INTRODUCTION

1. This document relates to the Prohibition of Smoking in Regulated Areas (Scotland) Bill introduced in the Scottish Parliament on 3 February 2004. It has been prepared by Stewart Maxwell, the member in charge of the Bill with assistance from the Parliament’s Non-Executive Bills Unit and is submitted to the Parliament in accordance with Rule 9.3.3A of Standing Orders. The contents are entirely the responsibility of the member and have not been endorsed by the Parliament. Explanatory Notes and other accompanying documents are published separately as SP Bill 20–EN.

POLICY OBJECTIVES OF THE BILL

2. The objective of the Bill is to prevent people, including children, from being exposed to the effects of passive smoking in certain public areas. The Bill does not prevent people from smoking in all public places, it focuses on areas where food is supplied and consumed.

3. The Bill should be considered as part of the process of safeguarding the health of the people of Scotland from the effects of tobacco smoke. It should also raise awareness of the dangers of both passive smoking and smoking, while at the same time assisting to change the attitudes of the public towards smoking in general. It is to be hoped that it will also encourage people who want to stop smoking, and help ex smokers from relapsing, by providing a smoke-free environment.

BACKGROUND

Health issues

4. About 30% of adults in Scotland currently smoke, around 1.2 million people. Smoking tobacco produces two main types of emissions: sidestream smoke, directly from the burning of tobacco and mainstream smoke, the smoke exhaled by the smoker. Being exposed to these types of smoke is commonly known as passive, involuntary or second hand smoking, this type of smoke is also known as environmental tobacco smoke (ETS).
5. The United States Environmental Protection Agency (USEPA) has classified ETS as a Class A human carcinogen for which there is no safe level of exposure.\(^1\) This puts ETS in the same class as asbestos, arsenic, benzene and radon gas. The USEPA has estimated that exposure to ETS is responsible for 3000 lung cancer deaths per year in the USA\(^2\) and recent research by them has shown that ETS also causes heart disease. The research shows that there are 10-20 times as many ETS related deaths from heart disease as there are from lung cancer.\(^3\)

6. In June 2002, the World Health Organisation International Agency for Research on Cancer (IARC) classified ETS as a human carcinogen.\(^4\) ETS contains five regulated hazardous air pollutants, 47 regulated hazardous wastes, and more than 50 known or suspected cancer causing agents along with other chemicals that increase blood pressure, damage the lungs and cause abnormal kidney function. It is a known cause of cancers, cardiovascular and respiratory diseases.\(^5\) The IARC has concluded that there is sufficient evidence that involuntary smoking (exposure to second hand tobacco smoke or ETS) causes lung cancer in humans.\(^6\)

7. The Chief Medical Officer for England and Wales, in his Annual Report for 2002, advocates that a key part of tackling the health risks of smoking is to protect people (both smokers and non-smokers) from the effects of tobacco smoke. He states that inhaling ETS is “unpleasant and a direct hazard to health”. He concludes that restrictions on smoking in public places and overall smoking reduction are the key strategies to reduce second hand smoke exposure. The first recommended action in his report is that “very serious consideration should be given to introducing a ban on smoking in public places soon”.\(^7\)

8. The British Medical Association (BMA), in its report *Towards Smoke Free Public Places*, states that an estimated 1000 people a year die in the United Kingdom as a result of being exposed to ETS. The report also contains a list of known health effects where there is conclusive proof that passive smoking can be the cause. In adults this includes lung cancer, coronary heart disease, asthma attacks in those already affected, onset symptoms of heart disease and worsening of symptoms of bronchitis. In children this includes cot death, ear infections, respiratory infections, development of asthma and asthma attacks in those already affected. Other proven health effects of passive smoking include shortness of breath, coughing, nausea, headaches and eye irritation. The BMA states that there is also substantial evidence to show that passive smoking can lead to strokes and to low birth weight and premature babies.\(^8\)

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\(^1\) US Environmental Protection Agency (June 1994), *Setting the record straight: second hand smoke is a preventable health risk.*


\(^3\) California Environmental Protection Agency Office of Environmental Health Hazard Assessment (1997) *Health Effects of Exposure to Environmental Tobacco Smoke.*


\(^7\) Annual Report of the Chief Medical Officer for England and Wales, 2002.

