

# **Scottish Trades Union Congress**

## **Response to Scottish Executive Consultation**

### **Smoking in Public Places – Reducing Exposure to Second Hand Tobacco Smoke.**

#### **Introduction**

The Scottish Trades Union Congress is Scotland's Trade Union Centre. Our purpose is to co-ordinate, develop and articulate the views and policies of the trade union movement in Scotland.

The STUC represents some 630,000 trade union members in Scotland, the members of over 40 affiliated organisations. We speak for trade union members in and out of work, in the workplace and in the community, as workers and as citizens. Our affiliated trade unions have members in every sector of the economy and across a broad range of occupations.

Our affiliated organisations represent workers employed in many of the workplaces covered by this consultation, including the tobacco industry. We welcome the opportunity to respond to the consultation and our response is as follows.

#### **STUC Comments on Smoking in Public Places Consultation**

The view of the STUC is that all workers have the right to be protected from injury or illness as a result of their employment while recognizing the necessity to provide secure employment to workers in all industrial sectors.

The STUC and our affiliated organisations acknowledge the growing evidence base that indicates that exposure to environmental tobacco smoke has serious and long-term effects on the health of individual trade union members. We note from our affiliated organisation, Unison that the USA Environmental Protection Agency took steps to declare environmental tobacco smoke a Class A carcinogen. While we are aware that it falls to Westminster to take such action, preventing exposure by taking

similar action would be the most effective way of protecting workers.

Whilst we recognise that the issue of passive smoking poses a significant problem to those employed in the hospitality industry, polls tend to suggest that the public are less keen on a ban covering pubs and clubs while accepting the rationale behind imposing restrictions in hospitals, shopping centres, restaurants, cafes and railway stations. This would tend to suggest that, culturally, the Scottish public would find it more difficult to support a ban on smoking in areas seen as synonymous with relaxation and socializing, perhaps without being fully aware of the dangers to those employed in this sector. However, hospitality staff, who are members of the T&G union, voted in June 2004 for an outright ban on smoking in bars, pubs, clubs and restaurants amid mounting concerns of the failure of existing legislation to protect workers and the public from the impacts of passive smoking.

Therefore, the STUC and our affiliated organisations believe that action does need to be taken to protect workers from the risk of passive smoking. Although we feel that full consideration has to be given to the economic impact a total ban is likely to have in the workplaces outlined in this consultation. It is also clear that there would be a benefit to health services in reduced costs of treating smoking related ill-health although the exact figure would be hard to measure.

In principle, the STUC would support a ban of smoking in enclosed public places if such a ban were manageable and enforceable. There is little indication in this document as to who will have responsibility for enforcing any potential legislation. If the example in Ireland is followed with the responsibility falling to local authority enforcement officers, there will clearly be budgetary and resource implications on these departments. Failure to provide funding to increase the amount of enforcement officials may have an impact on the effectiveness of the legislation or on already stretched local authority health and safety enforcement.

From the consultation it is our assumption that local authorities will assume responsibility for enforcement although we would wish to see the position clarified. We would also view that any ban has to cover all local authorities and consistency of application of any likely legislation would have to be monitored, ensuring a ban is

equally applied throughout Scotland. Therefore we would not see it appropriate to give powers to local authorities to regulate smoking in their areas on a piecemeal basis.

It is also unclear on who will be held responsible within a workplace for complying with potential legislation. For example, would a young worker in a restaurant face a penalty or prosecution for failing to prevent a customer from smoking. We would also have concerns regarding the possibility of increased verbal or physical assaults on workers attempting to impose the ban. Clearly, such attacks would not attract the welcomed increased penalties proposed in the Emergency Workers Bill.

We are also unclear as to the level of penalties any breaches of this legislation will attract and how breaches will be prosecuted. It is clear from the levels of self compliance in Ireland, currently at 97%, that the threat of realistic penalties does ensure adherence to the legislation by both those deemed to be duty holders and, in this instance the users of the defined public places. The STUC remain concerned that existing penalties for health and safety legislation imposed by Scottish Courts are inadequate to be deterrents for those who wish to flout legislation and inconsequential penalties may in all likelihood render this legislation ineffective.

