

Smoking Prohibition (Children in Motor Vehicles) (Scotland) Bill

ASH Scotland

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

Yes. Action on Smoking and Health (ASH) Scotland is an independent Scottish charity taking action to achieve its vision of a healthier Scotland free from the harm and inequalities caused by tobacco. As such, two of our primary aims are to protect people from second-hand smoke (SHS) and to limit the number of young people taking up smoking. Recent data show that 22% of 13 and 15 year olds in Scotland report that they are often or sometimes exposed to smoke when travelling in a car¹. ASH Scotland therefore supports legislation to make it an offence to smoke in a private vehicle when children under the age of 18 are present.

Children and young people witnessing smoking in vehicles may seek to emulate it; two recent New Zealand studies^{2,3} which investigated this found that reported exposure to smoking in cars was significantly associated with an increased risk of both current and initiated smoking. Therefore, reducing children and young people's exposure to smoking in vehicles will not only protect them from the dangers of second-hand smoke, but may reduce their propensity to take up smoking themselves. It may also be the case that higher smoking rates in more deprived communities outweigh the lower car ownership, so that a ban on smoking inside cars carrying children may benefit those from lower income groups most and so reduce health inequalities⁴.

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.

A 2015 YouGov poll⁵ revealed that 85% of Scottish adults (72% of smokers) agree that smoking should be banned in cars that are carrying children younger than 18 years old, making this a measure strongly supported by the public.

International evidence⁶ suggests that the prevalence of smoke-free car (and home) rules rises after the passage of smoke-free vehicle laws, perhaps indicating changing social norms related to the unacceptability of second-hand smoke exposure. This measure has the potential to reinforce public awareness of the harmfulness of second-hand smoke in Scotland, which could help to drive positive voluntary changes in practice in domestic settings and help achieve the national target to reduce children's exposure to tobacco smoke by half in 2020 against a baseline measured in 2012⁷.

It is inherently unjust that children may not be able to choose whether or not someone else in a vehicle is smoking and yet are at an elevated risk of harm from second-hand smoke: their smaller airways, faster rates of breathing, and less developed immune systems all contribute to inhalation of larger quantities of particulates⁸. Evidence of the harm of inhaling second-hand smoke is well-established, and exposure to the pollutants

and carcinogens in SHS increases the risk of acute and chronic health conditions, hospital admission, and death⁹. Furthermore, non-smokers have significant intake of multiple volatile organic compounds (VOCs) from breathing second-hand smoke in cars, corresponding to health risks that exceed the acceptable level¹⁰; VOCs from tobacco smoke are associated with cancer, cardiovascular, and respiratory diseases. Ventilation (eg air conditioning or opening windows) is not a sufficient measure to remove tobacco smoke pollution from vehicles¹¹.

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

For first offenders, the option of a remedial course with quit smoking counselling might be offered as an alternative to a fine. For example, the Alcohol Diversion Scheme run in partnership by DrinkSense and Cambridgeshire Constabulary¹² is a course for those issued with a penalty notice in relation to an alcohol related offence; as an alternative to a £90 fine the scheme offers offenders an alcohol awareness course. Or the National Speed Awareness Scheme¹³, an innovative scheme used by police forces across the UK to allow motorists caught speeding to complete a workshop rather than be issued with three penalty points and a £60 fine.

Also, we would like to see the number of successful prosecutions and fines following the ban being made public to act as a deterrent.

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

Opponents have claimed that a lack of action on mobile phone use in cars suggests motorists could easily avoid the penalties. ASH Scotland believes that while second-hand smoke in vehicles technically falls under the functions of Environmental Health Departments, Police Scotland has resources more appropriate to the enforcement of this action. Police officers would be able to effectively enforce the measure while engaging in routine duties, minimising any resource implications and the actual figures¹⁴ show that police have caught tens of thousands each year for using a mobile phone while driving. In the Scottish consultation for this Bill, a retired Chief Superintendent with extensive experience and thorough expertise in traffic and road policing endorsed the likely ability of Police Scotland in adding this offence to existing motoring offences.

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

For some people their vehicle may also act as a place of residence and we do not believe this legislation should extend to the home. Therefore the legislation should include an exemption for a caravan or motorhome that is stationary and not on the road. A further exemption should cover vehicles which are less than 50% enclosed, such as a motorbike or a convertible car with the roof completely down. This aligns with the legislation agreed in

England and Wales and the definitions applicable to Scotland's smoke-free public places.

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?

We believe that the focus of the offence should be both on the person smoking and on the driver. The offence should apply both to any individual smoking when another person under the age of 18 is present and to the driver who permits this, in parallel with existing enclosed public spaces provisions. However before any offender under the age of 18 is referred to court or prosecuted, due consideration should be given as to whether or not it is in the public's interest to do so.

To be consistent with the smoking in vehicles legislative proposals of Wales, England, and Northern Ireland, we believe that where a driver is implicated, they should be permitted to present a defence that:

- a) the driver, by reason of driving the vehicle, was unable to prevent another individual from smoking in the car, and
- b) the driver made all reasonable efforts to prevent the offence.

We believe that any permitted defences regarding the believed or perceived age of passengers should be in line with permitted defences for other age-related offences.

ASH Scotland would be happy to bring evidence to the Committee and to provide further evidence or background information.