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9. In reply to a written question\(^9\) in November 2003, the Deputy Minister for Health quoted from a report\(^10\) by the Royal College of Physicians that it is estimated that as many as 17,000 hospital admissions in a single year of children under the age of five are due to parental smoking.

10. Non-smokers who are exposed to ETS in the workplace have their risk of lung cancer increased by 16-19%.\(^11\) Passive smoking also increases the possibility of an acute coronary event by 25-35%.\(^12\)

Current restrictions

United Kingdom restrictions

11. In the UK, for the most part, it is left up to individual organisations to specify smoking restrictions in public places. Legislative provision to restrict smoking tends to be narrow in scope, for example employers are required to ensure that there are arrangements to protect non-smokers from discomfort caused by tobacco smoke in rest rooms or rest areas. Other legislation exists to give operators the power to control smoking on trains\(^13\) and to ban smoking on domestic flights.\(^14\) Workers in food industries are prohibited from smoking in places where food is handled or stored.

12. The Government’s 1998 White Paper on Tobacco, *Smoking Kills*, recognised the importance of protecting people from passive smoking and acknowledged that ETS is a clear health risk.\(^15\) The Government chose not to legislate, but to take action, in partnership with businesses, to produce voluntary measures to curb smoking in public places and workplaces.

Scottish Voluntary Charter

13. In May 2000, the Scottish Executive produced the Scottish Voluntary Charter on Smoking in Public Places (the Charter). The Charter is co-sponsored by Nicorette and promoted by the Scottish Licensed Trade Association, the Scottish Tourism Forum, the Brewers’ and Licensed Retailers’ Association Scotland and the British Hospitality Association.

14. The Charter’s aims were to achieve a 10% increase in provision in sites having:
   - smoking policies (rising from 46% to 56% of establishments);
   - written smoking policies (from 25% to 35%);
   - signage close to entrances (from 16% to 26%); and
   - non-smoking areas (from 39% to 49%).

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\(^9\) S2W-3999, 24 November 2003
\(^10\) Royal College of Physicians, (1992) *Smoking and the young: a report of a working party of the Royal College of Physicians*
\(^12\) Law, MR., Morris, JK. And Wald, NJ., (1997), *British Medical Journal*, 315:973-9v
\(^13\) Transport Act 1962 (c.46)
\(^14\) Air Navigation (No.2) Order 2000 (SI 2000/1562) articles 66 and 122
\(^15\) Government White Paper on Tobacco, (1998, Chapter 1) *Smoking Kills*,
15. The Charter is voluntary and gives organisations a choice as to the level of smoking restriction, if any, they want to impose. It is not necessary to impose any restriction on smoking to be compliant with the Charter. Implementing a smoking policy implies no provision for the protection of non-smokers from the effects of passive smoking. There are no sanctions or methods of enforcement linked to the Charter.

16. In 1999, in anticipation of the Charter’s launch, a baseline study was conducted of 1007 businesses in the leisure industry. This study established that 58% allowed smoking throughout the premises, 31% had smoking restrictions in place and 8% had a total ban on smoking. Two thirds of the businesses surveyed agreed that non-smoking should be the standard in public places.

17. In January 2003 a follow up survey on the 1999 study was carried out. Two of the main aims were to determine the proportion of businesses that have smoking policies in place and to measure the extent of compliance with the Charter. In total 1574 businesses were contacted, 974 businesses responded (62%), with 11% refusing to participate. Overall of the 974 businesses that responded 249 (26%) were from public houses and bars and 188 (19%) were restaurants.

18. The results of this survey which illustrates the extent to which the Charter had achieved its aims are as follows:

- sites with smoking policies (2000, 46%, target 56%, 2003, 68%);
- sites with written smoking policies (2000, 25%, target 35%, 2003, 34%);
- sites with signage close to entrances (2000, 16%, target 26%, 2003, 36%); and
- sites with non smoking areas (2000, 39%, target 49%, 2003, 61%).

19. With the exception of the final objective above, no-one will have had their exposure to ETS reduced, in any way, by any of the above activity.

