



# The Royal Environmental Health Institute of Scotland

Ref:TB/Consult/04/076

30<sup>th</sup> September 2004

Smoking in Public Places Consultation Team  
Scottish Executive  
3 E(S), St. Andrew's House  
Regent Road  
Edinburgh  
EH1 3DG

Dear Sirs

## **SMOKING IN PUBLIC PLACES: A CONSULTATION ON REDUCING EXPOSURE TO SECOND-HAND SMOKE**

The Institute's response to the 'Smoking in Public Places' consultation paper is enclosed.

Please do not hesitate to advise me of any matter requiring additional information or clarification.

Yours sincerely

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**Director of Professional Development**

Enc

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Incorporating the Royal Sanitary Association of Scotland and the Scottish Institute of Environmental Health  
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**Smoking in Public Places: A Consultation on Reducing Exposure to Second-Hand Smoke**  
**The Royal Environmental Health Institute of Scotland Response**

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  No  Don't Know

There is overwhelming good quality, epidemiological and other, evidence to prove that smoking and exposure to Environmental Tobacco Smoke (ETS) are harmful to human health. There is no evidence to suggest that smoking has any beneficial effect on human health. ETS is known to contain 4,000 chemicals, some of which have irritant properties and some 60 of which are known or suspected carcinogens (including benzene and 1,3-butadiene). The World Health Organisation's International Agency for Research on Cancer (IARC) identified, ETS as being 'carcinogenic to humans'<sup>1</sup>. ETS has also been labelled a 'class A human carcinogen' by the United States of America's Environmental Protection Agency<sup>2</sup>. There is no doubt that if tobacco were now to be subject to the UK's approval for use process approval would not be granted. There are no safe limits for exposure to carcinogens: only a policy of elimination of ETS from public places and from workplaces will protect and improve public health in Scotland.

The medical case alone for a ban on smoking in public places and in the workplace is beyond dispute. In 2003 the Chief Medical Officer for Scotland stated that 'smoking is the single biggest cause of preventable premature death and ill-health in Scotland'<sup>3</sup>. Over 13,000 people die every year in Scotland from tobacco use<sup>4</sup>.

The Institute believes that only a total ban on smoking in public and work places will be effective.

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

Yes  No  Don't Know

The Institute fully supports the introduction of legislation to ban smoking in enclosed public and work places.

At present the Health and Safety at Work etc. Act 1974 does not provide adequate protection for workers against ETS. A Consultation Document (CD151) published by the Health and Safety Commission in 1999 looked at aspects of smoking in the workplace and outlined a draft Approved Code of Practice (ACOP). This ACOP remains under consideration 5 years after its publication. Although health and safety legislation is not a devolved matter, the Health and Safety at Work Act 1974 definition of 'workplace'<sup>5</sup> could be used to assist define the term 'enclosed public places' in any new public health legislation introduced by the Scottish Executive. New legislation banning smoking in enclosed public places as defined is long overdue and it would clarify the legal position for employers and ensure that they fulfilled their duty of care to their workforce and the public in respect of ETS.

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

Yes  No  Don't Know

The Institute believes that ideally there should be no exemptions from compliance with any legislation introduced to ban smoking in public and work places. However, the Institute does recognise that there are issues around employees working with the terminally ill and with employees working in prisons, young offenders' institutions and other residential premises.

**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 Institute agrees that retailers and the licensed trade need to be supported and encouraged to 'self regulate'. A great deal of work is already being done by Environmental Health Officers to provide advice on, for example, children's areas, provision of 'no smoking' notices and training on environmental management.

The Institute is also of the opinion that a whole community approach needs to be taken if a significant improvement in public health is to be achieved in Scotland. The Institute is currently reviewing how it as an organisation and its membership will significantly contribute to the Scottish Executive's strategy for improving the health of the people of Scotland which recognises multi-agency working.

The 'Public Places Charter on Smoking - Voluntary Code of Practice' supported by the Scottish Executive and launched in 2000 states that 'Legislation may be around the corner to protect staff, and if we don't see real action to reduce smoking in bars, clubs, restaurants, hotels, sports centres, galleries and other public places, politicians will legislate for restrictions on smoking in public places'. This voluntary charter has been ongoing for 4 years, yet the vast majority of pubs still have smoking throughout. Any further measures to 'encourage' businesses to take voluntary action will, at best, see marginal improvements in participation levels. Most businesses which would be inclined to act voluntarily will already have instituted voluntary control measures.

Very few public premises had a smoking policy until a private members bill [The Prohibition of Smoking in Regulated Areas (Scotland) Bill 2004] was introduced to the Scottish Parliament. Voluntary action and encouragement have failed. It is time for the politicians to take decisive action to protect the public and the workforce from ETS.

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

Exposure to ETS in, for example, homes and private cars impacts negatively on the health of non-smoking family members, particularly children. This can only be addressed by a determined and directed health education and health promotion awareness-raising campaign. Education and support should start at the antenatal stage and be a life long issue.

The Health and Safety Executive code of practice on smoking in the workplace has been with government since 1999, but has not been issued as a finalized document. Introduction of a proper code which protects worker health would present enforcement agencies the opportunity to assess standards in businesses, and if necessary, take enforcement action for non compliance.

