

The Royal Society for the Promotion of Health

38A ST. GEORGE'S DRIVE, LONDON SW1V 4BH

TEL: (+44) (0)20 7630 0121 FAX: (+44) (0)20 7976 6847 E-MAIL: rshealth@rshealth.org.uk WEB-SITE: www.rsph.org

Established 1876 PATRON: HER MAJESTY THE QUEEN



Introduction

On behalf of its members in Scotland, The Royal Society for the Promotion of Health would like to submit the attached response to the Scottish Executive's consultation on Smoking in Public Places.

The Royal Society for the Promotion of Health is the UK's largest and longest-established public health body. We were founded in 1876 under the leadership of a Scottish physician, Dr. John Lory Marsh, who gathered together a group of reformers including Edwin Chadwick, William Farr and Florence Nightingale. We have three hundred members in Scotland.

Since our foundation, our aim has been to promote continuous improvement in human health world-wide through education, communication and the encouragement of scientific research. We do this through events and publications, as well as through our qualifications.

The Royal Society for the Promotion of Health is an independent and self-financing organisation. We receive no government money. Our charitable activities are mostly funded by the subscriptions we receive from our members.

--oOo--

Consultation Responses

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?

Many public places including both buildings and public transport have been smoke-free for a long time now, and our members feel there are really only two significant areas which remain to be decided.

The first question is whether restaurants, pubs and other places of entertainment should be obliged to become entirely smoke-free just as public buildings have done. The second, related question is whether any 'smoke-free' enclosed public space may or may not include designated smokers' areas.

We believe it is important to be clear from the outset what the purpose of the legislation is. If the purpose is to discourage smoking then evidently there can be little justification for continuing to permit places of public entertainment to tolerate smoking. Likewise there is no case for permitting designated smokers' rooms inside smoke-free buildings or for tolerating smokers congregating outside buildings. If the intention or the legislation is to bear down on smoking in general we would want to see careful consideration given to the effects of smoking in the home, given that this is likely to be the last place where smoking may legally take place, and where the health effects of passive smoking can be most serious, particularly on children.¹ In the context of a general drive to reduce smoking in the population we would like to see more active health-promotion measures, particularly in the workplace,

¹Rushton Courage and Green in Journal of the Royal Society for the Promotion of Health 2003 vol 123 (1) pp 46-51 and (3) pp 175-80

to encourage smoking cessation, rather than relying on a simple ban to reduce the areas in which people could continue to smoke.

However if the purpose is primarily to protect customers and employees in places of public entertainment, as the accompanying documentation to this consultation implies, then a different set of measures may be appropriate. The domestic setting will not be under consideration at all and the purpose of the legislation is not to discourage smoking but to prevent smokers from harming others. If this is the purpose of the legislation then it is much harder to argue that a sealed off designated smoking room or an allocated outside space is a hazard to the health of non-smoking employees or customers.

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

Our members note that health and safety at work legislation is reserved to Westminster. Any laws restricting smoking in the workplace on the basis of health and safety must therefore be legislated for at the Westminster parliament on a UK wide basis. A Scottish solution is required to suitably tackle second hand smoke exposure in enclosed public places in the potential interim period. In this context one thing the proposed Scottish legislation would need to clarify is whether a designated smoking room constituted a public area or not.

The majority of our members would like to see the Executive follow the lead given by its counterparts in Ireland and implement a ban on smoking in all public spaces. They feel the ban should be total and backed up by legislation, enforceable by local authorities.

A more nuanced view is that the law should require all enclosed public spaces to have a mandatory smoking policy, but that this should not necessarily involve a total ban and could still allow for designated areas for smokers. Staff would be guaranteed a smoke-free working environment, with patrons departing from the designated smoking enclosed, ventilated (negative pressure) area (with designated fire exit; and self-closing device fitted to internal doors) to order beverages and/or meals. The scheme should be piloted at licensed premises, perhaps with greater restrictions placed upon those establishments trading with Children's Certificates.

One member who dislikes the idea of a total ban suggested some alternative proposals which would strongly discourage smoking without actually banning it. One such proposal is to impose a tobacco tax on organisations which fail to move towards a total smoking ban, or to adopt and enforce an otherwise satisfactory tobacco policy. Another is to offer some kind of fiscal rebate to establishments which go smoke-free, to encourage them to make building renovations necessary to support a smoke-free policy. People who use the street should, like dog owners, be required on pain of penalty to 'bag and bin' their rubbish.