20. The detailed survey results show that 44% of public houses had a smoking policy. In 71% of those public houses the smoking policy was to permit smoking throughout. 83% of restaurants had a smoking policy, with 29% of them permitting smoking throughout. 21% of restaurants had banned smoking but no public house or bar had a smoking ban throughout.

21. Overall in 2003, of the 759 businesses in the food and entertainment sector who responded to the survey, 68% stated they had a smoking policy in place. Of those with a smoking policy in place, only 11% actually banned smoking in their premises.

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17 MVA for Ash Scotland and NHS Health Scotland (2003) Smoking in Public Places – a follow up survey of the Scottish Leisure Industry
22. Both the 2003 survey and the 1999 baseline survey show that the figure, among businesses, for awareness of the Charter is static at 45%. Being aware of the Charter does not necessarily mean being compliant with it.

23. Given that 6 out of 10 businesses complying with the Charter were in fact unaware of its existence, the results could indicate that businesses are introducing smoking policies for reasons other than the influence of the Charter.

24. The Deputy Minister for Health has acknowledged that the results of the 2003 survey were disappointing, as was the fact that the survey was unable to verify enforcement of non-smoking areas.19

Restrictions in other countries

25. Since 1995, the Republic of Ireland has had regulations in place that prohibit smoking in many public places including eating places. Further regulations coming into force in 2004 will prohibit smoking in licensed premises and clubs; this includes bars, restaurants, and hotels. The person(s) responsible for the premises are those liable for any breaches of the regulations.

26. In Sweden, all indoor public areas must be smoke free. In 1988, Norway introduced anti-smoking legislation in many of its public places. In 1995 these restrictions were extended to include restaurants and other establishments that serve food and drink.

27. In New York, smoking has been banned in restaurants and various other public places since March 2003. Mayor Bloomberg who proposed the new law stated ‘You have a right to smoke, you just don’t have the right to make someone else sick and kill them, and that’s what second hand smoking does’.”20

28. Australia, Canada, California and Singapore are other jurisdictions that have legislation in place in relation to smoking and ETS. Legislation is also forthcoming in New Zealand.

Economic issues

29. As indicated a number of other countries have introduced restrictions on smoking in public places. It is a frequent claim, often made by groups backed by tobacco interests, that restrictions will have a devastating affect on businesses and employment. Numerous studies have been carried out to measure the impact on business of smoking restrictions.

30. In 2002 a review21 was undertaken of 97 studies which had made statements in relation to the economic impact of smoke-free laws on the hospitality industry. The review compared the quality of evidence and conclusions reached about the economic impact of smoke-free laws based on the type of data used, the design, analysis and interpretation of studies and the funding

19 Scottish Executive News Release SEhd517/2003
20 www.nietrokers.nl/e2/n01013.html (source New York Daily News)
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source. The studies considered covered areas in the United States, Australia, Canada, England, New Zealand, Hong Kong, South Africa and Spain.

31. The review suggested three criteria to judge study quality for policy makers set out by Siegel\textsuperscript{22}. The three factors suggested were:
   \begin{itemize}
   \item was the study funded by a source clearly independent of the tobacco industry?
   \item did the study objectively measure what actually happened, or was it based on subjective predictions or assessments?
   \item was it published in a peer reviewed journal?
   \end{itemize}

32. Of the 97 studies 35 concluded that there was a negative impact on businesses. These 35 studies were all funded by the tobacco industry, and none of them used all three criteria.

33. There were 21 studies which met all three criteria, all of which found that smoke-free restaurant and bar laws had no negative impact on revenue or jobs.

34. The review concluded that policy makers can act to protect patrons from the effect of second hand smoke “confident in rejecting predictions that there will be an adverse economic impact”.

35. Various studies have consistently shown that the ban in New York has not had a detrimental effect on the City’s restaurant business\textsuperscript{23} and one such study concluded that having a smoking ban in place increased restaurant profits.\textsuperscript{24} New York City’s Department of Health and Mental Hygiene issued a press release in July 2003 showing that employment in New York’s restaurants and bars had increased in comparison to the same period the year before.\textsuperscript{25}

36. Figures quoted by the London Health Commission as part of their “Big Smoke Debate” show that 82% of tourists want compulsory smoke-free areas in pubs and bars.

