



Special Issue

Health Bill
Smokefree Workplaces
&
Public Places

Welcome to the ASH political bulletin, the sixth in a series of regular political briefings from Action on Smoking and Health (ASH).

ASH is a campaigning public health charity working for a comprehensive societal response to tobacco aimed at achieving a sharp reduction and eventual elimination of the health problems caused by tobacco. 115,000 people per year die from smoking-related diseases in the UK and tobacco is a major cause of illness and health inequalities.

Tobacco is a powerfully addictive drug that most of its users would like to quit using.

What we want...

- Raising tobacco prices through the tax system
- Tackling smuggling and the role played by tobacco companies in promoting it
- A comprehensive NHS response to nicotine addiction and support for cessation
- Major public communications programmes aimed at encouraging all smokers to quit and non-smokers not to start
- Increasing provision of smoke-free places – at work, in public places, and through persuasion and awareness-raising, in the home – with a view to eliminating all involuntary smoke exposure
- Consumer protection measures such as improved warnings, comprehensive risk communication; plain packaging, bans on misleading claims, control over retailers
- Regulation of tobacco as a dangerous drug with controls over the contents of cigarettes and smoke, and any health claims made in relation to tobacco and nicotine
- Harm reduction strategies for those who cannot or will not stop using nicotine

We are always happy to help decision-makers with information, briefing, policy analysis and comment.

Don't hesitate to get in touch.

Our contact details are:

- www.ash.org.uk contains a comprehensive database of information on smoking and tobacco control issues. It includes factsheets and reports dealing with statistics, science and policy issues.
- Ian Willmore (Public Affairs Manager) can also be reached on 078 8764 1344 or ian.willmore@ash.org.uk
- **ASH Scotland** 0131 225 4725
- **ASH Wales** 029 2064 1101



Director Writes:

IT'S A BODGE!

The Government has now produced its Health Bill, which would end smoking in the great majority of workplaces and enclosed public places. This has to be an important step forward for public health.

But health organisations, local Councils, trade unions and others involved in the campaign to end smoking in the workplace will be hugely disappointed that, for England, the Government did not follow the model adopted in Ireland, Scotland, Northern Ireland and almost certainly Wales. Instead of a simple and comprehensive piece of legislation covering all workplaces, the Government has chosen to offer exemptions to private membership clubs and to pubs that do not serve prepared food.

These exemptions would reduce the impact of the new law on public health. As we show in this issue of the ASH Political Bulletin, they will worsen health inequalities between poorer and richer communities. They will do damage to the pub and hospitality trade. And, of course, they will leave a significant number of the most vulnerable workers still exposed to danger from other people's smoke.

The public health lobby will therefore work to improve the Bill during its passage through Parliament. We are disturbed to hear that the Government will not listen to calls for a free vote on the issue of exemptions, and that Government Whips have decided to "*whip strongly*" on the Bill

in order to re-impose political discipline after the mess surrounding the final announcement of Government policy, even though the Official Opposition has already announced a free vote on the issue of exemptions. This cannot be the right way forward.

We sincerely urge MPs who share our concern about the toll of death and disease caused by smoking to join us in pressing the Government to go the extra few yards – and remove the exemptions for pubs and clubs. That would produce a Health Bill that would save thousands of lives and leave a legacy of which any Government could rightly be proud.

Deborah Arnott
Action on Smoking and Health

ASH Political Bulletin – Special Issue

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David Taylor MP - Chair APPG on Smoking & Health would like to invite you to a meeting of the APPG on Smoking & Health:

Monday 7th November, 5-6pm, Committee Room 21, Upper Committee Corridor, House of Commons

This will be an opportunity to discuss how best to amend the legislation during the Bill's passage through parliament to ensure that it makes provision for a comprehensive ban on smoking in work places and enclosed public places.

Contact Daniel Crimes on 020 7219 2237

The Incredible Vanishing Consultation

The Department of Health staged a major consultation exercise on the smokefree elements of the Health Improvement and Protection Bill.