3. If a law was introduced, do you think there should be any exemptions to it?

One of our members notes that as far as licensed premises are concerned there will be complications if people have to go outside in order to smoke. Since people will likely take their drink outside with them when they smoke they may fall foul of regulations which prevent drinking in the street, and this may have an impact on the licensee. An increase in patron numbers outside the establishment would also be likely to increase noise complaints in relation to premises, particularly in connection with 'all night drinking' establishments. We would need to know how Ireland and New York had handled these specific problems before deciding how to legislate in Scotland.

One of our members has recommended that there should be special exceptions for elderly persons in residential homes and patients in palliative care hospices and units. These people are already subjected to considerable stress without the additional pressure of withdrawal from smoking which

they may have enjoyed for many years. In these situations it might be desirable to have a well-ventilated smoking room to which persons could be wheeled for short periods during the day/evening.

Another member has raised questions about NHS hospitals. Some hospitals already do not permit smoking anywhere in the grounds, thereby entailing a 10 minute walk out onto the main road to stand outside the gate. As NHS staff are not yet expected to physically restrain people from going outside to smoke it is questionable whether a better arrangement might not be to allow a kind of 'bus-shelter' outside the hospital (albeit still on NHS property).

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?

There is no support from our members for the status quo, or for merely voluntary encouragement. The majority of our members support an outright and total, with a minority supporting either a legal requirement to have a policy (which might not include a ban) or a range of fiscal and bye-law measures to pressure employers towards restricting smoking. Some members did bring to our attention existing company policies based on alleged health and safety grounds, which seemed to verge on the spurious if not the outright dishonest. These included one workplace which already bans smoking in one's own car in an office car park, and of another where smokers are not allowed to smoke within 10 metres of the building in case someone opens their window. These absurdities seem to arise where confusion prevails between a health-based anti-smoking policy and a health and safety policy designed to protect employees from passive smoking.

We do not believe that voluntary action will be sufficient. We do not see the question as being about 'smoke-free provision'; on the contrary it is about whether any 'for-smoke provision' is appropriate or desirable. If the Scottish Parliament decides not to pass a law requiring a total ban, we would advocate a law requiring all places of employment and all public places to have a smoking policy. Such a policy could require an organisation to declare whether it intended to retain any provision for smoking on its premises and require it to review this regularly. This would mean that retaining smoking provision could never be the 'default position' any longer and any smoking provision would have to be regularly reviewed and justified.

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

As we mentioned in answer number 1, it is important to be clear what question we are trying to answer. It is possible that well-intentioned measures may have the effect of shifting the risk of passive smoking away from one group and onto another. This is particularly the case where smoking is associated with drinking, and careful thought is required to determine whether the effect of anti-smoking laws would be to move smoking - and attendant drinking - back into the home, and whether there might be any negative consequences to this. In the end this comes back to the philosophical question of whether the Scottish Executive is trying to bear down on the prevalence of smoking for public health reasons, or whether it is trying to move smokers around so that they cause minimum inconvenience and risk to non-smokers.

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

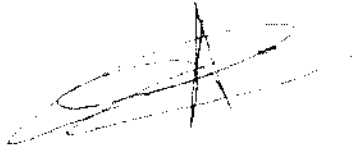
Comments from our members include:

'The Executive has a chance to demonstrate that it is serious about the health of the Scottish people and to be a leader in progressive policies rather than following on behind other countries; after all the health of the Scottish nation at present is nothing to write home about!'

'These proposals seek to criminalise the act of smoking, a situation which many will applaud, but we should be aware of the reality of the possible outcomes. If a person is fined for smoking and refuses to pay it, they can be sent to prison for non-payment, yet our prisons are overcrowded, unhealthy, and they will then be allowed to smoke there!'

'We understand that the new Scottish Parliament building has a smokers' room. If MSPs do not regard it as reasonable for there to be a total ban on smoking in their place of work it is difficult to see why anyone else should.'

--oOo--

A handwritten signature in black ink, appearing to read 'Alastair McCapra', written over a faint, circular stamp or watermark.

Alastair McCapra
Head of Communications and Membership