37. The above results from the “Big Smoke Debate” along with the fact that the majority of people in this country are non smokers and object to others smoking near them (see paragraph 96), mean that going smoke free should represent an economic opportunity rather than a threat for the hospitality industry.\textsuperscript{26}

\textsuperscript{22} Siegel M., (1992) “Economic Impact of 100% smoke-free restaurant ordinances”, Smoking and restaurants: a guide for policy makers
\textsuperscript{25} NYC Department of Health and Mental Hygiene, Press Release, Employment up in City Bars and Restaurants since Implementation of the Smoke Free Air Act, 23 July 2003. 
\textsuperscript{26} Annual Report of the Chief Medical Officer for England and Wales, 2002.
How the Bill will work

Regulated areas

38. The Bill will apply to enclosed places open to the public where food is supplied and consumed. This will include private clubs and function suites. In practice places that will initially be covered include:

- licensed premises where food is served;
- cafes;
- restaurants;
- sandwich shops with seating;
- eating places in larger buildings, e.g. hotels, supermarkets, railway stations, airports, shopping centres, covered markets, leisure centres, sports stadiums, museums, conference centres, visitor centres, day care centres, colleges, universities, membership clubs and workplaces; and
- places where food may be served from time to time, e.g. church halls, hotel function suites and conference rooms.

39. The restriction on smoking applies to these premises at all times when food is supplied and consumed. It also applies in the period of five days prior to any food being served. This flexibility allows proprietors to vary the use of their premises to meet local circumstances while limiting exposure to ETS, particularly those premises that are multi-purpose due to limited local availability.

40. The Bill does not apply to beer gardens or outdoor tables. Nor does it apply to licensed premises where food is not supplied and consumed, or where the only food supplied is bar snacks like crisps and nuts. It provides landlords with a clear choice in relation to the use made of their premises in relation to smoking restrictions.

41. The Bill gives power to Scottish Ministers to extend the restrictions of the Bill to any other places in the future.

Supplied and consumed

42. The Bill covers the supplying of food for consumption and is not restricted to the sale of food. Supply covers food supplied without direct payment, for example food provided at conferences, weddings and other functions in regulated premises. It also covers food ‘given away free’ whether as part of any promotion or otherwise. This is in keeping with the policy that nobody should suffer from exposure to smoke while consuming food in regulated areas.

Signage

43. The Bill requires owners and persons in control of premises to display signs to make it clear to customers and staff the areas where smoking is not permitted. It will be necessary to have sufficient signage to ensure that no reasonable person could inadvertently be unaware of the restrictions.
Further powers are given to Scottish Ministers to make additional regulations about signs. Any such regulation can only be made after consulting with interested parties.

**Enforcement**

It is not the primary policy intention to see numerous prosecutions for the offences created by the Bill. The aim is that the creation of the requirement will lead to a change in attitudes by smokers and assist those who want to stop smoking. Similar intentions as to attitudes were behind seat belt laws and more recently restrictions on using mobile phones when driving. In each case the core issue is one of safety. Compliance with seat belt legislation is generally high as are initial indications about using mobile phones while driving. Compliance with existing smoking restrictions on trains, in cinemas and theatres is extremely high with no significant ongoing resistance being reported.

Enforcement of the smoking restrictions in the Bill is through the criminal law. It will be an offence to smoke in a regulated area while food is being supplied or consumed. To ensure that the atmosphere is smoke-free for future diners the offence also applies in an area where food is to be served within the next five days.

Owners and persons in charge of premises will also commit an offence by permitting smoking in areas covered by the Bill. It will be a defence that they have taken all reasonable steps to prevent smoking. Steps will include having signs prominently displayed requesting smokers to desist as well as other measures to remove them from the restricted areas. Failure to display signs will itself be an offence.

By penalising proprietors as well as smokers it is anticipated that non-compliance will be extremely low and essentially self-policing. The police will however be able to take action, either on their own initiative or in response to information received from other customers, staff or members of the public. This will include environmental health officers (EHOs) who regularly monitor premises in relation to other statutory requirements.

Any complaints received or prosecutions made in respect of the offences in this Bill can be brought to the attention of and taken into account by the Licensing Boards when considering applications under the Licensing (Scotland) Act 1976 (c.66). Thus ignoring the restrictions could lead to licensees not having licenses renewed.

