European Commission Green Paper

Towards a Europe free from tobacco smoke: policy options at EU level

Response from ASH Scotland

ASH Scotland is the leading voluntary organisation for tobacco control in Scotland. ASH Scotland led a 10-year long campaign to end smoking in enclosed public places in Scotland. This campaign successfully concluded with the introduction of smoke-free legislation within the Smoking, Health and Social Care (Scotland) Act 2005.

ASH Scotland welcomes the opportunity to respond to the Commission's Green Paper consultation on policy options at EU level to increase protection from the health hazards associated with exposure to second hand smoke (SHS). There is a wealth of robust international medical and scientific evidence which documents the health risks associated with SHS.[1] The U.S. Surgeon General recently issued a comprehensive scientific report which concluded that there is no risk-free level of exposure to SHS[2]. SHS has been labelled carcinogenic to humans by the World Health Organisation's International Agency for Research on Cancer (IARC)[3] and it has also been labelled a class 'A' human carcinogen by the US Environmental Protection Agency[4], along with asbestos, arsenic, benzene and radon gas. SHS is a controllable and preventable form of indoor air pollution that no infant, child or adult should be exposed to.[5]

A growing number of countries across the world have successfully introduced comprehensive smoke-free legislation, including Norway (2004), the Republic of Ireland (2004), New Zealand (2004), Bhutan (2005), Uruguay (2006), Scotland (2006), Wales and Northern Ireland (2007).[6] The English government plans to end smoking in every enclosed public place and workplace in July 2007.

Policy options for achieving a smoke-free Europe

Question 1: Which of the two approaches set out in Section IV would be more desirable in terms of its scope for a smoke-free initiative: a total ban on smoking in all enclosed public places, or a ban with exemptions granted to selected categories or venues? Please indicate the reason (s) for your choice.

ASH Scotland considers that a comprehensive ban on smoking in all public places is the only effective way to reduce the health risks caused by exposure to SHS. International evidence demonstrates that in order to effectively reduce the health risks caused by tobacco and exposure to SHS, legislation must be standardised across areas and establishments.[7] [8] It is much easier for the public to understand a 'one rule applies to all' smoke-free provision.

a. The health benefits associated with comprehensive smoke-free legislation

Studies from countries with comprehensive smoke-free legislation in place, including parts of the U.S., Ireland, Norway and New Zealand, demonstrate that indoor air quality improves dramatically after legislation is introduced.[9] [10] [11] [12] Research from Scotland, Ireland and California has also demonstrated that the respiratory health of bar workers significantly improves after the introduction of comprehensive smoke-free legislation.[13] [14] [15]

In addition, smoke-free legislaiton would most likely contribute to an effective reduction in smoking rates. Smoke-free environments support smokers who are trying to give up. A review of 35 studies on the effectiveness of smoke-free laws concluded that comprehensive smoke-free legislation has the potential to reduce smoking prevalence by about 10%.[16] This finding has been supported by reports from countries including Italy and Norway, where tobacco sales have fallen after the introduction of smoke-free legislation.[17] [18]

Evidence from countries such as the USA, Canada, Australia, New Zealand and Ireland suggest that the introduction of comprehensive smoke-free legislation also has the effect of enhancing protection from SHS in the home. For example, after two years of smoke-free public places in New York City, exposure to SHS in the home had decreased by 35%.[19]

The implementation of comprehensive smoke-free legislation across the EU would most likely result in a number of significant improvements in public health. In addition, comprehensive smoke-free legislation has the biggest potential to assist in denormalising smoking in society, which would in turn discourage young people from taking up smoking. Comprehensive smoke-free legislation would also assist in increasing awareness of the health risks associated with active and passive smoking.

b. Possible exemptions for pubs, clubs and bars

Under the less stringent of the two approaches outlined in Section IV, possible exemptions could be granted to the licensed hospitality sector (restaurants, bars and pubs) and to hospitality establishments which do not serve food. Under this proposal, hospitality workers, children and other members of the public would not be adequately protected from the harmful health effects of SHS. A study carried out in a range of public places in seven European cities in 2001-2002 demonstrated that tobacco smoke was present in most of the studied public places, including leisure and hospitality venues. The highest SHS concentrations were found in bars and clubs, with a four-hour exposure in a club being similar to that from living with a smoker for a month.[20] The finding that exposure levels are exceptionally high in hospitality venues has also been confirmed by a London-based study, which found the average exposure of bar workers to be two to three times higher than the exposure sustained from living in a smoking household.[21] **Any efforts to provide partial protection from SHS remain flawed, as there *is* no safe level of exposure to SHS.**[22]

