

Proposed Smoking (Children in Vehicles) (Scotland) Bill



A proposal for a Bill to prohibit, in Scotland, smoking in private vehicles while a child under 16 years of age is present.

A public consultation by Jim Hume MSP

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Foreword



There is little doubt that the Smoking, Health and Social Care (Scotland) Act 2005 was a vital piece of legislation that our Scottish Parliament passed and played a vital part in changing behaviour in Scotland for the better. We all now benefit from a safer, cleaner environment whether at work or enjoying a restaurant.

That law has led to Scotland being a safer place to work in and enjoy, but I want to see a fairer Scotland, where every child has the best start in life.

Recent research has shown that 17% of 11-16 year olds in the UK are exposed to second-hand smoke more than once a week while in a car with a

further 30% indicating exposure once a week or less. These are shocking figures. I believe we can improve on the ban on smoking in public places and places of work, further protecting our children.

Research has found that second-hand tobacco smoke in cars has serious negative health impacts for children, including Sudden Infant Death Syndrome, coughing, wheezing, asthma and respiratory tract infections such as bronchitis and pneumonia. Not to mention the known risk of lung cancer from second hand smoke and the fact those exposed to second hand smoke as children are more likely to take up smoking themselves in later life.

Some children have no option but to go into a smoke filled car en route to the school, shops or their sport. I believe we have a moral duty to protect those children from second hand smoke, which will allow children to have the freedom to get the best start in life and go on to lead healthy lives themselves. I believe we need to remove the danger of smoke filled cars and ban smoking in cars when children are present. That is why I am consulting on the intention to bring in a Member's Bill which will prohibit tobacco smoking in cars when children are present.

A handwritten signature in blue ink that reads "Jim Hume". The signature is written in a cursive, flowing style.

How the consultation process works

This consultation is being launched in connection with a draft proposal which I have lodged as the first stage in the process of introducing a Member's Bill in the Scottish Parliament. The process is governed by Chapter 9, Rule 9.14, of the Parliament's Standing Orders which can be found on the Parliament's website at:

<http://www.scottish.parliament.uk/parliamentarybusiness/17797.aspx>

A minimum 12 week consultation period is required, following which responses will be analysed. Thereafter, I would expect to lodge a final proposal in the Parliament along with a summary of the consultation responses. If that final proposal secures the support of at least 18 other MSPs from three or more of the groups on the Parliamentary Bureau, and the Scottish Government does not indicate that it intends to legislate in the area in question, I will then have the right to introduce a Members' Bill. A Member's Bill follows a 3-stage scrutiny process, during which it may be amended or rejected outright. If it is passed at the end of the process, it becomes an Act.

At this stage, therefore, there is no Bill, only a draft proposal for the legislation.

The purpose of this consultation is to provide a range of views on the subject matter of the proposed Bill, highlighting potential problems, identifying equalities issues, suggesting improvements, considering financial implications and, in general, assisting in ensuring that the resulting legislation is fit for purpose.

The consultation process is being supported by the Scottish Parliament's Non-Government Bills Unit (NGBU) and will therefore comply with the Unit's good practice criteria. NGBU will also analyse and provide an impartial summary of the responses received.

Details on how to respond to this consultation are provided at the end of the document.

Additional copies of this paper can be requested by contacting me at:

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Enquiries about obtaining the consultation document in any language other than English or in alternative formats should also be sent to me.

An online copy is available on the Scottish Parliament's website under Parliamentary Business/Bills/Proposals for Members' Bills/Session 4 Proposals

<http://www.scottish.parliament.uk/parliamentarybusiness/Bills/12419.aspx>

Part 1

Objective of the Bill

My Proposals

In March, the Scottish Government published its latest tobacco control strategy: 'Creating A Tobacco-Free Generation: A Tobacco Control Strategy for Scotland' which contained the key aim of making Scotland a tobacco-free country by 2034. The publication states:

"If someone smokes inside a car, the concentration of second-hand smoke increases very quickly due to the confined space of the vehicle. Even if windows are opened or air conditioning is used, the harmful particles remain in the atmosphere long after the visible smoke has disappeared...

Exposure to second-hand smoke in cars is harmful to all occupants, but especially to children who have little or no control over their environment. There is clearly more to be done to raise awareness of the level of harm caused by second-hand smoke in confined spaces."¹

The Scottish Government's own strategy acknowledges that the exposure of children to harmful second-hand tobacco smoke is an issue which currently requires action to address it.

I therefore propose to prohibit smoking in a vehicle while a child aged under 16 is present. The ban would apply irrespective of whether the vehicle was moving or stationary, on a road, a private driveway or any other private or public land. My proposals would also include convertible vehicles irrespective of whether the top is down but would not apply to motorcycles and sidecars.

In this chapter, I will go on to explain in detail the finer points of my proposals and outline the case for why I have arrived at the decisions I have made.

Age of the child

In my proposals, I have decided that any ban relating to smoking in a vehicle with children present should only apply when those aged under 16 are travelling in the vehicle. While there are those who make reasoned arguments in favour of the age limit being for under 18s - primarily due to the Tobacco and Primary Medical Services (Scotland) Act 2010 making it an offence for under 18s to buy tobacco² - I am not persuaded this represents an appropriate age at which to begin enforcement.

¹ Scottish Government. 'Creating A Tobacco-Free Generation: A Tobacco Control Strategy For Scotland'. p 25. <http://www.scotland.gov.uk/Resource/0041/00417331.pdf>

² Scottish Government. Tobacco and Primary Medical Services (Scotland) Act 2010. <http://www.scotland.gov.uk/Topics/Health/Services/Smoking/Tobacco-Act-2010>

Currently, our 16 year olds can obtain a moped licence³, join the armed forces and, under the Marriage (Scotland) Act 1977⁴, can choose to marry if they wish. A 16 year old travelling on public transport will find that they are obliged to pay the full adult fare and that due to the Road Traffic Act 1988 are legally responsible for ensuring they are wearing a seat belt while in a car.

Upon passage of the Scottish Independence Referendum (Franchise) Bill they will also have the ability to vote in the forthcoming independence referendum. Perhaps the most crucial determining factor behind the rationale for my choice can be found in section 1 of the Age of Legal Capacity (Scotland) Act 1991 which states:

"a person of or over the age of 16 years shall have legal capacity to enter into any transaction"⁵

This indicates that a 16 year old is considered to be of an age to make an informed choice and that is why I believe it represents a natural age from which to stop considering a person a child for the purposes of my proposals.

We must also reflect on the fact that the minimum age to obtain a full UK driving licence is 17. To introduce a law which would cover 17 year olds would be to state that while they are considered old enough to be legally competent to drive they are not old enough to be a passenger in a vehicle without a fellow driver being guilty of an offence in relation to them should they choose to smoke while driving.

Furthermore, evidence which will be found in greater detail from my case studies of Canada and Australia later in this consultation shows that the majority of legislatures also opt to protect under 16s.

