

Smoking Prohibition (Children in Vehicles) Bill

British Lung Foundation Scotland

Background

The British Lung Foundation is the UK's only charity dedicated to supporting everyone with a lung disease. Founded in 1985, the BLF provides funding for research into respiratory conditions, campaigns for better awareness and treatment of lung disease and provides direct support to patients. BLF Scotland functions as part of the UK-wide organisation, adapting the same goals for a different political and social context.

The majority of lung disease in Scotland is caused directly by or related to tobacco use. Our nation has a long historical relationship with the substance, with high smoking rates and damaging cultural norms. Although the prevalence of tobacco use has greatly decreased in recent years, Scotland's rate remains the highest of the four home nations and health inequalities due to significantly higher smoking rates in areas of deprivation are of increasing concern.

The Scottish Government has adopted an ambitious vision for a Scotland free from the harms of tobacco by 2034. BLF Scotland fully supports this goal, and recognises that targeted legislative action will be required to support smokers to quit and ensure that the next generation grows up tobacco-free. This legislation will support the pursuit of this long term goal. Crucially it will also protect children from the significant immediate and long term threats to health posed by second-hand smoke.

1. Do you support the Bill? Please provide reasons for your position.

The British Lung Foundation has campaigned on this issue for several years and has been at the heart of similar measures in England, Wales and Northern Ireland.

Children are particularly vulnerable to second-hand smoke, as they have smaller lungs, faster breathing rates and less developed immune systems. This makes them more susceptible to respiratory, ear and other infections triggered by passive smoking.¹ Children's exposure to second-hand smoke also causes 22,000 new cases of wheeze and asthma and 40 cases of sudden infant death syndrome every year.² This represents a significant health burden, costing the NHS an estimated £23 million across the UK. Over 300,000 GP consultations and 9,500 hospital admissions a year are estimated to result from children's exposure to second-hand smoke.

Tobacco smoke is a carcinogen and there is no level of smoke that is safe for a child. In the small confined space of a car, smoke density can build up very quickly to dangerous levels. Research from the University of Aberdeen has

¹ Annual report of the Chief Medical Officer 2002. Department of Health, 2003

² Passive smoking and children: A report by the Tobacco Advisory Group. Royal College of Physicians, 2010.

shown that a single cigarette smoked in a moving car with the window half open exposes a child in the centre of the back seat to around two thirds as much second-hand smoke as in an average smoke-filled pub. Levels increase to over eleven times those of a smoky pub when the cigarette is smoked in a stationary car with the windows closed.

A significant proportion of children in Scotland report being exposed to second-hand smoke in cars. Recent data shows that 22% of 13 & 15 year olds in Scotland are often or sometimes exposed to smoke when travelling in a car.³

A ban on smoking in cars when children are present enjoys widespread public support, with around 78% of the UK public and 62% of smokers supporting the measure in a 2011 YouGov poll commissioned by ASH.⁴ In the Westminster Parliament, during the passage of the Children and Families Act, Peers voted in favour of the measure with 222 votes to 197 and MPs voted 376 to 107.⁵

2. Do you think the Bill (if enacted) would achieve its aim of protecting children from the effects of second-hand smoke and their health? Please provide an explanation for your answer.

Yes. Smoking in cars carrying children is a significant threat to children's health which would be ameliorated effectively by this legislation.

Enforcement of this new law would be comparable to existing legislation on the use of mobile phones while driving. Statistical evidence shows that enforcement of this law is both possible and effective, with 18,856 offences recorded by police forces in Scotland in 2007-08.⁶

Although data on impact of existing legislation is fairly limited, evidence from Australia suggests that opportunistic enforcement by police can be successful in enforcing a ban on smoking in cars with children present. Following the introduction of legislation in Queensland in January 2010, 654 \$200 fines were issued by police to people smoking in a vehicle carrying a child under 16, between 1 January 2010 and 30 April 2011. Significantly, a Queensland Health spokesman explained that the on-the-spot fines worked "as a deterrent", showing that these initial figures on fines were being used by State Governments in the media to help deter other motorists from breaking the law.⁷

³ Scottish Schools Adolescent Lifestyle and Substance Use Survey (SALSUS), 2013

⁴ p.27, All Party Parliamentary Group on Smoking and Health: Inquiry into smoking in private vehicles, 2011

⁵ Votes took place during: Children and Families Bill, HoL Report Stage on 29 January 2014 and HoC Consideration of Lords' Amendments on 10 February 2014.

⁶ Written Question S3W-31099, submitted by George Foulkes MSP

⁷ Forty parents a month nabbed smoking in cars with children since new laws introduced, *Queensland Sunday Mail*, 14 August 2011

The impact assessment produced by the English Department of Health estimated savings to the NHS of £33million over 10 years as a result of introducing similar legislation.⁸

3. Is there anything in the Bill you would change? If yes, please provide more details.

We are impressed at the thorough research, consultation and calls for evidence that preceded the drafting of this Bill, and are satisfied that our input has been taken into account. Consequently we are content that the Bill as it stands will protect children effectively from tobacco smoke in the car.

We are aware that some organisations are calling for the introduction of an offence of permitting smoking in a car, to apply to the driver of the vehicle. This would be in line with the law in England & Wales. BLF Scotland's primary concern is that this law is easily enforceable in order that it can protect as many children as possible. Therefore, if creating an additional offence would make enforcement simpler for Police Scotland, we would support it.

4. Who do you think should have responsibility for enforcing the proposed legislation and why?

Enforcement of this new law must be carried out by Police Scotland to provide the best guarantee of successfully protecting children from exposure to second-hand smoke. This central role for the police is essential in the Scottish context, as they have the sole legal authority to stop moving vehicles. This would be consistent with similar laws internationally - all jurisdictions in Australia and majorities of those in Canada and the US which have similar laws charge police with enforcement.

In the regulations banning smoking in cars carrying children in England, Local Authorities have also been tasked with helping the police to enforce this law, by monitoring stationary vehicles. While Local Authority officers undoubtedly have an important supporting role to play, it is vital that the primary responsibility for enforcement of this law lies with the police. This would be consistent with enforcement of offences such as driving while using mobile phones or failing to wear a seat belt.

The impact assessment carried out by the UK Government into the comparable law in England & Wales recommended strongly that police should enforce this measure, for both cost-effectiveness and to ensure proper enforcement.⁹

5. What type of vehicles do you think should be exempt from the legislation and why?

⁸ Page 3, Smokefree (Private Vehicles) Regulations 2014: Impact assessment, Department of Health, July 2014.

⁹ Smokefree (Private Vehicles) Regulations 2014: Impact assessment, Department of Health, July 2014.

Some individuals may use a vehicle as their place of residence. While BLF Scotland supports and encourages those who wish to keep their homes smoke-free, we do not believe that this legislation should apply to residences. Therefore, a common-sense approach should be taken, whereby caravans and motor-homes which are parked should be exempted from this legislation.

Furthermore, as the basis for this law is the harm caused by second-hand smoke within an enclosed vehicle, a further exemption could apply for those vehicles which are not enclosed, such as motorcycles and convertibles where the roof is entirely down.

6. What is your view on the Bill's provision for a defence that the person smoking could not have reasonably know that the other occupants of the vehicle were under 18?

BLF Scotland's emphasis throughout this process is providing effective and enforceable protection for children. Therefore, we do not take a specific view on this defence but regard this as an area where legal expertise will be invaluable.

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