The STUC is aware of the concerns of those within the license trade may have on their businesses and those in employment in the hospitality industry. While it is clear that the current voluntary charter has had limited impact and there is anecdotal evidence from Ireland, even at this early stage that smaller establishments, especially in rural areas are witnessing reduced levels of turnover.

It has also been suggested that the ban in Ireland may not be reducing the amount of population actually smoking and is merely making those who wish to smoke do so, either outside or in domestic properties. This would tend to suggest that while the ban is having a positive impact on protecting workers there is, at this early stage, nothing to suggest that it encourages individuals not to smoke. This experience appears to be in contradiction to the evidence from New York where trade and employment appears to have increased following an intense campaign and strategic approach to implementing a ban. The STUC should consider such

a strategy based on the experiences, successful or otherwise, from other countries.

There is no evidence to suggest that a ban imposed on Scotland would have a positive or negative economic effect on businesses subject to restrictions. We would therefore wish to see an impact assessment on proposals for a complete ban outlining the implications for workers in the hospitality and other sectors covered by this consultation.

We would also wish to see such an assessment giving full consideration as to the effect that imposing a ban would have on workers in the tobacco industry. Anecdotal evidence from Ireland suggest that tobacco sales have reduced by at least 7%, although this contradicts earlier evidence that actual levels of smoking have not been affected.

It may be that the Scottish Executive, prior to the introduction of any legislation, may wish to consider making exemptions to certain workplaces perhaps, for example on the basis of floor area and during any transitional period. Such exemptions could be given if owners of those establishments could provide satisfactory evidence that all precautions are taken, including fitting the best possible ventilation, agreed smoking policies, smoke free areas where staff are working and efforts are made to encourage staff and customers to access smoking cessation initiatives.

The STUC see that a complete ban, properly managed, is the most effective method to reduce exposure to passive smoking. However, in the absence of such a ban, increased effort would be required to ensure that duty holders fully endorse and implement any future improved voluntary charter, working in partnership with trade unions, health improvement bodies and the Executive to ensure that workers are protected from environmental tobacco smoke.

It is clear that the current voluntary approach to restrict tobacco smoke in workplaces and public places has failed to deliver significant protection from environmental tobacco smoke. An audit demonstrated that after three years, seven in ten Scottish pubs have no restrictions on smoking. Further, only 18% of public places are currently smoke free, although 70% of the public does not smoke. Any new voluntary charter would need to be much

more effective at placing a duty on stakeholders to restrict smoking within public places.

## **Conclusion**

In summary the STUC would support a total ban introduced following a realistic lead-in period. There is also an argument to extend this period for smaller businesses that may struggle to meet any proposals. This could be supported by a business case for such an extension, based on guidelines issued by the eventual enforcement body following consultation with all stakeholders.

The STUC would wish to see clarification on the definition of public places covered by the proposed legislation. The consultation refers to any ban covering transport and workplaces in addition to closed public places. We would wish to see a more precise definition of exactly what constitutes an enclosed public place with regard to any Scottish Executive proposals.

The STUC notes that the appropriate legislation in Ireland was introduced under employment law. If the protection of public service workers is the primary reason for considering a ban then it may be that a nationwide workplace ban should have been considered, working with Westminster to ensure all workers are protected from passive smoking.

We are also concerned that if this is introduced as a piece of public health legislation these proposals would require increased enforcement activity. Current levels of enforcement of health and safety legislation by local authorities are constrained by lack of resources. We would be concerned that further pressure to enforce this new legislation would be at the expense of current local authority health and safety enforcement activity, as witnessed in the example of the Food Standards Agency.

The STUC would also support further smoking cessation initiatives by the Executive with immediate and particular emphasis on the workplaces most likely to be affected. This should involve trade unions, trade associations and existing health improvement bodies.