Should the law be regularly flouted in certain places it remains open to the police to respond to local concerns and to target offenders and offending premises. Unlike the other offences mentioned, this Bill carries a requirement on proprietors to self-police with consequential penalties for failure.

If a person is found guilty of any of the offences under this Bill they are to be liable, on summary conviction, to a fine not exceeding level 3 on the standard scale (currently set at £1000). The Procurator Fiscal on receiving a report from the police has options available short of prosecution. An offender could be cautioned or a conditional offer of a fixed penalty offered. If a summons is issued this would be to either the district or sheriff court.
CONSULTATION

52. There have been two member-led consultation exercises to obtain the views of those affected by the Bill.

Initial consultation

53. “The Regulation of Smoking Bill: A Consultation” was issued in November 2001 by the former MSP, Kenneth Gibson, to assist him in formulating the policy for his proposed Member’s Bill.

54. The consultation gathered views and comments from industry and other organisations on the regulation of smoking in enclosed premises. Copies were sent to organisations and individuals identified as having an interest in the proposed legislation. Others requested and were sent copies. In total 145 copies were issued, others were able to electronically access the consultation. The consultation sought views on eight specific questions as well as general comment.

55. Thirty nine responses were received covering replies from 43 organisations.

56. Of the 39 responses, 9 were received from the tobacco industry/licensing industry. The remainder came from health organisations, charities, local authorities and tobacco control groups.

Question 1: To what extent is ventilation a useful tool in combating ETS?

57. Eighteen of the 28 respondents to this question stated that ventilation was not a useful tool in combating ETS. This included Macmillan Cancer Relief, ASH Scotland, Royal College of Nursing and Royal College of Physicians, Edinburgh.

58. Seven respondents indicated that it was their view that ventilation was a useful tool in combating ETS when designed and maintained properly. These responses were from local authorities, the Scottish Licensed Trade Association and Honeywell, a manufacturer of air ventilation systems.

Question 2: How has the Voluntary Charter and/or the Approved Code of Practice (ACoP) had an impact on the adoption of non-smoking policies?

59. Ten respondents said that there was little evidence that the Charter has made much difference, while 11 said the voluntary Charter was inappropriate or did not go far enough and legislation was required. five respondents said the Charter is working.

Question 3: How do you feel about smoking restrictions in restaurants and/or in pubs serving food?

60. In total 27 (70%) of the respondents’ favour some type of restriction on smoking where food is served. A variety of reasons were given for this, five responses said that it was unacceptable that people were involuntarily exposed to smoke. Four respondents said that
restrictions were required to protect staff and customers. Eight respondents said that smoking should be restricted by having separate areas for smokers away from the serving of food. Two respondents said that they did not agree with smoking restrictions and four were opposed to an outright ban.

**Question 4: What type of impact, financially or otherwise, will smoking regulations have on trade, tourism and health in Scotland?**

61. Twenty two (56%) of the respondents did not expect smoking regulations to have a negative impact on trade and tourism. 12 respondents said that it would have no detrimental effect on tourism and trade. Eight respondents anticipated more tourists would use a place where a strict smoking policy was adhered to. In addition, eight of the respondents said that smoking regulations would provide a better environment for tourists.

62. Five respondents felt a guaranteed smoke-free atmosphere would increase business.

63. The organisations representing the licensing trade and tobacco organisations suggested smoking restrictions would have a negative impact on business. They noted that tourism had suffered following foot and mouth and the aftermath of September 11th. They feared that many people would go out of business and many jobs would be lost should people choose to stay at home to smoke.

**Question 5: What time scale should be followed in the implementation of the legislation?**

64. All respondents agreed a period for implementation was required, responses ranging from as soon as possible to 10 years. A majority were keen for implementation as soon as practicable.

**Question 6: Who should be responsible for breaches of the legislation?**

65. A variety of suggestions were made. Four said the police, eight said the licensing board, four said health and safety officers and 1 said the local fire authority. Fifteen said that EHOs should be responsible for breaches of the legislation with 14 saying no authorities should be involved and that the owner / proprietor or manager of the establishment should be responsible for any enforcement.