Inherent in this proposal is the assumption that ventilation in bars, pubs and restaurants could protect the public from the harmful effects of SHS. Although

good ventilation systems can help reduce the irritability of smoke, they do not eliminate its poisonous components. Only 15% of SHS is in the form of particles that are visible to the eye. Ventilation filters trap these particles, making a room look less smoky and feel more comfortable to be in. However, tobacco smoke contains 4,000 toxins and more than 50 cancer-causing substances. Many of these are odourless, invisible gases, which cannot be removed by ventilation systems.[23] **Scientific evidence has demonstrated that there is no ventilation system that *fully* removes harmful gases that are present in SHS.**[24]

c. Other possible exemptions

ASH Scotland considers that exemptions should be minimal in order to assist with overall compliance and enforcement, and to reinforce the message that SHS kills. Exemptions should be justified in terms of the acceptability of exposing members of the workforce to a preventable Class A carcinogen.

ASH Scotland considers that ideally all types of premises regarded as an indoor public place should be captured by smoke-free legislation and the overall direction of legislation and regulations should be towards comprehensive smoke-free provision. However, we recognise that there are particular humanitarian issues that need to be acknowledged in order to accommodate people who would be regarded as dwelling in premises, such as adult care homes and psychiatric hospitals.

With regard to exemptions in mental health settings, it is worth noting that the Scottish Executive is committed to reducing the health inequalities experienced by this group of patients, and is working with ASH Scotland and other stakeholders to implement a programme of targeted cessation, and to develop a National Mental Health Framework, which will support a move towards smoke-free mental health settings in Scotland.

Question 2: Which of the policy options described in Section V would be the most desirable and appropriate for promoting smoke-free environments? What form of EU intervention do you consider necessary to achieve the smoke-free objectives?

The EU Green Paper suggests several different policy options for achieving the smoke-free objectives, as follows:

Option 1: No change from the status quo

This would mean no new activity on behalf of the EU, while continuing the current work on SHS under the different Community programmes. Regulatory developments would be left to the Member States and the FCTC process.

Of all the options this one could be expected to be the least effective in reducing SHS exposure and related harm. The Green Paper outlines a number of potential outcomes associated with this option, stating that progress in Member States is likely to be patchy, and as a result of incomplete regulations, many vulnerable groups would remain exposed to SHS in indoor environments. In addition, the Paper states that this could present the risk of litigation by citizens for damage to their health caused by passive smoking. **ASH Scotland agrees**

that continuing with the status quo would be a lost opportunity to build on the current political momentum towards smoke-free areas in the EU.

A key message from those opposing smoke-free legislation is that it removes choice for business and for customers. But the status quo actually denies the option of smoke-free air to many people, including those with asthma or other existing health conditions who are barred from smoky atmospheres. People in deprived communities, where smoking rates tend to be highest, are least likely to be able to enjoy smoke-free facilities. Some employees cannot choose to work in smoke-free conditions without losing their jobs. **Society doesn't regulate any other carcinogen in this way, in the workplace or in enclosed public places, and ASH Scotland does not accept that exposure to SHS should be treated any differently.**

Option 2: Voluntary measures
This option would consist in encouraging stakeholders to adopt common voluntary guidelines at European level to make more places smoke-free.

As the Green Paper outlines, evidence from the Member States suggests that voluntary agreements have not been effective in the area of tobacco control. Specifically in the leisure and hospitality sector, voluntary measures have not met the key target of significantly reducing SHS exposure.

The EU Green Paper highlights the failings of past voluntary charters implemented in England, Spain and Paris. The voluntary charter in Scotland, launched in May 2000, also failed to deliver significant protection to hospitality workers. After nearly three years of its introduction, more than 7 in 10 pubs still permitted smoking throughout, as did nearly 4 in every 10 leisure industry sites. Only 1 in 7 of all leisure industry sites, including superstores, sports grounds, sports centres, as well as pubs and restaurants complied with all key aspects of the Charter. Furthermore, awareness of the scheme was pitiful. Fewer than half of businesses knew about the scheme, suggesting that the changes that had taken place would have happened anyway.[25] **Voluntary approaches are not relied upon to control any other carcinogen in the workplace. In short, voluntary approaches do not work.**

Option 3: Open method of coordination
This option would involve encouraging Member States to make their smoke-free laws more convergent without there being a need for direct harmonisation (although this would remain a possibility).

Again, the commitment to smoke-free objectives would remain voluntary, and there would be no sanctions for non-compliance with the agreed targets. **On this basis, the open method of communication cannot be considered an effective solution to health hazards associated with SHS exposure.**

Option 4: Commission or Council Recommendation
This option would consist in encouraging Member States to adopt national smoke-free legislation steered by a comprehensive Commission or Council Recommendation on smoke-free environments which would set out suggested

courses of action. It could be used independently or as part of the self-regulatory schemes outlined in options 2 and 3, but it would not have a binding force.