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

The Institute notes that the current debate has centered around whether a ban on smoking in public places should be introduced. We hope that the force of scientific, medical and public opinion will move this issue towards a ban. The next stage should now be considered. Any restrictions/controls introduced to prevent exposure to environmental tobacco smoke in public places will require legislation, which will need to be enforced if it is to have any effect. Provisions for enforcement must be in place which will identify what the offences are, who enforcement action may be taken against and who the legislation will be enforced by. Any future legislative provision should be adequately resourced, to ensure there are sufficient appropriately trained and qualified enforcement staff available to give meaning to these controls.

Environmental Health Officers (EHOs) working in local authorities have a proven track record in securing the improvement and protection of public health in Scotland for over 130 years. EHOs regularly inspect premises to which the public have access, such as bars and restaurants, on a daily basis to monitor compliance with, for example, food safety and occupational health and safety legislation. EHOs with their education, training, professional qualification and their enforcement expertise and abilities to educate the public are ideally positioned to play a major part in ensuring any future ban understood and complied with.

The Institute believes that consideration will also have to be given to the allocation of sufficient resources to local authorities in order to ensure full compliance in both the short and long term, after a law is passed. Local authorities will also have to be given time to 'prepare the ground' with businesses. The run-up time will also require a mass media campaign to be funded in order to avoid mass non-compliance and enforcement agencies being swamped.

One of the key factors in the success of the smoking ban in the Republic of Ireland is that the penalties for non-compliance are severe. A 3,000 Euros fine each for the smoker, bar manager, owner and person in charge of the premises at the time the offence was committed. The smoking of one cigarette is one offence, so smoking five cigarettes could result in total fines of 100,000 Euros. The publican also risks losing their licence at the time of renewal.

As 70-80% of the population do not smoke a ban is essential on economic, medical and moral grounds. A ban on smoking in public places would be good for Scotland, and would help to reverse our image as the sick man of Europe. There is no middle ground or compromise on this issue. Tobacco is probably the only product which incapacitates and finally kills those who use it as well as those around them.

Any ban must be introduced with minimum delay and should not be phased in over a period of time. Evidence from the failure to control smoking in public places in France should be carefully considered.

The Irish experience indicates that the complete ban on smoking in public and work has received a high level of public support and the following figures are generally agreed to be an accurate reflection of public opinion.

- 82% support the ban
- 95% believe that the ban it is a positive health measure
- 90% believe that the ban benefits workers
- 82% believe that the ban it benefits everyone
- 78% believe that their experience of restaurants has improved because of the ban
- 70% believe that their experience of pubs has improved
- 53% are more inclined to eat in pubs following the introduction of the ban
- 97% compliance reported with few enforcement problems
- 20% of smokers have given up smoking
- 16% drop in tobacco sales

## References

- <sup>1</sup> World Health Organisation International Agency for Research on Cancer. Volume 83: 'Tobacco smoke and involuntary smoking'. Lyon: June 2002.
- <sup>2</sup> United States of America Environmental Protection Agency. Respiratory health effects of passive smoking: Lung cancer and other disorders. Smoking and tobacco control monographs No.4 (NIH Publication No 93-3605). Bethesda, Maryland: United States Department of Health and Human Services, Public Health Service, National Institute of Health, 1993.
- <sup>3</sup> The Scottish Executive. Health in Scotland 2003. Edinburgh: The Stationery Office: 2004
- <sup>4</sup> Callum, C. The UK Smoking Epidemic: Deaths in 1995. London: The Health Education Authority: 1998
- <sup>5</sup> HMSO, The Health and Safety at Work etc Act 1974. Definition of 'workplace'.
- 'Workplace' means any premises or part of premises that are not domestic premises and are made available to any person as a place of work and includes:
- a) any place within the premises to which such a person has access while at work; and
  - b) any room, lobby, corridor, staircase, road or other place used as a means of access to or egress from the workplace or where facilities are provided for use in connection with the workplace other than a public road

## INFORMATION TO HELP US UNDERSTAND YOUR VIEWS

7. Are your views personal or are you representing those of an organisation? (please tick one box only)

Personal  Go to question 8      On behalf of a group or organisation  Go to Respondee Information Form overleaf

8. Do you smoke? (Please tick one box only)      Yes       No

9. Are you? (Please tick one box only)      Male       Female

10. What age are you? (Please tick one box only)

Under 16       16-24       25-59       60 and over

**PLEASE COMPLETE THE RESPONDEE INFORMATION FORM OVERLEAF TO ENSURE WE HANDLE YOUR RESPONSE APPROPRIATELY**

## 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:** Tom Bell, Director of Professional Development

**Address:** The Royal Environmental Health Institute of Scotland

3 Manor Place, Edinburgh, EH3 7DH

**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, not at all

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 respondees *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**

**The Royal Environmental Health Institute of Scotland** (the Institute) has been in existence for over 125 years and has around 1,200 members the majority of whom are Environmental Health Officers working in that capacity for Scottish local authorities.

The objects for which the Institute is established are for the benefit of the community to promote the advancement of Environmental Health by:

- stimulating interest in and disseminating knowledge concerning Environmental Health;
- promoting education and training in matters relating to Environmental Health; and
- maintaining, by examination or otherwise, high standards of professional practice and conduct on the part of Environmental Health Officers in Scotland.

Environmental Health Officers in Scotland are part of a graduate only profession and by virtue of their underpinning academic education, professional practical training, professional qualifications and experience are well placed to apply a holistic public health approach to the education of the public and to the enforcement of a wide range of environmental and public health legislation.

The Institute, which is Incorporated by Royal Charter, is an independent and self-financing organisation. It neither seeks nor receives grant aid. The Institute's charitable activities are funded significantly by the subscriptions received from its members.