I am aware that there are those who would call for an outright ban on smoking in vehicles in the presence of passengers of any age, or a ban on all smoking in vehicles. The research I will highlight later in this consultation demonstrates that tobacco smoke in all types of ventilated conditions will build up to harmful levels inside a vehicle. Therefore, this will be harmful to the health of all of those inside, regardless of age.

The reason I am not minded to extend the proposals beyond those under 16 are two-fold: choice and biological. Choice in the sense that a child is unable to find an

³ Gov.uk. Driving, transport and travel. <https://www.gov.uk/ride-motorcycle-moped/bike-categories-ages-and-licence-requirements>

⁴ Marriage (Scotland) Act 1977. Section 1. <http://www.legislation.gov.uk/ukpga/1977/15/section/1>

⁵ Age of Legal Capacity (Scotland) Act 1991. Section 1. <http://www.legislation.gov.uk/ukpga/1991/50/section/1>

alternative means of transport or, in most cases, have any real influence on their parents smoking habits. An adult can.

Biological in the sense that while second-hand smoke is harmful to all, this is particularly the case with children, whose bodies are still developing and breathe faster and thus inhale more of the tobacco's harmful constituents. I will explore this later in the consultation.

I am keen to hear your views on these matters and encourage you to address them in your response to this consultation.

Age of the offender

My proposals would make it an offence for anyone who is 16 or over to smoke in a vehicle while a child under that age is present. And while it is unlikely, it must be considered that there may be an occasion where a child aged under 16 is found to be smoking in a car with another similarly aged child.

Of course, it is illegal for under 18s to attempt to purchase tobacco but no provision in law exists explicitly prohibiting an under 18 from smoking. In Scotland, the Children's Hearings System exists to consider all offences by children under 16 years of age short of murder, assault and certain road traffic offences as well as improving the outcomes and considering the welfare of at risk children.

I do not propose to clog up the valuable time of Children's Panel members or the Children's Hearings System by referring cases arising from such a ban. Therefore, I am minded that an offence is not committed by an individual unless they are aged 16 years and over.

While I am aware of views towards making the driver wholly responsible for smoking by anyone in their vehicle in front of a child, I am not minded to include this in my proposals.

A driver is responsible for ensuring a child aged under 14 is appropriately restrained in their vehicle as this is a matter of road safety. But my proposals relate to public health and it would therefore not be appropriate to make a driver an offender if they are not the person smoking in front of a child.

I propose the age of an offender to be those aged 16 years and over and I believe that such people have the capacity to know they would be breaking the law, harming the health of a child and capable of accepting the consequences of a sanction. They alone should be able to accept responsibility for their behaviour.

Enforcement

Like the numerous Canadian and Australian provinces and states which have introduced similar bans, the local police authority would take the lead in enforcing the ban. In this case the Police Service of Scotland.

In terms of detecting offenders, this would be no different to apprehending those who use hand-held devices while driving or fail to wear seat belts. The eight former police forces in Scotland prior to April 2013 demonstrated a clear ability to police crimes of this nature which are often detected through opportunistic means.

Statistics show that in 2007-08 there was an estimated 18,856 offences for driving while using a mobile phone which were the subject of police conditional offers⁶. In just one day in September 2012, police forces across Scotland apprehended 331 motorists for using a mobile phone while driving⁷. And in 2004 there were 29,419 seat belt offences recorded by the Police in Scotland⁸.

Evidence from Australia in particular highlights that this law can be enforced. In the first six months after its introduction - in Queensland and Victoria there were 158 and 138 fines respectively handed to people caught breaking the law⁹.

While some may argue that these numbers reflect a low incidence of offence and/or detection, anecdotal evidence does suggest that the publicity surrounding the introduction of a ban does have an impact. Through coverage of both the legislative process and the lead-in period to the ban's introduction, the public are informed of the harmful effects of second-hand smoke and of the levels of tobacco smoke which can build in a ventilated car. This helps to foster a cultural change in the mind of the public.

As an example, a study of 127 Scottish smokers before and after the introduction of the ban on smoking in public places found that smoking attitudes and behaviour had

⁶ Written Question S3W-31099, submitted by George Foulkes.
<http://www.scottish.parliament.uk/parliamentarybusiness/28877.aspx?SearchType=Advance&ReferenceNumbers=S3W-31099&ResultsPerPage=10>

⁷ The Scotsman. 'More than 300 Scottish motorists caught using mobile phones while driving in one-day police crackdown'. September 14 2012. <http://www.scotsman.com/news/transport/more-than-300-scottish-motorists-caught-using-mobile-phones-while-driving-in-one-day-police-crackdown-1-2527475>

⁸ Written Question S2W-19914, submitted by Stewart Stevenson.
<http://www.scottish.parliament.uk/parliamentarybusiness/28877.aspx?SearchType=Advance&ReferenceNumbers=S2W-19914&ResultsPerPage=10>

⁹ Herald Sun. 'Smoking ban burns parents'. September 01 2010.
<http://www.heraldsun.com.au/news/victoria/smoking-ban-burns-parents/story-e6frf7kx-1225912518244>

changed. The study found that 6 months after the ban there had been a 20% increase in support for it compared to when respondents had been surveyed before its introduction.¹⁰

The study also found that half of the respondents had reported cutting down on cigarette consumption after the introduction of the ban.¹¹ The mere existence of a ban and the surrounding media coverage plays a role in changing 'social norms'.¹² I believe my proposals would serve as a continuation of these changes and assist the Scottish Government in its drive towards a smoke-free Scotland.

The experience of jurisdictions across the world in enforcing this law allied to the highly effective performance of Scottish police forces in enforcing seat belt and mobile phone laws highlights that this can be done. I do not believe enforcing this ban to be beyond the capabilities of the Police Service of Scotland.

Penalties

Penalties for an offence would be issued through a police conditional offer giving the offender the opportunity to pay a fixed penalty fine of £60. Failure to do so within the allotted time frame would result in referral to the Procurator Fiscal.

I believe £60 represents a proportionate penalty in response to the offence. It also matches penalties awarded for being found to be using a hand-held device while in control of a vehicle or failure to wear a seat belt. Unlike both of those offences, I am not proposing to award 3 penalty points to offenders alongside the fine.

This is for three reasons: firstly, the offence is not a motoring offence and, therefore, penalty points would not be appropriate. Secondly, a person could be guilty of an offence whilst not in actual control of a vehicle and, indeed, may not even be a full or provisional UK driving licence holder.

And thirdly, penalty points are sanctions available to punish those specifically guilty of a motoring offence. As the ability to legislate on motoring offences is not within the competence of the Scottish Parliament it is, therefore, not possible to apply penalty points to an offence as laid out in my proposals.