As the Green Paper outlines, the effectiveness of this option would depend to some extent on the clarity of EU guidelines and the reporting requirements. However, whilst this option would offer flexibility to Member States, the main risk would be that some Member States might not choose to act at all. **This option would therefore be highly unlikely to be able to offer adequate protection from the risks of SHS exposure across the Member States.**

Option 5: Binding legislation

A Community action could include the adoption of binding legislation measures, which would impose a comparable, transparent and enforceable basic level of protection from the risk of SHS exposure throughout the Member States.

As the Green Paper states, taking into account the unequivocal scientific evidence of the harm caused by SHS, and the impact of clean indoor air policies on the overall reduction in tobacco use, this option would bring the biggest benefits to the public health of the population. More than 79,000 adults die each year as a result of passive smoking in the 25 countries of the EU.[26] A recent Eurobarometer survey found that more than 80% of EU citizens are in favour of a ban on smoking in workplaces and indoor public places. Furthermore, 73% of EU citizens are non-smokers.[27] **It is time for the EC to take decisive action to end unnecessary exposure to SHS, in order to better protect EU citizens from the health hazards associated with SHS.**

Question 3: Are there any further quantitative or qualitative data on the health, social or economic impact of smoke-free policies which should be taken into account?

Data on economic considerations, economic burden, the impacts of smoke-free initiatives, the risk of unintended consequences, social considerations and public support are all taken into account in the Green Paper. ASH Scotland would like to highlight the following additional points:

a. Economic impacts on the hospitality sector

Predictions of a downturn in business are encountered in every country where legislation has been, or is currently being, introduced. For example, before the smoke-free legislation was introduced in Scotland, the Scottish Licensed Trade Association (SLTA) commissioned research that suggested the capital cost of compliance with the Smoking, Health and Social Care (Scotland) Act 2005 would be in the region of £85million. The SLTA also reported that smoke-free legislation would force more than 140 pubs to close, and lead to the loss of 2,300 jobs, and £59 million in tax revenue in Scotland.[28] Whilst the official research to measure the economic impacts of Scotland's smoking ban has yet to conclude, anecdotal evidence is largely positive. Publicans have generally reported that business has either remained steady, or that sales have increased since the legislation was introduced.[29] [30] [31] [32] [33] [34] [35] [36] [37]

Smoke-free legislation has been passed in every conceivable type of community, from small towns and rural areas to a number of states, and economists have studied the impacts on communities across the spectrum. Anecdotal reports, polls or interviews with business owners concerning economic impacts of smoke-free legislation should be treated with great scepticism. **No objective, peer reviewed study ever conducted has found a significant negative economic impact associated with smoke-free legislation**.[38] Research has compared the quality and funding sources of 97 studies concluding either a negative effect, no effect, or positive effect of smoke-free legislation on the hospitality industry. The best designed most rigorous studies consistently report no impact or a positive impact of smoke-free restaurant and bar laws on sales and employment. **It is noteworthy that all the studies concluding a negative impact have been funded by the tobacco industry**.[39] **The reliable evidence, which measures hard numbers from independent sources, remains clear.** Legislation on smoke-free enclosed public places does not harm the economy, but improves health both by cutting smoking rates and by reducing people's exposure to SHS.

b. Additional resources for smoking cessation services

In Scotland, smoking cessation services are delivered through 15 regional NHS Health Boards. Record levels of funding were made available to these Boards to assist in meeting the additional demand placed on smoking cessation services as a result of the smoke-free public places legislation. In 2004/05 £3m was available for smoking cessation and £7m in 2005/06. The additional money brought the total spend on smoking cessation to £9 million in 2006/07, and to £11million in 2007/08. Guidance on the additional funding was also issued to Health Boards instructing them to find new and innovative approaches of engaging with smokers. A Scottish Ministerial Working Group on Tobacco Control was asked to advise Ministers on how this additional funding should be targeted and invested by NHS Boards to support local delivery of national tobacco control policies. ASH Scotland recommends that additional resources be allocated to evidence-based smoking cessation services, to address the likely increase in demand from people related to the proposal to ban smoking in public places across the EU.