**Question 7: How should this legislation be enforced?**

66. There was a varied response on penalties and enforcement. Thirteen respondents said that compliance with alcohol licensing regulations with the ultimate sanction of the removal of the licence was the way to enforce the legislation. Six respondents said that the proprietor should be responsible for enforcement, this would be voluntary with no criminal sanctions. Eight respondents said that it should be enforced through food safety legislation, which is controlled by environmental health. Nine respondents felt that fines should be imposed for people who breached the legislation.

67. Concerns were raised about the possible enforcement of any smoking regulation. Four respondents said smoking regulations were impossible to enforce and that enforcement will not work if significant numbers of the population decide to ignore the law.
Question 8: Do you support a legislative measure of this nature coming into force in Scotland?

68. Twenty one (54%) of the respondents supported legislation to regulate smoking. Sixteen (40%) of the respondents wanted legislation to be accompanied by a clear public information campaign to ensure people understand and support regulation in this area.

Stewart Maxwell’s consultation

69. To supplement the initial consultation in July 2003 the Member wrote to all those who had responded inviting them to make any additional points. He also wrote to those who had not responded to the initial consultation offering them a further opportunity to contribute.

70. Some organisations reviewed and strengthened their original response. The additional responses showed a continuing support for the introduction of legislation in respect of banning smoking where food is served. Two local authorities who provided additional information stated that they had been investigating the possibility of either restricting or banning smoking in public places by using local byelaws. A third local authority has since implemented smoking restrictions in licensed premises where children’s meals are being served; this was achieved through conditions imposed by its Licensing Board.

71. Responses received from organisations involved in both cancer research and care indicates that they believe Scotland is falling behind other countries in addressing the problem of ETS.

72. The Member has carefully considered the responses received to both exercises in formulating the Bill. It is his belief, supported by research findings, that business fears over loss of trade are unfounded (see paragraphs 29 to 37 above). He also accepts that other research findings show a high percentage will comply with the restrictions when in place and believes that enforcement will not be a major problem. Figures issued by New York City Council show that in the first six months after their Smoke-Free Air Act 2002 came into force, compliance was recorded at 98%.  

ALTERNATIVE APPROACHES

73. Arising from the consultation responses were five main alternative approaches considered by the Member.

(i) Smoking regulation provided for by the Licensing (Scotland) Act 1976 (c.66)

74. The first approach considered was to make it a condition of an alcohol licence granted under the Licensing (Scotland) Act 1976 that the premises would be non-smoking.

75. The Bill seeks to ensure that smoking does not take place in an enclosed space where food is supplied and consumed and this may not necessarily apply to the whole of the premises.

27 Testimony of Nancy Miller, Assistant Commissioner for Tobacco Control, NYC Department of Health and Mental Hygiene, 16 September 2003
The Bill also allows food to be served in an area where smoking has previously taken place after a smoke-free period of five days.

76. Not all premises where food is sold are licensed; therefore a separate mechanism would also need to have been included to provide for non-licensed premises. Not all licensed premises sell food and such a requirement would have imposed a restriction on all premises.

77. The considered approach would not have been proportionate to the aims of the proposal and indeed would not, by itself, have succeeded in bringing about the aims of the Bill.

(ii) Enforcement by environmental health officers

78. A number of respondents suggested that EHOs would be the appropriate people to enforce the legislation. Those Scottish EHOs employed by local authorities visit premises where food is handled and routinely prepare reports observing breaches of legislative requirements particularly under Food Safety and Health and Safety regimes.

79. The focus of EHOs’ activity is towards education and encouragement of proprietors although they have powers to issue Improvement and Prohibition notices under certain statutes. In other cases, where they observe breaches of the law, they make reports direct to the Procurator Fiscal and subsequently provide evidence at court. Direct reporting to the Procurator Fiscal is covered by guidance issued by the Crown Office, having developed over time without the need for a statutory basis.

80. The enforcement activities of EHOs are directed at the proprietors of premises and they do not normally enforce the law against ordinary members of the general public.

81. Following discussion with EHOs it was not considered appropriate to alter their existing relationship with the general public. It would be undesirable to have a different approach to enforcement for proprietors and individuals and thus no specific role for EHOs is contained in the Bill.