Matching the fine to mirror those awarded for motoring offences is common practice in other countries. For example, in Manitoba the fine of \$199.80 is the same as being

¹⁰ Musiello T. *'An investigation into the effects of the Scottish smoking ban'*. Queen Margaret University. 2009

¹¹ *ibid*

¹² Heloma A, Jaakkola S. *'Four year follow-up of smoke exposure, attitudes and smoking behaviour following enactment of Finland's national smoke-free work-place law'*. *Addiction*. 2003

caught using a hand-held device while driving¹³. And in British Columbia the fine for an infringement is the same as failing to have an appropriate booster seat for a child¹⁴.

¹³ Manitoba Government news release. July 14 2010.
<http://news.gov.mb.ca/news/index.html?item=9240>

¹⁴ British Columbia Government news release. March 18 2009.
http://www2.news.gov.bc.ca/news_releases_2005-2009/2009HLS0024-000385.htm

Current Legislative Framework

Amendments to road traffic legislation or additions to regulations concerning the construction and use of road vehicles would not be appropriate in this instance. As my proposals are being progressed as a matter of public health and children's rights, and not as an issue of road safety, then amendments to existing health legislation would be more applicable.

The *Smoking, Health and Social Care (Scotland) Act 2005* brought about the legislative change which saw Scotland become the first part of the UK to prohibit smoking in enclosed public places. The ban came into effect on 26 March 2006 and, overnight, it became illegal to smoke on public transport, in pubs and restaurants, lorries and vans and many other public locations.

Section 4(2) of the 2005 Act gives the Scottish Ministers power to define in regulations what counts as "no-smoking premises" for the purposes of the Act, but only within the following limits (set out in section 4(4)):

(4) The kind of premises referred to in subsection (2) is premises which are wholly or substantially enclosed and -

- (a) to which the public or a section of the public has access;
- (b) which are being used wholly or mainly as a place of work;
- (c) which are being used by and for the purposes of a club or other unincorporated association; or
- (d) which are being used wholly or mainly for the provision of education or of health or care services.

As my proposals relate to a private space, then (unless it is being used as a place of work, by a club or for the provision of services) it cannot be made to fall within the definition of a "no-smoking premises" as laid out in the Act.

Due to the limited scope of the 2005 Act, the Scottish Ministers do not have the power to give effect to my proposals by exercising their existing powers under the 2005 Act and therefore, primary legislation (e.g. a Member's Bill) would be required.

Part 2

The Case for Change

Health Implications of Passive Smoking

Second-hand smoke is a group 1 carcinogen with no safe level of exposure¹⁵ and studies by academics, health organisations and Governments from across the world have established direct links between a child's exposure to second-hand smoke and a range of illnesses.

A 2006 US Surgeon General report¹⁶ on involuntary exposure to tobacco smoke concluded, with regards to children, that:

“the available evidence was sufficient to infer a causal association between passive smoking and sudden infant death syndrome, lower respiratory illness, middle ear disease, asthma in school-aged children, and impairment of lung function.”

Tobacco smoke is known to be comprised of many toxic constituents which include recognised human carcinogens¹⁷. This is of particular concern with regards to children due to their increased risk from second-hand smoke exposure in comparison to adults.

This point is explained further in ASH Scotland's recent publication: 'Smoking in vehicles: An evidence review'. In it they state:

“There are several reasons why children and infants may face elevated risks from SHS exposure as passengers in vehicles when compared to adults. They have smaller airways, faster rates of respiration and immature immune systems. Because of differences in respiration, infants inhale increased quantities of particulates, and through greater hand to mouth contact can absorb quantities through ingestion.”¹⁸

Among the most common illnesses known to afflict children due to passive smoke exposure are lower respiratory infections, wheezing, middle ear disease, asthma and modest impairment of lung function. Living in a household with one or more smokers more than doubles the risk of bacterial meningitis and sudden infant death

¹⁵ International Agency for Research on Cancer. *IARC Monographs on the Evaluation of Carcinogenic Risks to Humans: Tobacco Smoke and Involuntary Smoking*. Vol. 83. IARC. 2004

¹⁶ U.S. Department of Health and Human Services. *The health consequences of involuntary exposure to tobacco smoke: A report of the Surgeon General – Executive Summary*. 2006

¹⁷ World Health Organisation International Agency for Research on Cancer. *IARC Monographs on the Evaluation of Carcinogenic Risks to Humans – Volume 83: Tobacco Smoke and Involuntary Smoking*. 2004

¹⁸ Ash Scotland. *Smoking in vehicles: An evidence review*. 2013

syndrome.¹⁹ And evidence suggests that children who are exposed to second-hand smoke have an increased likelihood of becoming smokers.²⁰

Second-hand smoke exposure in children leads to more days of restricted activity, more days of school absence and more days of bed confinement than those not exposed to second-hand smoke.²¹ There is also evidence that exposure to second-hand smoke in a vehicle increases the risk of nicotine dependence symptoms amongst children.²²

A 2007 study of Irish 13 – 14 year olds' exposure to second-hand smoke in vehicles found evidence to suggest an increased risk of hay fever symptoms and a 35% increased risk of having wheeze symptoms. Young females in particular had significantly increased odds of suffering from both bronchitis and wheeze in comparison to males of the same age.²³

A report entitled 'Passive Smoking and Children' by the Tobacco Advisory Group of the Royal College of Physicians was able to present evidence of the incidences of the aforementioned diseases caused by passive smoking in the UK. Using data from the Office for National Statistics they established that:

"The burden of disease caused by passive smoking in children in the UK, as outlined in Chapter 5, is substantial. Passive smoking results in over 165,000 new episodes of disease, 300,000 primary care contacts, 9,500 hospital admissions, at least 200 cases of bacterial meningitis, and about 40 sudden infant deaths each year. Most of this additional burden of diseases falls on the more disadvantaged children in our society. All of it is avoidable."²⁴

Most children who are regularly exposed to second-hand smoke (e.g. by parents who smoke) may only spend relatively short periods in a car with a smoker. However, this should not lull us into believing that as a child is likely to spend less time in a vehicle than in their own home, their exposure to passive smoking during their journey would be inconsequential. One study has found that just 30 minutes of

¹⁹ Royal College of Physicians Tobacco Advisory Group. 'Passive Smoking and Children'. 2010

²⁰ Gilpin E A, Pierce J P, Cavin S W, et al. 'Estimates of population smoking prevalence: Self vs proxy reports of smoking status'. Am J Public Health. 1994.

²¹ Mannino D M, Siegel M, Husten C, et al. 'Environmental tobacco smoke exposure and health effects in children: Results from the 1991 National Health Interview Survey'. Tob Control. 1996

²² Belanger M, O'Loughlin J, Okoli C T, et al. 'Nicotine dependence symptoms among young never-smokers exposed to secondhand tobacco smoke'. Addict Behav. 2008

²³ Kabir Z, Manning PJ, Holohan J, Keogan S, Goodman PG, Clancy L. 'Second-hand smoke exposure in cars and respiratory health effects in children'. Eur Respir J 2009

²⁴ Royal College of Physicians Tobacco Advisory Group. 'Passive Smoking and Children'. 2010

exposure to second-hand smoke reduced 'coronary flow velocity reserve'²⁵ which is one measure of endothelial dysfunction, a condition in which the endothelium (the thin layer of cells that lines the interior surface of blood vessels) loses its physiological properties.²⁶

²⁵ Otsuka R, Watanabe H, Hirata K, Tokai K, Muro T, Yoshiyama M, Takeuchi K, Yoshikawa J. 'Acute effects of passive smoking on the coronary circulation in healthy young adults.' JAMA. 2001

²⁶ Avogaro A, Albiero M, Menegazzo L, de Kreutzenberg S, Fadini G P. 'Endothelial dysfunction in diabetes: The role of reparatory mechanisms.' Diabetes Care, Volume 34. 2001.

