Government on action to ensure that regulation and its enforcement accord with the five Principles of Good Regulation: These principles are that regulation should be

- Proportionate – regulation should only be used where it is necessary, and should be appropriate to the risk involved. Costs should be identified and minimised.
- Accountable - regulators must be able to justify decisions, and be subject to public scrutiny.
- Consistent - government rules and standards must be joined up and implemented fairly
- Transparent - regulators should be open, and keep regulations simple and user friendly
- Targeted - regulation should be focused on the problem, and minimise side effects

The main alternatives to legislation would be

- a voluntary response to the desire for more smoke-free public places
- making it a requirement of licences for pubs that they should be smoke-free, or
- giving local authorities power to introduce local regulations.

To link a smoking ban with licensing would not have any impact on a wide range of catering outlets which do not require a licence.

There is very little evidence of a voluntary response to the desire of consumers to be able to go to smoke-free restaurants and pubs. The problem appears to be that, in a competitive market place, service providers are reluctant to be the first to restrict the size of their potential market.

One reason for service providers to voluntarily change their behaviour might be in response to the threat of legal action by those affected by passive smoking. The campaigning organisation Action on Smoking and Health (ASH) in association with a trade union law firm is trying to encourage employers to respond to this threat. While employees may initiate claims, this is not a realistic option for consumers, as they would find it much harder than employees to prove causation, and there are aspects of the legal process which act as a deterrent to using the law in this way, for example the length of time and cost of legal action, and the absence of class actions in Scotland.

Consumer Network views

On smoking

Almost all the respondents to our Consumer Network survey (94%) thought that no smoking should be allowed in places where food is served, with only 3% strongly disagreeing. Slightly more than half of those responding did not consider that it was easy to find a restaurant where they could be sure they would not be affected by other people smoking. Almost a quarter had no view on this, and a quarter thought that it would be easy to find such a restaurant.

Views about smoking in pubs were not as strongly held. A clear majority (60%) disagreed or strongly disagreed with the statement "People should be able to smoke in pubs", with 22% neither agreeing nor disagreeing, and 18% agreeing or strongly agreeing. However, 77% said that they would prefer to go to a smoke-free pub, suggesting that some people had a clear preference for non-smoking pubs, but were more reluctant to ban smoking in all pubs.

Almost all respondents (99%) agreed or strongly agreed that all public transport should be smoke-free. The remaining one per cent neither agreed nor disagreed. A large majority thought that all enclosed public places should be smoke free (87%) with only 1% disagreeing, and the remaining 12% neither agreeing nor disagreeing. Four-fifths agreed that people should only be allowed to smoke in public places if there was a separate smoking area, and smoke could not get into other parts of the building.

On whether the approach should be statutory or voluntary

When asked whether they would prefer legislation or a voluntary approach, the majority (53%) were not in favour of a voluntary approach, while just under a third (32%) preferred a voluntary approach, with 16% neither agreeing nor disagreeing with such an approach. Slightly more than two fifths (43%) thought it would be better if local authorities decide whether their area should

have a ban on smoking in public places. Nonetheless, 89% of respondents would support a ban on smoking in enclosed public places.

These findings are not entirely consistent, and suggest that if a voluntary approach could be made to work, it was favoured by a third of our respondents. However, a much higher percentage would support a ban if that was necessary.

Conclusion

On balance the SCC believes that the difficulty of influencing the market through the individual choice of consumers, combined with externalities in the market, means that a significant shift to smoke-free environments will only be achieved by regulation. On this basis the SCC supports the use of legislation to ban smoking as the most effective way to change markets in which the needs and preferences of consumers are not being met. We would like to restrict our comment to situations in which people find themselves as consumers, and so will not answer the wider question about whether smoking should be banned in all public places.

Question 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)

A large majority of our Consumer Network respondents (90%) think that smoking should not be allowed in hospitals, while there was more ambivalence about prisons. Over a third (37%) thought that smoking should be allowed in prisons, with a similar percentage (33%) saying they did not know, and 28% saying that smoking should be banned in prison. In relation to residential care homes, 32% thought smoking should be allowed, with 41% believing it should be banned. In all these situations, respondents who thought smoking should not be banned in these settings did think it was important that smoking was only allowed in designated areas. Three respondents also thought that smoking should be banned in schools and colleges. Two respondents thought that smoking should not be banned in hostels or cinemas.

This is not, strictly speaking, a consumer issue, and the SCC does not have a particular view on this, although on grounds of consistency we would argue that people should have similar rights in residential establishments to those they would enjoy in their own home, provided other residents are not affected by the smoke.

Question 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 experience of the Scottish Healthy Choices Award Scheme

The Scottish Healthy Choices Award scheme is an example of the kind of voluntary measures which can be used to encourage cafes and restaurants to improve the provision of non-smoking. To get the award, there must be a no-smoking policy in place. At present, if at least half the seating area is non-smoking, the establishment can qualify for the commended level of the award. Only if at least two thirds of the seating area is non-smoking can an establishment get a highly commended award. Customers must be informed of the smoking policy and they should always have a choice to sit in a non-smoking area.

In recent months, people associated with the scheme have expressed concern that smoking is permitted in establishments holding the highly commended level of award. Since the development of the Award criteria in 1996, smoking in public places has become less socially acceptable. More and more people prefer and expect to eat in a smoke-free environment whether they are smokers or not. With smoking cessation forming such a large part of the health promotion and the public health agenda, it is argued that the Award should encourage a smoke-free environment.

It has, however, been decided that in the absence of a ban on smoking in places where food is served, it would not be practical to introduce a non-smoking requirement. It is argued that for many establishments this requirement would exclude them from the award, and so consumers would lose the current benefit of having a choice of healthy options on the menu.

The Scottish Healthy Choices Award Scheme demonstrates the limited ability of voluntary measures to encourage a greater degree of non-smoking provision in places where food is served. Staff working on the Scheme would like to move towards a requirement of non-smoking but feel this is impossible in the absence of a wider ban on smoking.

Financial incentives

One alternative might be to provide incentives to businesses providing non-smoking environments. For example, local business rates could be lower for non-smoking premises.

In light of the failure of parts of the market to respond to consumers' preferences for non-smoking environments, the SCC believes that a degree of coercion may be required.

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

No comment.

Question 6 Please let us know about any other views you have about smoking in public places.

We have no other views on this.