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Kumar N (Nim)

From: Simon Chase [s.chase@cigars.co.uk]
Sent: 26 May 2005 16:02
To: Glen J (John)
Cc: Wyndham Carver
Subject: Smoking, Health and Social Care (Scotland) Act draft regulations

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Dear Mr Glen

I would like to comment on Question 10 in Annex B of the Consultation Document on the draft regulations to the Smoking, Health and Social Care (Scotland) Act 2005 (Prohibition of smoking in certain premises) as indicated below. (Please find my Respondent Information Form attached).

Omissions from Schedule 2

Q.10 Are there any premises which, taking into account humanitarian, practical or other considerations, are omitted from the exemptions list in Schedule 2?

I am writing as Vice Chairman of the Imported Tobacco Products Advisory Council (ITPAC), which represents the interests of 13 importers of tobacco products to the UK, several of which are small, private companies employing less than 75 people, their main interest being in imported cigars and pipe tobaccos.

Imported cigars and pipe tobaccos are, by their very nature, specialist tobacco products. They appeal almost exclusively to mature, mostly male adults, and are sold in a very different manner from cigarettes. Their distribution and sale depend to a large extent on the activities of a small number of Specialist Tobacconist's shops within the UK. These Specialist Tobacconists are very small businesses, which depend for their livelihood on such specialist tobacco products, and their survival is of great importance to most of our members.

We request, therefore, that Specialist Tobacconists shops be added to the list of exceptions in Schedule 2 of the regulations for the Smoking, Health and Social Care (Scotland) Act 2005.

We are aware of an exchange of letters on this subject between the Chairman of the Association Independent Tobacco Specialists (AITS) and Deputy Minister for Health and Community Care. In her reply dated 11th May 2005, Rhona Brankin reiterated the First Minister's desire that the scope of the smoking legislation should be comprehensive, that it was essential to operate a level playing field and that no one business should be given an unfair advantage. She added that exemptions for some businesses would distort the market and would do nothing to remedy the inequalities gap.

We understand these arguments but nevertheless would ask you to consider the following issues.

There is a wide variety of specialist tobacco products on the market and the main point of difference between them is their taste. In this context the sale of imported hand made cigars, for example, has much more in common with fine wines than it does with mass market tobacco products such as cigarettes or hand rolling tobacco. It is therefore vital that the Specialist Tobacconist tastes the products that are on sale so that he can accurately describe them to customers. Quality is also very

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important in the case of hand made cigars and specially blended pipe tobaccos, and because such products are often made by long established craft methods and need to be kept in special conditions, the Specialist Tobacconist must conduct regular quality checks on his stocks.

We believe that it is unreasonable to expect a Specialist Tobacconist to have to conduct such tests either at home or outdoors when they are a vital part of his business.

With regard to distorting the market it should be understood that there are very few businesses that could be described as Specialist Tobacconists in Scotland; the letter to the Minister listed a maximum of 18. Clearly there would be a danger of creating a loophole if an exemption was granted to these businesses. However a precedent exists in UK law that would allow this to be constrained. The Tobacco Advertising and Promotion Act 2002 provides for a definition of a Specialist Tobacconist as "a shop selling tobacco products by retail (whether or not it also sells other things) more than half of whose sales on the premises in question derive from the sale of cigars, snuff, pipe tobacco and smoking accessories". Were this definition to be incorporated into the regulations, it would not only reduce the number of shops that would qualify, probably to no more than 10 premises in Scotland, but it would also prevent exploitation of the exemption by other types of businesses such as bars and clubs.

It should be noted the Specialist Tobacconist's definition was included in the Tobacco Advertising and Promotion Act 2002 so that certain privileges with regard to advertising at point of sale only for specialist tobacco products could be granted to these businesses. It was accepted that the effect of this exemption would not subvert the purpose of the Act, and would not distort the market.

We believe that the same principles could be applied in the Smoking, Health and Social Care (Scotland) Act 2005. They should only cover specialist tobacco products, as is the case in the advertising regulations, and whilst the exemption would include members of the public whilst on the specific premises, it should be remembered that the UK government has acknowledged that these products appeal mainly to mature adults.

We respectfully request the Health Committee to give due consideration to the exemption detailed above, which would have a negligible effect on the purpose of the legislation, but which would provide a lifeline to a limited number of small Scottish businesses.

Yours sincerely,

S, G. Chase
Vice Chairman
Imported Tobacco Products Advisory Council
Tel: 020 7471 8400

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