The consultation ran from 20th June 2005 to 5th September 2005. Respondents were asked about a range of issues, including proposed exemptions for membership clubs and pubs that do not serve prepared food.

The Government has suddenly become extremely coy about the results of this consultation exercise, having originally intended to publish an analysis of responses at the same time as the final Bill. We understand that the House of Commons Health Select Committee was in effect told that the analysis did not exist.

ASH believes that at least 80% of the around 60,000 responses supported comprehensive smokefree legislation and that very few indeed supported the Government's compromise proposal.

Lord Faulkner of Worcester has now tabled a Parliamentary Question requesting details of the results of the consultation exercise. It will be interesting to see whether he gets a straight answer

Pubs Exemption Would Worsen Health Inequalities

Survey evidence shows that the Government's plan to exempt pubs that do not serve food from smoking restrictions will worsen health inequalities.

Contrary to John Reid's notorious claim that smoking is a working class "*pleasure*", it in fact kills more people in social classes D and E than any other, is the number one preventable cause of death, and the single most important factor in the difference in life expectancy between social classes.

A major survey of pubs in England and Wales was conducted by independent research agency IFF Research among a representative sample of 1,252 publicans and managers of pubs and bars throughout England and Wales. The fieldwork took place between the 27 July and 11 August 2005 from IFF's central London telephone interviewing centre. The full results of the survey will be circulated by ASH shortly.

The survey shows that 29 per cent of pubs do not currently serve prepared food, at the very top end of the estimate in the Government's 'Choosing Health' White Paper (10 – 30%). It also shows conclusively that those pubs not serving prepared food are concentrated in poorer communities, where smoking rates are already highest. In the poorest areas, 45% of pubs do not currently serve prepared food.

On a scale of 1-5 where 1 is least deprived and 5 is most deprived the figures are as follows:

- 1 – 86% serve food (as defined by the white paper legislation but not including crisps etc.)
- 2 – 82% serve food
- 3 – 75% serve food
- 4 – 63% serve food
- 5 – 55% serve food

If the current exemption survives the Parliamentary passage of the Bill, publicans say that many will stop serving food. The IFF survey suggests that in future pubs will divide as follows by area – where 1 is least deprived and 5 most deprived.

- 1 – 21% (smoking throughout but no food served)
- 2 – 29%
- 3 – 38%
- 4 – 42%
- 5 – 50%

Across England, the proportion of pubs not serving food could rise by a third – from 29% at present to 40%.

| | Currently do not serve food | Claim smoking will be allowed and will not serve food after proposed legislation | +/- % |
|--------------------------|------------------------------------|---|--------------|
| East Midlands | 32% | 36% | +4 |
| Eastern | 19% | 35% | +16 |
| London | 25% | 31% | +6 |
| North East | 41% | 50% | +9 |
| North West | 41% | 45% | +4 |
| South East | 19% | 30% | +11 |
| South West | 20% | 33% | +13 |
| West Midlands | 29% | 43% | +14 |
| Yorkshire and Humberside | 38% | 57% | +19 |
| Wales | 35% | 45% | +10 |
| Total | 29% | 40% | +11 |

Current situation with regard to smoking in pubs:

| Region | Smoking throughout (%) | Separate areas for smoking and non smoking (%) | Separate rooms for smoking and non smoking (%) | No smoking at bar only (%) | No smoking throughout (%) |
|--------------------|-------------------------------|---|---|-----------------------------------|----------------------------------|
| East Midlands | 41 | 43 | 8 | 8 | 1 |
| Eastern | 48 | 33 | 12 | 4 | 2 |
| London | 52 | 28 | 3 | 18 | - |
| North East | 44 | 36 | 9 | 11 | 1 |
| North West | 55 | 35 | 3 | 6 | 1 |
| South East | 46 | 40 | 11 | 3 | 1 |
| South West | 44 | 39 | 10 | 5 | - |
| West Midlands | 42 | 43 | 7 | 8 | 1 |
| Yorks & Humberside | 49 | 33 | 9 | 6 | 3 |
| Wales | 45 | 37 | 13 | 4 | 1 |
| Total | 47 | 37 | 8 | 7 | 1 |

The survey results also provide evidence to show that the exemption would undermine the Government's alcohol strategy – which includes an attempt to control binge drinking by encouraging the consumption of meals when drinking alcohol.