Scale of Passive Smoke Exposure in Vehicles

When children are exposed to second-hand smoke they inhale more toxic constituents and carcinogens than adults on a body weight basis due to their faster breathing rates.²⁷ But, exactly how much second-hand smoke are they being exposed to while travelling in a vehicle and to just what levels can smoke be measured as reaching in such an environment?

The established means for monitoring second-hand smoke build-up is by measuring levels of 'very fine particulate matter' known as PM_{2.5}, which stands for particulate matter less than 2.5 microns in diameter. As the 2011 All Party Parliamentary Group on Smoking and Health report at Westminster entitled: 'Inquiry into smoking in private vehicles' states:

"This is recognised as the component of outdoor air pollution that leads to significant negative health consequences. It is also an established measure of SHS, and studies have shown that in indoor spaces, SHS accounts for 85-90% of total measured PM_{2.5}."²⁸

By way of context, Dr Sean Semple *et al* in their paper 'Second-hand smoke in cars: assessing children's potential exposure during typical journey conditions' provide a guide in which to measure second-hand smoke readings against. It states:

"For comparison, the US Environmental Protection Agency has a health-based guidance level for outdoor PM_{2.5} concentrations of 35 µg/m³ averaged over a 24h period, while WHO [World Health Organisation] last year indicated that their PM_{2.5} air quality guidance value of 25 µg/m³ can now be applied to indoor environments."²⁹

In a study conducted by the Harvard School of Public Health in urban areas of the US city of Boston, forty-five driving trials in both 'open window' and 'closed window' conditions revealed concentrations of particulate matter were 51 µg/m³ during 'open window' conditions and 272 µg/m³ during 'closed window' conditions.³⁰

A study by academics from the Wellington School of Medicine and Health Sciences produced broadly similar findings. The method for their research was as follows:

"Whilst driving, three cigarettes were smoked, the first with the passenger's window fully open and cigarette held outside car between puffs; the second with the passenger window

²⁷ Dr Sean Semple, personal communication. May 23 2013.

²⁸ All Party Parliamentary Group on Smoking and Health. 'Inquiry into smoking in private vehicles'. 2011.

²⁹ Semple S, Apsley A, Galea K S, MacCalman L, Friel B, Snelgrove V. 'Secondhand smoke in cars: Assessing children's potential exposure during typical journey conditions'. BMJ. 2011.

³⁰ Rees VR, Connolly GN. 'Measuring air quality to protect children from secondhand smoke in cars'. Am J Prev Med. 2006.

open half way and cigarette held inside the car in between puffs; and the third was smoked with all windows closed. The weather was sunny throughout, with a light to moderate breeze.”³¹

The results revealed mean levels for the first cigarette of 199 µg/m³, 162 µg/m³ for the second cigarette and 2926 µg/m³ for the third. Further readings discovered that 15 minutes after the third cigarette was extinguished levels still stood at 631 µg/m³ and did not return to base levels until a further 25 minutes later.³²

Research by Dr Sean Semple *et al* involved the installation of monitoring equipment in the rear of each participant car at ‘breathing zone height’ for a child. The study took place in two locations – Glasgow and Great Yarmouth and resulted in 83 journeys which could be analysed, 34 of which were non-smoking journeys and 49 of which involved smoking. Unlike previous work that had measured levels in contrived, experimental condition, this study reported data collected during normal driving-smoking activity from a range of participants going about typical everyday behaviour.

The group’s findings revealed that there was a clear trend between number of cigarettes smoked per minute and higher concentrations of PM_{2.5} as well as all smoking journeys exceeding World Health Organisation (WHO) guidance levels. The percentage of journey time when PM_{2.5} exceeded WHO guidance levels ranged from 11-100% during smoking journeys with an average of 53%.³³

The mean concentration levels found in cars in which smoking took place was 85 µg/m³ which is more than three times the stated WHO 24h guidance levels.³⁴ Examination of recorded peak levels revealed the mean measurement was 385 µg/m³ with one journey recording levels of 880 µg/m³. This led the Dr Semple *et al* to conclude:

“The evidence from this paper is that SHS concentrations in cars where smoking takes place are likely to be harmful to health under most ventilation conditions.”³⁵

This study took place over two 1-week periods in October and March when it could reasonably be assumed that ventilation in cars would be more likely due to the timing avoiding the worst periods of wintry weather. Therefore, the concentrations of

³¹ Edwards R, Wilson N, Pierse N. ‘Highly hazardous air quality associated with smoking in cars: New Zealand pilot study’. N Z Med J. 2006

³² *ibid*

³³ Semple S *et al*. 2011.

³⁴ *ibid*

³⁵ *ibid*

second-hand smoke may be an underestimate of true levels which may occur in winter.

While the use of particulate matter to measure second-hand smoke does provide good data on the volume of smoke which has gathered in the environment being monitored, it fails to give a full account of the hazardous nature of the smoke it is measuring. As ASH Scotland explain:

“As discussed previously, using particulate matter concentration to report on exposure to SHS - as is the case for the majority of the literature on vehicle SHS exposure, is likely to underestimate true health hazard from SHS as it does not account for toxicity in detail. Tobacco smoke contains many toxic constituents, including human carcinogens, and, as described by the World Health Organisation, strictly has no threshold level identified as ‘safe’.”³⁶

³⁶ Ash Scotland. *Smoking in vehicles: An evidence review*. 2013

Prevalence of Child Exposure to Passive Smoking in Vehicles

Obtaining reliable data on how widespread smoking in vehicles is can be difficult due to the natural reluctance of a smoker to admit to doing so. This may be particularly relevant when questioning whether a parent is doing so while driving and in the presence of their children.