A number of NHS smoking cessation services in Scotland reported a rise in the number of people registering with the service in the month leading up to the smoke-free law being introduced in Scotland. For example, inquiries to the NHS Grampian workplace smoking cessation programme increased by 50% compared with 2005 and there was a 32% increased in the actual delivery of services in the first quarter of 2006.[40] NHS Borders cessation services saw a sharp rise in the number of people trying to stop smoking in the run up to the ban in Scotland. 1500 people sought help between January and March 2006, compared with 2000 for the whole of the previous 12 months.[41] In July 2006 cessation services in Fife reported that the number of quitters had doubled since the smoke-free legislation was introduced in March.[42]

c. Potential for increased noise and litter as a consequence of smoke-free legislation

There has been an overwhelmingly positive reception throughout Scotland to the smoke-free legislation. People have accepted it and welcomed it. In the overall

context negative reports have been very few. Scotland's city authorities have reported an increase in noise levels outside pubs and bars, and an increase in the amount of litter created by smokers throwing cigarette butts on the street outside pubs.[43] [44] [45] With advance preparation and public communication, it should be possible to forestall and minimise such adverse effects.

Question 4: Do you have any other comments or suggestions on the Green Paper?

a. Evaluation

Legislation on smoke-free public places and workplaces has the potential to have a major impact on public health. ASH Scotland agrees that in order to scientifically assess potential impacts across a range of key outcome areas, smoke-free legislation should be equipped with a transparent monitoring regime. Committing to review and evaluate smoke-free legislation is extremely valuable to assist in refining and improving on the effectiveness of the legislation once implemented. It would also contribute significantly to an enhanced international understanding of the impacts of smoke-free legislation.

In Scotland, Health Scotland, in conjunction with the Information Services Division (ISD) Scotland and the Scottish Executive, have developed a comprehensive evaluation strategy to assess the expected short-term, intermediate and long-term outcomes of Scotland's ban on smoking in public places.[46] Using routine health, behavioural and economic data and commissioned research, seven research teams, comprising more than fifty researchers, are assessing the impact of the smoke-free legislation in eight key outcome areas:

1. Knowledge and attitudes
2. SHS exposure
3. Compliance
4. Cultural change
5. Smoking prevalence
6. Tobacco-related morbidity and mortality
7. Economic impacts
8. Health Inequalities

An international conference is being held in Edinburgh on the 10-11 September 2007, which will bring together researchers, policy makers and practitioners. The overall purpose of this event is to present the findings of the Scottish evaluation, to present additional research evidence on the impacts of smoke-free legislation in Europe and elsewhere. The conference also aims to mobilise further effective action on smoke-free legislation. Further information is available from: www.smokefreeconference07.com

b. Enforcement

ASH Scotland agrees with the statement on page 16 of the Green Paper, that any regulatory instrument should be equipped with a viable means of enforcement.

Opponents of smoke-free laws have proclaimed that difficulties with enforcement and implementation make such laws unworkable. However, data from places including the Republic of Ireland,[47] [48] New York,[49] [50] New Zealand, [12] [51] Norway[52] and Scotland[53] demonstrate high levels of compliance with smoke-free laws.

To ensure compliance, provision for enforcement must be in place which will identify what the offences are, who enforcement action may be taken against and who the legislation will be enforced by. This legislative provision should be adequately resourced, to ensure the effectiveness of any controls. In Scotland, local authorities were allocated an additional £6 million spread over 3 years to enforce the smoking ban and enable councils to recruit extra environmental health officers and fund environmental health resources. Each local authority was able to decide how best to use the funding.[54]

c. Publicity and awareness raising in advance of implementation

ASH Scotland agrees with the statement on page 16 of the Green Paper, that the introduction of regulatory measures, either at EU or at national/sub-national level, should also be accompanied by prior public consultations and information campaigns as well as an impact assessment.

Comprehensive education and health promotion activities would be essential to ensure that the public understand the serious health risks which exposure to SHS poses, In addition, Governments would have to apply compliance and enforcement procedures to reinforce this. While international evidence does show that smoke free regulations are generally welcomed and well observed, this should not be taken for granted. A key element to successful compliance is raising public awareness of forthcoming changes to the law, and raising awareness of the health hazards associated with exposure to SHS. In Scotland, a comprehensive consultation process, and a comprehensive publicity and awareness raising programme were vital in winning hearts and minds ahead of implementation, and in communicating the health messages and reasons for introducing legislation. From Scotland's experience we would recommend publicity and awareness raising initiatives should focus on the substance, SHS, rather than on smokers; and they should give a clear health message.

ASH Scotland fully supports the Commission's conclusion that comprehensive legislation would bring the biggest benefit to the public health of the population**.** Comprehensive smoke-free legislation is the only way in which to fully protect individuals from harmful exposure to a known class 'A' carcinogen. **We urge the Commission to propose a total ban on smoking in all enclosed and substantially enclosed workplaces and public places, with very limited exemptions based on humanitarian grounds. This is the next and most important measure that can be taken to improve the health of people across the Members States**.

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