82. It is recognised, however, that EHOs will be present in premises and are likely to observe if there is, or has been, smoking in regulated areas. These matters can, without any further statutory authority, be drawn to the attention of proprietors during visits to premises. It is also expected that breaches will be reported as part of EHOs professional responsibilities to promote public health in the same way as for any other crime they observe not covered by direct reporting agreements. It would be possible for the Scottish Executive to promote this role for EHOs by drawing the provisions in the Bill to the attention of officers by way of circular to local authorities and EHO professional organisations.

(iii) Air treatment systems (ventilation and filtration)

83. The third approach considered was that of requiring premises to install air treatment systems throughout to help reduce the effects of ETS. Air treatment systems are largely of two types. The first is a filtration system that draws the smoke filled air through a filter; it filters the particles, removing the visible smoke and leaving the harmful chemicals present.
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84. The second type is a ventilation system that re-circulates the air; these are ineffective when dealing with smoke filled air. For ventilation systems to be effective in clearing the air, the speed of air circulation would require to be so high it would result in the appearance of a tornado like gale blowing inside the building.

85. While any improvement in air quality is to be welcomed, ventilation can only reduce exposure to ETS and not eliminate it. Although it may provide a more comfortable environment for customers, it does not provide effective protection against the health hazards associated with passive smoking. Only 12% of ETS is made up of particles the rest takes the form of gases which contain many of the most harmful chemicals. These chemicals are still present in the air once the visible tobacco smoke has disappeared.

86. Studies have shown that smoke particles attach themselves to surfaces in rooms and these surfaces themselves become a secondary source of ETS pollution. The particles over time detach themselves and reform as concentrates in the air.

87. The UK Government, states that “no system of ventilation provides adequate protection against ETS”. Furthermore, in response to a written question, the Deputy Minister for Health stated that the Scottish Executive does not endorse ventilation systems as being effective in reducing the health risks associated with passive smoking.

88. The clear conclusion from numerous studies is that ventilation systems at best only partially remove the ETS particles and have little or no effect on the gases containing the harmful chemicals.

(iv) Prohibit smoking in all public places

89. The Member also considered a total ban on smoking in all public places.

90. The approach taken is more about protecting non-smokers, allowing them to exercise their right to eat in places that are free from smoke. The Member accepts that there are limits to what can be achieved within the scope of a Member’s Bill. He fully acknowledges that this Bill is part of a process of legislative action combined with education campaigns to raise public awareness in respect of the issue of smoking in society.

(v) Maintain the status quo

91. The fourth alternative considered was to wait and monitor further the progress of the Voluntary Charter. The Charter allows businesses to comply whilst having no smoking restrictions. Latest results show that only 11% of businesses in the Food and Entertainment

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29 Health and Safety Executive, (1997) Passive Smoking at Work (Leaflet)
32 S2W-542, 12 June 2003
sector are smoke-free, meantime the health of the people of Scotland continues to be affected by ETS.

92. In September 2002 in response to a Petition submitted to the Parliament on smoking in public places, the Scottish Executive stated that they “have not ruled out statutory restrictions on smoking in public places but Ministers believe such restrictions would be premature as long as substantial progress was made in partnership with owners and managers”.

93. Overall, the findings of the 2003 survey indicate that the industry has made some but not substantial progress towards complying with its own targets. Neither signage nor written policies have a direct impact on the health risks of ETS. Notably it is possible to comply with the terms of the Charter without providing any smoke-free areas.

94. It is clear that although the Charter appears to meet most of its original targets it has been ineffective in reducing the risks of passive smoking. It is difficult to see how it can be effective since the objectives set will not, in themselves, lead to any reduction in exposure to ETS.

95. The Member does not believe that the Charter will lead to a reduction in the ill-health and deaths caused by passive smoking.

Public attitudes towards smoking

96. A do nothing approach is not supported by public opinion surveys which have repeatedly shown that the majority of smokers as well as non-smokers want to see a wider smoke-free environment. The 2002 Smoking related Behaviours and Attitudes survey published by the Office of National Statistics show that 87% of people agree that smoking should be restricted in restaurants. Among current smokers the number agreeing to a restriction was 71%. The figures reported favouring restrictions have consistently risen over the years.

97. For the first time ever 50% agree with smoking restrictions in bars. The Bill would not apply to bars unless they were serving food. This figure indicates a degree of support for wider measures than are proposed.