A similar point was speculated in a University of Liverpool research project examining the smoking behaviour of parents of pre-school children. They stated:

“Although some respondents may not have been comfortable to admit that they smoked in their homes, and so the actual proportion may [be] higher, around three quarters of our respondents smoked inside their houses.”³⁷

Surveys and studies have been undertaken by academics which do help to give us an insight. One study conducted in 2009 gives us an idea how many car journeys can be expected to produce second-hand smoke. Researchers in 4 different Scottish population centres: Aberdeen, Edinburgh, Glasgow and Livingston surveyed 15,285 cars, 481 of which were found to contain at least one smoker.³⁸

Due to these observations encompassing a small snapshot in time of a few seconds, researchers must take into account that smoking may be occurring at other points in the car’s journey when the vehicle is not being observed. Based on previous observational research in bars, an appropriate multiple factor of 3 is used to account for ‘journey prevalence’. This, therefore, allowed the study to produce a figure of between 9% and 10% of all car journeys having some second-hand smoke exposure at some point.³⁹

Two recent surveys have both been conducted by polling children and asking them whether they have been exposed to second-hand smoke while travelling in a car. The first, a 2009 Populus survey⁴⁰ on behalf of the Department of Health which polled 1009 children in England aged between 8 and 13, revealed that 35% of respondents are exposed to second-hand smoke by their parents while in a vehicle. And the second, a 2011 survey by TNS on behalf of the British Lung Foundation⁴¹

³⁷ Robinson J, Kirkcaldy A. *‘Passive smoking qualitative research in Merseyside’*. Health and Community Care Research Unit, University of Liverpool. 2004.

³⁸ Dr Sean Semple, personal communication. May 15 2013.

³⁹ *ibid*

⁴⁰ Populus. *‘Survey of 8-13 Year Olds Executive Summary’* on behalf of the Department of Health. 2009. http://www.populus.co.uk/uploads/download_pdf-281009-Blue-Rubicon-Poll-of-8-13-year-olds-on-smoking.pdf

⁴¹ British Lung Foundation. Press release: *‘Kids unite to stop smoking in cars.’* March 2 2011.

which polled 1000 children between the age of 8 and 15, revealed that 51% of respondents had been exposed to second-hand smoke while a passenger in a vehicle.

A cross-sectional study of 11-16 year olds in the UK, conducted by the University of Stirling and University of Birmingham, found that 47% of those surveyed had been exposed to second-hand smoke in a vehicle. Of those indicating exposure in a vehicle, 17% indicated that this happened more than once a week.⁴²

A paper published in the British Medical Journal in 2007⁴³ by a team from the Child and Adolescent Health Research Unit at the University of Edinburgh, provides some Scottish specific data on smoking prevalence in vehicles with children present.

The aim of the research was to determine any changes in child exposure to 'environmental tobacco smoke' following the introduction of the smoking ban in public places in March 2006. The research was conducted by utilising 2,559 schoolchildren in Primary 7 (with a mean age of 11.4 years) in January 2006 and 2,424 Primary 7s in January 2007 and involved filling out a questionnaire on exposure to tobacco smoke during the previous day and the analysis of saliva samples from each child.

Through analysis of the questionnaire responses it was revealed that, among participants in 2006, 6.7% of respondents had been subjected to second-hand smoke in a vehicle the previous day with the corresponding figure for 2007 being 6.5%. When you remove the respondents who indicated they did not travel in a car on the previous day from consideration, you obtain figures of 9.4% in 2006 and 9.3% in 2007 for the percentage of children who were travelling in a vehicle being exposed to second-hand smoke on a single day.

We know through looking at General Register Office for Scotland publications that population estimates for 2006 estimated 59,521 11 year olds were resident in Scotland⁴⁴ with the corresponding figure for 2007 being 58,911⁴⁵. If we then apply

⁴² Jones L, Moodie C, Mackintosh A, Bauld L. 'Young people's exposure to and perceptions of smoking in cars and associated harms in the UK'. Draft paper submitted for publication in May 2013, University of Stirling and University of Birmingham.

⁴³ Akhtar P C, Currie D B, Currie C E, Haw S J. 'Changes in child exposure to environmental tobacco smoke (CHETS) study after implementation of smoke-free legislation in Scotland: National cross sectional survey'. BMJ. 2007.

⁴⁴ General Register Office for Scotland: Mid-2006 Population Estimates. <http://www.gro-scotland.gov.uk/files1/stats/mid-2006-population-estimates-scotland/mid-2006-population-estimates-scotland.pdf>

⁴⁵ General Register Office for Scotland: Mid-2007 Population Estimates. http://www.gro-scotland.gov.uk/files1/stats/population-estimates/07_my-booklet-final-upd21082008.pdf

the percentages of 6.7% and 6.5% obtained from the research paper to those estimates we can try and determine the levels of exposure for 11 year olds. This allows us to speculate that at least 3,987 and 3,829 11 year olds were exposed to second-hand smoke while travelling in a vehicle on an average week day during term time in 2006 and 2007 respectively.

Opinion of Both Adults and Children On Passive Smoke Exposure in Vehicles

Public opinion seems to indicate strong support for legislative change. This is supported by the All Party Parliamentary Group on Smoking and Health report which stated:

“However studies consistently find a substantial majority of adults (including a majority of smokers) supporting a ban on smoking in cars with children.”⁴⁶

A 2009 YouGov survey in England⁴⁷ revealed 76% of respondents supporting a ban on smoking in cars carrying children with 54% of smokers indicating their approval for legislative change. A later YouGov survey from 2011⁴⁸ showed support for legislative change had increased slightly to 78% of respondents with 62% of smokers now indicating their support.

On an annual basis since 2008, ASH Scotland has commissioned YouGov to conduct an opinion poll of Scottish adults to ascertain the levels of public support for legislation to prohibit smoking in a vehicle while children are passengers. The results point towards increasing support for change.

In 2008⁴⁹, 75.8% of adults indicated their support for a ban with just 11.3% stating their opposition. In the most recent poll conducted in 2013⁵⁰, support had increased to 81.5% with opposition falling to 7.4%.

The 2009 Populus survey on behalf of the Department of Health went on to question the children on their views of passive smoke exposure, particularly when in a vehicle.

The results reveal that 92% of respondents think parents smoking around their children in a car is damaging to a child’s health with 75% saying they minded people smoking around them. Of those children who indicated they were subjected to second-hand smoke by their parents, 73% said they didn’t like their parents smoking

⁴⁶ All Party Parliamentary Group on Smoking and Health. *‘Inquiry into smoking in private vehicles’*. 2011.

⁴⁷ *ibid* p. 143-144

⁴⁸ Highlighted in: All Party Parliamentary Group on Smoking and Health. *‘Inquiry into smoking in private vehicles’*. 2011. p. 27

⁴⁹ Highlighted in: Ash Scotland. *‘Smoking in vehicles: An evidence review’*. 2013. p. 17

⁵⁰ *ibid*

in the car and wished that they wouldn't with 76% saying they were concerned that this was damaging their health.⁵¹

Similar findings were revealed by the British Lung Foundation's 2011 survey. They too asked the children for their view on adults smoking in a vehicle while they were a passenger and 86% of respondents indicated that they wanted people to stop smoking.⁵²

The survey went on to reveal that an adult smoking around the child participants made 44% of them cough, 49% feel sick and 58% smell of smoke. Despite this, only 31% felt empowered enough to ask them to stop smoking while they were in a car.⁵³

The joint paper by the University of Stirling and University of Birmingham revealed that 74% of young people disliked people smoking while they were in a car, with 86% indicating that they believed this to cause a great deal of harm to the health of a non-smoker. When asked whether they supported a ban on smoking in a car while a child under 16 years of age was a passenger, 84% indicated they would support such a ban.⁵⁴

Research conducted by Dr Neneh Rowa-Dewar and her colleagues at the University of Edinburgh's Centre for Public Health Sciences sought to determine children's experiences of second-hand smoke in the home and car. By conducting interviews with 38 children and young people aged between 10 and 15 from "both advantaged and disadvantaged socio-economically areas", the team was able to gain an insight into children's views on exposure to second-hand smoke and their attitude towards their parents and siblings.