Clearly, if fewer pubs serve food as a result of the exemption from smoking restrictions for wet-led pubs this will be less likely to happen.

What a Weird Bill!

The drafting of the smokefree section of the Health Bill is extremely strange, and questions are already being asked about whether it is acceptable under Parliamentary rules.

The Bill was printed *before* the Cabinet concluded its discussion of the issue, and was in fact written to allow the Government to produce any of a whole range of different results, depending on what final approach was agreed.

This is because Clause 2 of the Bill provides for the prohibition of smoking in workplaces and enclosed public places, but under Clause 3 any exemptions will be specified in regulations. Clause 3(2) states that:

*“(2) **Examples** of descriptions of premises which **may** be specified are the following, or any subset of the following —*

- (a) premises where a person has his home, or is living whether permanently or temporarily (including hotels, care homes and prisons and other places where a person may be detained),*
 - (b) licensed premises,*
 - (c) premises in respect of which a club premises certificate is in force.”*
- (our emphasis)

This would clearly allow the Government to produce any regulations it chooses, covering any or all of the types of premise in (a), (b) and (c). Since these are only “*examples*”, it appears that the final regulations could also exempt any other categories of workplace or enclosed public place that the Government chooses, whether listed above or not. In other words, the Bill is consistent with ending smoking in all, no or any group of workplaces.

Worse still, it is not clear what the effect of amending the list above would be. For example, if Parliament agreed an amendment removing category (b) from the list, what effect would that have on the Bill? Since it is only an “*example*”, and since the Government may exempt any category of workplace whether listed or not, would removing it prevent the Government from exempting licensed premises? If not, how can the Bill be sensibly amended?

How can MPs and Peers be asked to vote on a Bill that is so vaguely drafted? Is this even in order?

The Labour Manifesto: Health and Safety of Workers?

After a long and bitter wrangle, Ministers finally decided that the Government’s policy would follow the commitment given in the Labour Party manifesto for the 2005 Election. The exact wording of this commitment is therefore very important.

It reads:

“We recognize that many people want smoke-free environments and need regulation to help them get this. We therefore intend to shift the balance significantly in their favour.

We will legislate to ensure that all enclosed public places and workplaces other than licensed premises will be smoke-free. The legislation will ensure that all restaurants will be smoke-free, all pubs and bars preparing and serving food will be smoke-free; and other pubs and bars will be free to choose whether to allow smoking or be smoke-free. In membership clubs the members will be free to choose whether to allow smoking or to be smoke-free.

However, whatever the general status, to protect employees, smoking in the bar area will be prohibited everywhere.”

A statement on the Health Bill issued by the Secretary of State on Wednesday 26th October read:

“Proposals agreed by Cabinet colleagues are:

- restaurants will be smoke-free*
- pubs and bars preparing and serving food will be smoke-free*
- membership clubs will be exempt*
- ‘non-food’ pubs and bars will be free to choose whether to allow smoking, or be smoke-free*
- in any event, smoking in the bar area will be prohibited everywhere. We shall consult further on the best method to achieve this, including on discrete smoking rooms or areas to protect staff*
- we will monitor these proposals and there will be a review after three years.”*

It is important that the commitment to protect *all* employees, including those in any exempted pubs and clubs, is honoured. The TUC is pressing the Department of Health to guarantee that the Health

and Safety Commission is fully involved in drawing up regulations under the Bill, to ensure that full protection for all workers is in fact achieved. This would almost certainly mean that no artificial division of a “bar area” from a smoking area in the same room would be acceptable, since smoke will not stop at a white line painted on the floor.