ASH Scotland

Scotland's obligations under the Framework Convention on Tobacco Control (FCTC): request to the Committee

Scotland's obligations as signatories to the international public health treaty, the Framework Convention on Tobacco Control (FCTC), do need to be explicitly considered as part of the good governance of the Scottish Parliament and that these are materially relevant to its balanced decision making on health matters relating to tobacco and smoking. The default position in Scottish Parliamentary Committees is to listen to all stakeholders but tobacco companies represent a unique and special case. A long and well-evidenced history of their using misinformation and manipulation to undermine public health initiatives has inspired 179 governments (to date) to agree to set parameters that limit tobacco companies' influence over health policies, including influence that is exercised through secondary issues such as economic issues and illicit trade. This commitment is set out in an international agreement to which

we are party within both the UK and EU. No other industry is subject to such a sanction.

Article 5.3 of the FCTC states: *'In setting and implementing their public health policies with respect to tobacco control, Parties shall act to protect these policies from commercial and other vested interests of the tobacco industry in accordance with national law.'* Guidance subsequently issued by the Conference of Parties in relation to implementing Article 5.3 notes that: *'There is a fundamental and irreconcilable conflict between the tobacco industry's interests and public health policy interests.'* This view was reaffirmed by the United Nations General Assembly in 2011.

The guidelines also make clear their intended scope of application: *'The guidelines apply to setting and implementing Parties' public health policies with respect to tobacco control. They also apply to persons, bodies or entities that contribute to, or could contribute to, the formulation, implementation, administration or enforcement of those policies.'*

We believe that requiring transparency in evidence brought to Committees regarding the tobacco industry's influences is materially relevant to our elected representatives' balanced decision making on health matters relating to tobacco and smoking.

This year marks the 10th anniversary of the FCTC being implemented, and we would ask the Committee to introduce a required declaration of interests in relation to the tobacco industry and its vested interests.

¹ ISD Scotland. Scottish Schools Adolescent Lifestyle and Substance Use Survey (SALSUS) National Report: Smoking, drinking and drug use among 13 and 15 year olds in Scotland in 2013. 2014. www.isdscotland.org/Health-Topics/Public-Health/SALSUS/Latest-Report/

² Thomson, G., Wilson, N. and Howden-Chapman, P. 2005. Smoky homes: a review of the exposure and effects of secondhand smoke in New Zealand homes. New Zealand Medical Journal 118(1213). www.ncbi.nlm.nih.gov/pubmed/15843833

³ Healey B, Hoek J, Wilson N, Thomson G, Taylor S, Edwards R. Youth exposure to in-vehicle second-hand smoke and their smoking behaviours: trends and associations in repeated national surveys (2006-2012).

Tobacco Control. 2015 Mar; 24(2):146-52. www.ncbi.nlm.nih.gov/pubmed/24046210

⁴ Lavery A A, Millett C. Smoking ban in cars will benefit disadvantaged children most. BMJ 2014;348:g1720.

www.bmj.com/content/348/bmj.g1720

⁵ All figures, unless otherwise stated, are from YouGov Plc. Total sample size was 1036 adults. Fieldwork was undertaken between 26th February and 12th March 2015. The survey was carried out online. The figures have been weighted and are representative of all Scotland adults (aged 18+).

⁶ Murphy-Hoefler R, Madden P, Maines D, Coles C. Prevalence of smoke-free car and home rules in Maine before and after passage of a smoke-free vehicle law, 2007-2010. Preventing Chronic Disease. 2014 Jan 16;11:130132. www.ncbi.nlm.nih.gov/pubmed/24433624

⁷ Scottish Government. Creating a tobacco-free generation: a tobacco control strategy for Scotland. March 2013. www.gov.scot/Publications/2013/03/3766

⁸ Bearer, C.F. Environmental health hazards: How children are different from adults. The Future of Children 5(2):11-26, 1995.

www.princeton.edu/futureofchildren/publications/journals/article/index.xml?journalid=59&articleid=360

⁹ Royal College of Physicians. Passive smoking and children. A report by the Tobacco Advisory Group. London: Royal College of Physicians, 2010.

www.rcplondon.ac.uk/publications/passive-smoking-and-children

¹⁰ St Helen G, et al. Intake of Toxic and Carcinogenic Volatile Organic Compounds from Secondhand Smoke in Motor Vehicles. *Cancer and Epidemiology, Biomarkers and Prevention*. December 2014 23; 2774.

<http://cebp.aacrjournals.org/content/23/12/2774.abstract>

¹¹ Semple S, Apsley A, Galea KS, et al. Secondhand smoke in cars: assessing children's potential exposure during typical journey conditions. *Tobacco Control*. 2012;21:578-83.

<http://tobaccocontrol.bmj.com/content/early/2012/01/04/tobaccocontrol-2011-050197.abstract>

¹² www.drinksense.org/en/beer-diversion-scheme

¹³ www.driver-improvement.co.uk/index.php/home/speed-awareness-scheme

¹⁴ Scottish Parliament: Question S4W-16749: Graeme Pearson, South Scotland, Scottish Labour, Date Lodged: 16/08/2013. Answered by Kenny MacAskill (12/09/2013).

www.scottish.parliament.uk/parliamentarybusiness/28877.aspx?SearchType=Advance&ReferenceNumbers=S4W-16749&ResultsPerPage=10