The research revealed that the children expressed a 'strong dislike' of second-hand smoke and that:

"Participants were particularly opposed to smoking in the car, which approximately half reported they were exposed to in both areas."⁵⁵

⁵¹ Populus. 'Survey of 8-13 Year Olds Executive Summary' on behalf of the Department of Health. 2009. http://www.populus.co.uk/uploads/download_pdf-281009-Blue-Rubicon-Poll-of-8-13-year-olds-on-smoking.pdf

⁵² British Lung Foundation. Press release: 'Kids unite to stop smoking in cars'. March 2 2011.

⁵³ ibid

⁵⁴ Jones L, Moodie C, Mackintosh A, Bauld L. 'Young people's exposure to and perceptions of smoking in cars and associated harms in the UK'. Draft paper submitted for publication in May 2013, University of Stirling and University of Birmingham.

⁵⁵ Rowa-Dewar N, Amos A, Cunningham-Burley S. 'A qualitative study of children and second-hand smoke exposure in the home and car'. Scottish Government Health Directorate's Chief Scientist Office. 2012.

The group found that children were keen to avoid stigmatising their parents by describing them as 'responsible smokers' and explaining how their relatives would move into a different room or smoke outside to protect them from second-hand smoke.⁵⁶ A course of action not available to a passenger or a driver while in a vehicle.

⁵⁶ *ibid*

Examples From Other Countries

While there are numerous countries across the world, such as South Africa, Cyprus, Mauritius and the United States, where legislation of the type I am proposing can already be found, I plan to highlight the examples of Canada and Australia in this consultation.

As developed commonwealth countries with close ties to the United Kingdom, cultural similarities, areas of devolved governance and comparable public health challenges, I believe that Canada and Australia serve to provide useful illustrations of how these proposals can function as effective legislation.

Canada



Canada's federalist system comprises 10 provinces and 3 territories with delegated powers. Of these 13 provinces and territories, 9 have passed legislation to prohibit smoking in vehicles while carrying a passenger under a certain age.

While the majority of those 9 legislatures (6) have opted for under 16s to be the subject of their legislation, Yukon has legislated for under 18s and Prince Edward Island and Nova Scotia have legislated for under 19s.

The following table provides a summary of the Canadian experience:

Province/Territory	Details	Sanction	Date enacted
British Columbia	Smoking prohibited in motor vehicles carrying under 16s.	\$109 ⁵⁷	7 April 2009
Manitoba	Smoking prohibited in cars carrying under 16s.	\$199.80 ⁵⁸	15 July 2010

⁵⁷ British Columbia Government news release. March 18 2009.

http://www2.news.gov.bc.ca/news_releases_2005-2009/2009HLS0024-000385.htm

⁵⁸ Manitoba Government news release. July 14 2010.

<http://news.gov.mb.ca/news/index.html?item=9240>

New Brunswick	Smoking prohibited in motor vehicles carrying under 16s.	\$140 - \$570 ⁵⁹	1 January 2010
Newfoundland & Labrador	Smoking prohibited in vehicles carrying under 16s.	\$50 - \$500 ⁶⁰	1 July 2011
Nova Scotia	Smoking prohibited in vehicles carrying under 19s.	\$394.50 ⁶¹	1 April 2008
Ontario	Smoking prohibited in vehicles carrying under 16s.	\$250 ⁶²	21 January 2009
Prince Edward Island	Smoking prohibited in vehicles carrying under 19s.	\$100 - \$2000 ⁶³	15 September 2009
Saskatchewan	Smoking prohibited in vehicles carrying under 16s.	\$220 ⁶⁴	1 October 2010
Yukon	Smoking prohibited in vehicles carrying under 18s	\$150 ⁶⁵	15 May 2008

- ***Fines expressed in Canadian dollars.***
- ***Provinces/territories listed with an upper limit sanction denote the maximum available fine in the event of court proceedings.***

⁵⁹ New Brunswick Government news release. December 30 2009.

<http://www.gnb.ca/cnb/news/he/2009e2044he.htm>

⁶⁰ Newfoundland and Labrador Government news release. March 28 2011.

<http://www.releases.gov.nl.ca/releases/2011/health/0328n09.htm>

⁶¹ Nova Scotia Government news release. March 20 2008.

<http://novascotia.ca/news/release/?id=20080320006>

⁶² Ontario Government news release. January 21 2009.

<http://news.ontario.ca/mohltc/en/2009/01/driving-with-kids-dont-smoke---its-now-the-law.html>

⁶³ Prince Edward Island Government. Department of Health and Wellness.

<http://www.gov.pe.ca/health/index.php3?number=1020691&lang=E>

⁶⁴ CBC News. 'Fines imposed under law banning smoking in cars with kids'. September 28 2012.

<http://www.cbc.ca/news/canada/saskatchewan/story/2012/09/28/sk-smoking-in-cars-with-children-120928.html>

⁶⁵ Yukon Government. Department of Health and Social Services.

http://www.hss.gov.yk.ca/pdf/sfpa_info_3_en.pdf

Of the 4 legislatures which have yet to introduce similar bans, Alberta's Government recently signalled its intention to do so in its latest tobacco strategy: 'Creating Tobacco-free Futures: Alberta's Strategy to Prevent and Reduce Tobacco Use, 2012-2022'.⁶⁶

With the exception of Nova Scotia where a sanction is \$394.50, the penalties for a violation of the law range from \$109 to \$250 with the option in many areas to impose significantly higher penalties should a case come before court.

⁶⁶ Alberta Government. 'Creating Tobacco-free Futures: Alberta's Strategy to Prevent and Reduce Tobacco Use, 2012-2022'. <http://www.health.alberta.ca/documents/Tobacco-Reduction-Strategy-2012.pdf>

Australia



The federal governance system of Australia comprises of 6 states and 2 'mainland territories' which each have their own parliaments. All but one of these 8 states and territories has legislated to prohibit smoking in vehicles while a child is present, leaving the Northern Territories as the only remaining area of Australia where it is still legal to do so.

Similarly to Canada, the majority of states and territories (4) have chosen the under 16s as the subject of legislative protection. The state of Western Australia has sought to protect under 17s and both Tasmania and Victoria have elected to protect under 18s.