Health and Safety Commission Backed Comprehensive Smokefree Law

In July, Health and Safety Commission Chair Bill Callaghan wrote to the Secretary of State for Health supporting a comprehensive smokefree law. The paper approved by the HSC at its meeting on 27th July 2005 stated that:

“The arguments for a wider ban in all licensed premises are these:

- **the science:** *SCOTH [the Government’s Scientific Committee on Tobacco and Health] is clear that second hand smoke is harmful. The Government’s proposals appear to be at odds with equality in public health.*
- **better regulation:** *for regulation to be effective it must be capable of ready application by those to whom it is addressed. Differing restrictions in the UK will lead to confusion and lessen benefits. A uniform approach to smoking will be easier for employers, employees and the public to understand and comply with...*
- **effective enforcement:** *a simpler regime, with fewer and less complex exemptions, will aid enforcement by the Local Authorities.”*

The letter to the Health Secretary added that:

“We are concerned that the proposals run the risk of creating health inequality and this we consider would be undesirable.”

Local Councils Would Find Pubs and Clubs Exemptions Tough and Expensive to Enforce

Local Councils across England would of course be expected to enforce smoking restrictions in workplaces and enclosed public places, through environmental health officers. Their opinion on cost-effective and simple enforcement is therefore of considerable importance in deciding on how smokefree legislation should be framed.

Action on Smoking and Health commissioned Jane MacGregor of Jane MacGregor Associates (and the Local Authority Co-ordinating Office for Regulatory Services: LACORS) to survey seven authorities, representing London Borough, Unitary, Metropolitan and District Councils covering different regions of the country and very different social settings.

The Councils estimated that Option 4 in the DH consultation document (legislation with proposed exemptions for wet-led pubs and membership clubs) would be up to twice as expensive to enforce as Option 2 (comprehensive smokefree legislation). It would also require more frequent and intrusive inspections, a clear and unnecessary burden on business. All the Councils surveyed preferred Option 2, the comprehensive ban without exemptions. It is seen as less costly and generally less complicated to enforce.

The estimated financial costs to enforce Option 2 range from £12,800 through to £37,440 the variance is attributable to the different size of the respective authorities and the relative costs of enforcement staff. This compares to the range of £19,200 to £56,160 for the enforcement of Option 4.

This data indicates that the likely annual cost to Local Authorities of enforcing Option 2 is in the range of £4.5m - £13.3m; compared to £6.8m - £19.9m of enforcing Option 4.

ASH understands that the Government’s Better Regulation Task Force has supported this conclusion, together with the ODPM.

Northern Ireland Goes Smokefree

On 17 October 2005, the Minister for Health in the Northern Ireland Office, Shaun Woodward announced that all enclosed public places and workplaces in Northern Ireland are to go smokefree in April 2007.

Announcing the move Mr Woodward said that:

"I have looked and listened carefully to the economic arguments surrounding total smoking controls. I have visited Dublin and New York to see and hear the issues at first hand. In the Republic of Ireland there were dire predictions of a massive loss in trade in pubs. Yes, in the first year sales fell but only by 0.2%. And that against a background of a 15% fall in sales before the legislation was introduced. And things continue to pick up in the hospitality sector in the Republic. Fourteen hundred new jobs in the hospitality sector in the last quarter bears testimony to that. Further, this represents the most significant quarterly increase in employment since the second quarter of 2002. People welcome no longer being poisoned in pubs. The statistics bear testimony to that.

In New York I heard the same dire predictions. The same worry about jobs and sales of alcohol, before the legislation was introduced. But what actually happened? One year after their smoke free act was introduced in 2003, New York found that tax receipts for restaurants and bars were up by 8.7%. In the same timeframe jobs in bars and restaurants actually went up by more than 10,000...

In conclusion I appreciate nervousness in the business sector over this decision. But I have not taken the decision lightly. I am confident that on top of the overwhelming health arguments for total control, the economy will not suffer but that there will be opportunities for it to expand."

Action on Smoking and Health joined Northern Ireland health professionals and campaigners in saluting the move as the most important development for public health in the province for many years. But why Mr Woodward's excellent arguments do not apply to England is anybody's guess.

Tobacco Lobbyists Get it Wrong (Again)

Our old friends in the Tobacco Manufacturers Association are maintaining their usual high standard of factual accuracy and political briefing.