98. A survey reported by the Tobacco Manufacturers Association in September 2003 indicated that only 9% thought the smoking situation was fine as it is, with 75% indicating some improvements are required in pubs, clubs and bars. The same survey showed that 7 out of 10 non-smokers have real concerns about smoking in clubs and bars.

Pizza Hut

99. Over the last few years Pizza Hut, when refurbishing existing restaurants and opening new ones, have made them completely no smoking. This was in response to feedback from customers and managers who had noted that the smoking areas were rarely used and were effectively ‘dead areas’. In August 2003, Pizza Hut announced that they were to become the

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33 Firrhill High School, Edinburgh. Petition 503, Petition to Ban Smoking in Public Places
34 Office of National Statistics, Smoking Related Behaviour and Attitudes 2002
first restaurant chain to introduce no smoking in all of its 500 premises throughout the United Kingdom. Pizza Hut took this action to protect their customers and staff from the dangers of passive smoking. This step reflects the public mood since 80% of the public favour smoking restrictions in public places.\textsuperscript{35}

**EFFECTS ON EQUAL OPPORTUNITIES, HUMAN RIGHTS, ISLAND COMMUNITIES, LOCAL GOVERNMENT, SUSTAINABLE DEVELOPMENT ETC.**

**Equal opportunities**

100. The Bill does not discriminate on the basis of gender, race, disability, marital status, religion or sexual orientation.

101. The Bill will have a positive effect on certain groups, particularly those suffering from chest and other respiratory complaints. Such people will, following implementation, have more choice available to them in relation to places to eat due to the absence of smoke.

**Human rights**

102. The Bill is fully compliant with the European Convention on Human Rights.

103. The aim of the Bill is to protect public health by reducing exposure to ETS. This legitimate aim in the general interest must be borne in mind when considering any potential interference with individual human rights.

104. The Bill does raise issues under Article 6(2) in relation to the rights of an accused to be presumed innocent until proven guilty of an offence. The statutory defences provided in relation to the three offences in the Bill place a burden on the accused to prove the matters referred to in the defences. Such a reverse burden of proof may, in certain circumstances interfere with the presumption of innocence. In this Bill, the defences concern matters within the knowledge of the accused, and they are therefore considered to be compatible with Article 6(2).

105. The Bill raises issues in relation to Article 8, in that it may be suggested that prohibiting smoking in certain places interferes with a person’s right to respect for private life. However the Bill does not prevent people from smoking; it merely prevents smoking in regulated areas. The Bill also exempts from regulated area status eating places in premises where persons may be forced to reside for periods of time, such as prisons, hospitals or residential workplaces. It is considered that the Bill is compatible with Article 8.

106. The Bill also raises issues in relation to the Article 1 Protocol 1 right to peaceful enjoyment of possessions, in connection with the rights of proprietors of premises affected by the Bill. The provisions in the Bill are not considered to constitute a deprivation of property in the sense of Article 1 Protocol 1, however the Bill may be seen as a measure controlling the use of property. It is thought, however, that such control of use as the Bill achieves is proportionate and strikes a fair balance between the rights of individual proprietors and the general interest in

\textsuperscript{35} Office of National Statistics, *Smoking Related Behaviour and Attitudes 2002*
This document relates to the Prohibition of Smoking in Regulated Areas (Scotland) Bill (SP Bill 20) as introduced in the Scottish Parliament on 3 February 2004

protecting public health by reducing exposure to ETS in public places. The Bill is considered to be compatible with Article 1 Protocol 1.

Island and rural communities

107. The Bill has no disproportionate effect on rural or island communities. The Bill recognises the limited availability of places where food is supplied in such communities. And also that in a number of locations food may be supplied and consumed in village halls which are used for a variety of events. To make provision for these locations the Bill permits smoking at events provided no food is supplied or consumed. Food can be supplied and consumed in such places after a period of five days has elapsed during which the effects of the smoke will have largely dissipated.

Local government

108. The Bill has no specific impact on local government other than as set out at paragraphs 78 to 82 of this memorandum in relation to the operation of EHOs.

Sustainable development

109. The Bill will have no impact on sustainable development.
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PROHIBITION OF SMOKING IN REGULATED AREAS (SCOTLAND) BILL

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