The following table provides a summary of the situation in Australia:

State/Territory	Details	Sanction	Date enacted
Australian Capital Territory	Smoking prohibited in vehicles carrying under 16s	\$250 ⁶⁷	1 May 2012
New South Wales	Smoking prohibited in vehicles carrying under 16s	\$250 ⁶⁸	1 July 2009
Queensland	Smoking prohibited in vehicles carrying under 16s	\$200 ⁶⁹	1 October 2010
South Australia	Smoking prohibited in vehicles carrying under 16s	\$75 - \$200 ⁷⁰	31 May 2007

⁶⁷ Australian Capital Government Territory. Health Directorate website.
<http://health.act.gov.au/c/health?a=sp&did=10152911>

⁶⁸ New South Wales Government. Health Department website.
http://www0.health.nsw.gov.au/publichealth/healthpromotion/tobacco/smoke_free_cars.asp

⁶⁹ Queensland Government. Tobacco Laws website.
<http://www.health.qld.gov.au/tobaccolaws/penalties/enforces.asp>

⁷⁰ The Age. 'Smoking ban for cars in force in SA'. May 31 2007.
<http://www.theage.com.au/news/National/Smoking-ban-for-cars-in-force-in-SA/2007/05/31/1180205402770.html>

Tasmania	Smoking prohibited in vehicles carrying under 18s	\$260 ⁷¹	1 January 2008
Victoria	Smoking prohibited in vehicles carrying under 18s	\$233.64 - \$584.10 ⁷²	1 January 2010
Western Australia	Smoking prohibited in vehicles carrying under 17s	\$200 ⁷³	22 September 2010

- ***Fines expressed in Australian dollars***
- ***States listed with an upper limit sanction denote the maximum available fine in the event of court proceedings.***

The penalties across Australia are consistent and range from \$200 to \$250 with the possibility for courts to impose significantly higher fines should the case reach court.

In the first six months of the bans coming into place in Queensland and Victoria, when law enforcement agencies will still be adapting to their new legal powers and establishing best practice in detection, the number of people fined in both states was 158 and 138 respectively.⁷⁴

This is interesting as the populations of both states are not too dissimilar to Scotland's: recent estimates show Queensland's population to be 4,584,600 and Victoria's to be 5,649,100.⁷⁵

⁷¹ Tasmania Government. Department for Health and Human Services website. http://www.dhhs.tas.gov.au/data/assets/pdf_file/0011/53795/Poh_Fact_Sheet_smoking_in_cars_201208.pdf

⁷² Victoria Government news release. February 2010. <http://www.health.vic.gov.au/healthvictoria/feb10/ban.htm>

⁷³ Western Australia Government. Department of Health website. http://www.tobaccocontrol.health.wa.gov.au/legislation/docs/Smoke_ban_cars_with_children.pdf

⁷⁴ Herald Sun. 'Smoking ban burns parents'. September 01 2010. <http://www.heraldsun.com.au/news/victoria/smoking-ban-burns-parents/story-e6frf7kx-1225912518244>

⁷⁵ Australian Bureau of Statistics. 'Australian Demographic Statistics Sep 2010'. <http://www.abs.gov.au/ausstats/abs@.nsf/mf/3101.0/>

Part 3

Supporters of Change

Health Organisations



Simon Gillespie, Chief Executive of British Heart Foundation said:

“The link between second-hand smoking and an increased risk of developing heart disease is unequivocal. It’s clearly wrong that children should be exposed to smoking in any environment, and especially in an enclosed environment like a vehicle. British Heart Foundation congratulates Jim Hume MSP for taking the important step of publishing this consultation; the legislation is intended to protect children’s health and we urge other MSPs to help him get it onto the statute books without delay.”

James Cant, Head of the British Lung Foundation for Scotland & Northern Ireland said:

“The smoking ban was a huge step forward for Scotland. The improvement in public health has been even better than expected, for example the rate of low birth weights has reduced and child asthma admissions are down by 18% per year compared to a 5% annual increase before the ban.

These developments show that second-hand smoke had an even greater impact on health than previously suspected. Yet every day, children are still exposed to these dangers. The logical extension of the smoking ban’s progress is to protect children whose health is even now being unfairly compromised by exposure to second-hand smoke in the confines of a car.”





Sheila Duffy, ASH Scotland Chief Executive said:

“We’ve made a lot of progress in improving Scotland’s health by reducing smoking and exposure to tobacco smoke. Smoke-free public places was a huge leap forward but many people, including vulnerable groups like children, are still exposed to the health risks of tobacco smoke in places not covered by the legislation. In a fair and healthy Scotland I don’t think anybody should have to breathe in this harmful substance involuntarily. These proposals are a very welcome step to open the debate on how to extend protection from second hand smoke so we can all enjoy longer, healthier and happier lives. I believe that this debate will help to raise wider awareness about the risks and empower people to reduce them.”

Vicky Crichton, Cancer Research UK’s Senior Public Affairs Manager said:

“It’s vital that children are protected from the dangers of second hand smoke. We hope this consultation will raise awareness of just how damaging it is to smoke around children. Safeguarding the health of future generations is vital if we are to reduce the huge toll that society has to pay as a result of tobacco. There is no recognised safe level of exposure to second hand smoke and it is particularly dangerous for children because their bodies are still developing. It will also be important to learn from the experience in places such as Australia, where such steps have already been taken.”





Dr Sally Winning, Deputy Chair of BMA Scotland said:

"BMA Scotland is very supportive of a ban on smoking in cars when children are present. Tobacco smoke is a potent cocktail of over 4,000 toxins, including 50 known to cause cancer. Smoking in a car whilst children are present exposes them to second-hand tobacco smoke which has been linked to cot death and has been proven to increase the risk of ear and lung infections and asthma. Smoking in the confined space of a car is a toxic threat to health and we must act now for the health of our children."

David Clark, Chief Executive of Chest, Heart & Stroke Scotland said:

"Second-hand smoke is harmful to health. We know that it causes heart disease, lung cancer and many childhood illnesses, especially respiratory conditions. However, despite the legislation which prohibits smoking in enclosed public places, children can still be legally exposed to passive smoking in private cars. This is completely wrong as children are particularly vulnerable to the effects of tobacco smoke. There is strong public support for this measure and CHSS would welcome its introduction."



Children's Organisations

Jackie Brock, Chief Executive of Children in Scotland said:

"We are happy to support a Bill banning smoking in cars with child passengers. Smoking can lead to ill health and premature death and a child's right to protection from harm should override an adult's right to smoke in their vehicle when a child present. Children in Scotland feel strongly that we must do all we can to protect the health and development of today's young people as well as the next generation."



Tam Baillie, Scotland's Commissioner for Children and Young People, said:

"I wholeheartedly support attempts to ban smoking in cars while children are present.

I view this as a children's rights issue, as this is about the best interests of the child, the right of the child to the enjoyment of the highest attainable standard of health, and the responsibility of States to ensure the survival and development of the child. Children have the right to be protected from exposure to second-hand smoke.