The TMA wrote to MPs moaning about a BMRB poll conducted for ASH.

The question asked was

'The Government has announced plans to make most public places smokefree from 2008. Would you support a proposal to make all workplaces - including pubs and all restaurants smoke free?'

73% answered Yes to this question.

The TMA quoted a whole load of figures from the Office of National Statistics to try to refute this clear finding, but sadly got them all wrong. With delightful but unintended irony, they only quoted the opinions of heavy smokers!

Sadly, they then had to send another letter on 17th October which read:

"On September 22nd we sent you a letter in which data was quoted from the Office of National Statistics on smoking policies people would prefer to see in pubs. The data quoted to you was incorrect and we wish to set the record straight. The data quoted was the opinion of heavy smokers and not the population at large..."

Whoops. Nice to see all that tobacco firm money being so well spent.

Legal Challenges to Smokefree Exemptions

The Government's proposed exemptions for pubs that do not serve food and private members' clubs will mean that many of the workers most at risk from secondhand smoke will continue to be exposed in the workplace. The Scientific Committee on Tobacco and Health which advises the Department of Health reported in November 2004 that:

"some groups, for example bar staff, are heavily exposed at their place of work."

The report concluded that:

"it is evident that no infant, child or adult should be exposed to secondhand smoke ... Secondhand smoke represents a substantial public health hazard".¹

On 15th September 2005, the TUC Congress voted unanimously for a motion on secondhand smoking in the workplace, which stated that

"Congress ... urges the General Council to put pressure on the Government to 'sound the trumpet' for clean air, drop the proposed exemptions, follow the Irish and Scottish model, and introduce comprehensive legislation that ends smoking in all workplaces and enclosed public places."

Health and Safety at Work Act

Even if some workplaces are exempted from the Health Improvement and Protection Bill, workers in such premises will still be able to sue their employers if they are made ill by other people's smoke. Employers will face actions for negligence, citing breaches of duty under the Health and Safety at Work Act.

The trade union and personal injury lawyers Thompsons have a significant number of such cases already underway. Thompsons have already won an out of court settlement for a pub landlady who suffered ill health due to exposure to secondhand smoke in her pub. The pub, which was owned by a chain, agreed to put in ventilation to help with the smoke, however the system was not properly maintained and the landlady's health suffered as a result. Thompsons presently has at least another two strong cases pending on secondhand smoke.

Human Rights Act

ASH commissioned a QC's opinion on the Human Rights Act implications of the proposed exemptions from Keir Starmer QC and Keir Southey, which suggests that employees in exempted premises could have a case under the Act. The advice states that

"It is our opinion that the European Convention on Human Rights ('the ECHR') may require the Government to ensure that the proposed ban is wider so that it extends to all those who have no choice as to whether they are exposed to second hand tobacco smoke."

Health Secretary Patricia Hewitt has stated, on the face of the Health Bill, that it is consistent with the European Convention. This is an issue that is certain to be closely debated during the passage of the Bill.

(Footnotes)

¹ Scientific Committee on Tobacco and Health: Secondhand Smoke: Review of evidence since 1998: *Update of evidence on health effects of secondhand smoke*

<http://www.advisorybodies.doh.gov.uk/scoth/PDFS/scothnov2004.pdf>

National Assembly for Wales Wants to Go Totally Smokefree

The publication of the Health Bill for England means that Wales is a step closer to achieving comprehensive smokefree workplaces and public places. Under the Bill, the National Assembly for Wales will get the legal powers to institute smokefree legislation in the Principality.

The Assembly has already voted for a comprehensive ban on smoking in public places and workplaces in Wales after Brian Gibbons, Minister for Health and Social Services made a cabinet statement in July supporting the move.

Dr Gibbons said:

"Pubs, bars and restaurants are areas of particular risk for workers and customers. If we are serious about protecting public health then they must be included in any proposed ban."

A motion calling for such a ban was passed on Tuesday 24th May 2005, with 40 AMs voting for, 9 against and 3 abstentions.



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