We know that children are especially vulnerable to second hand smoking – because they breathe more rapidly and inhale more pollutants than adults.

Second-hand smoke has a significant impact on the health of a child before birth and in childhood, and can continue to have an impact on their health during adulthood."



**Scotland's Commissioner
for Children & Young People**

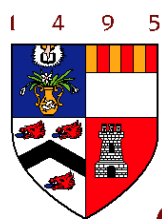
Academics

Dr Neneh Rowa-Dewar, UK Centre for Tobacco Control Studies said:

“Reducing children’s exposure to second hand smoke is an important step to protect and improve child health. In my research on children’s experiences and views on family smoking in the home and car in Scotland, children expressed a particularly strong dislike of smoking in the car. They reported that the confined space made them feel “trapped” and feel as though they were “choking”.

While children explain that their families try to protect them from second-hand smoke by opening windows, they say this often compounds the problem as the smoke blows into the back of the car where children mostly sit.

It is my hope that this consultation will raise awareness of this important issue for child health and support the implementation of the proposed law”



**UNIVERSITY
OF ABERDEEN**



**Dr Sean Semple, Senior Lecturer
Environmental & Occupational
Medicine, University of Aberdeen said:**

“Scotland led the way on measures to protect workers from second-hand smoke with legislation banning smoking in enclosed spaces in 2006. The benefits of this to public health have been substantial but we now need to take the next step to protect the health of our children. We know that smoking in cars produces concentrations of pollutants that would be completely unacceptable in outdoor air; our measurements of over 100 journeys show pollution in cars where someone smokes are over three times higher than the World Health Organisation guidance for fine particles. It is time for Scotland to take the lead in protecting children from the well-recognised harms of tobacco smoke.”

Part 4

Your Views

Questions

1. Do you support the general aim of the proposed Bill? (as outlined in Part 1 above.) Please indicate “yes/no/undecided” and explain the reasons for your response.
2. Do you agree that legislation is a necessary and appropriate means of addressing the issues identified?
3. What (if any) would be the main practical advantages of the legislation proposed? What (if any) would be the disadvantages?
4. Do you agree that a ban should apply to smokers while in a car with children under 16 years of age?
5. Do you agree that the age of an offender shall be anyone aged 16 or over?
6. Do you agree with making the fine for an offence (£60) in line with offences for failing to wear a seat belt and the use of a hand-held device while driving?
7. What types of vehicles should the ban apply to? Do you believe that these proposals should include convertible cars irrespective of whether the top is down?
8. What is your assessment of the likely financial implications (if any) of the proposed Bill to you or your organisation? What (if any) other significant financial implications are likely to arise?
9. Is the proposed Bill likely to have any substantial positive or negative implications for equality? If it is likely to have a substantial negative implication, how might this be minimised or avoided?
10. What lead-in time should be allowed prior to implementation of the ban and how should the public be informed?
11. Do you have any other comments on or suggestions relevant to the proposal?

HOW TO RESPOND TO THIS CONSULTATION

You are invited to respond to this consultation by answering the questions in the consultation and by adding any other comments that you consider appropriate.

Responses should be submitted by **5pm on Friday 30th August** and sent to:

Jim Hume MSP
M2.20
The Scottish Parliament
Edinburgh
EH99 1SP

Tel: 0131 348 6702

Fax: 0131 348 6705

E-mail: jim.hume.msp@scottish.parliament.uk

Please indicate whether you are a private individual or an organisation.

Respondents are also encouraged to begin their submission with short paragraph outlining briefly who they are, and who they represent (which may include, for example, an explanation of how the view expressed was consulted on with their members).

To help inform debate on the matters covered by this consultation and in the interests of openness, please be aware that the normal practice is to make responses public – by posting them on my website: www.jimhume.org and in hard copy in the Scottish Parliament's Information Centre (SPICe).

Therefore, if you wish your response, or any part of it, to be treated as anonymous, please state this clearly along with the reasons for this. If I accept the reasons, I will publish it as “anonymous response”. If I do not accept the reasons, I will let you know and give you the option of withdrawing it or submitting it on the normal attributable basis. If your response is accepted as anonymous, it is your responsibility to ensure that the content of it does not allow you to be identified.

If you wish your response, or any part of it, to be treated as confidential, please state this clearly and give reasons. If I accept the reasons, I will not publish it (or publish only the non-confidential parts). However, I am obliged to provide a (full) copy of the response to the Parliament's Non-Government Bills Unit when lodging my final proposal. As the Parliament is subject to the Freedom of Information (Scotland) Act (FOISA), it is possible that requests may be made to see your response (or the confidential parts of it) and the Parliament may be legally obliged to release that information. Further details of the FOISA are provided below.

NGBU may be responsible for summarising and analysing the results of this consultation and will normally aim to reflect the general content of any confidential response in that summary, but in such a way as to preserve the confidentiality involved. You should also note that members of the committee which considers the proposal and subsequent Bill may have access to the full text of your response even if it has not been published in full.

There are a few situations where not all responses will be published. This may be for practical reasons: for example, where the number of submissions we receive does not make this possible or where a large number of submissions are in very similar terms. In the latter case, only a list of the names of people and one response who have submitted such responses would normally be published.

In addition, there may be a few situations where I may not choose to publish your evidence or have to edit it before publication for legal reasons. This will include any submission which contains defamatory statements or material. If I think your response potentially contains such material, usually, this will be returned to you with an invitation to substantiate the comments or remove them. In these circumstances, if the response is returned to me and it still contains material which I consider to be defamatory, it may not be considered and it may have to be destroyed.

Data Protection Act 1998

As an MSP, I must comply with the requirements of the Data Protection Act 1998 which places certain obligations on me when I process personal data. Normally I will publish all the information you provide (including your name) in line with Parliamentary practice unless you indicate otherwise. However, I will not publish your signature or personal contact information (including for example, your home telephone number and home address details, or any other information which could identify you and be defined as personal data).

I may also edit any information which I think could identify any third parties unless that person has provided consent for me to publish it. If you specifically wish me to publish information involving third parties you must obtain their consent first and this should be included in writing with your submission.

If you consider that your response may raise any other issues concerning the Data Protection Act and wish to discuss this further, please contact me before you submit your response.

Further information about the Data Protection Act can be found at: www.ico.gov.uk.

Freedom of Information (Scotland) Act 2002

As indicated above, once your response is received by NGBU or is placed in the Scottish Parliament Information Centre (SPICe) or is made available to committees,

it is considered to be held by the Parliament and is subject to the requirements of the Freedom of Information (Scotland) Act 2002 (FOI(S)A). So if the information you send me is requested by third parties the Parliament is obliged to consider the request and provide the information unless the information falls within one of the exemptions set out in the Act, even if it have agreed to treat all or part of the information in confidence or to publish it anonymously. I cannot therefore guarantee that any other information you send me will not be made public should it be requested under FOI.

Further information about Freedom of Information can be found at:

www.itspubliknowledge.info.