

**Scottish Executive Consultation:
Smoking in Public Places**

Response Form

22 September 2004

1. Having considered the health risks associated with passive smoking, do you think that further action needs to be taken to reduce people's exposure to second-hand smoke?

Yes

No

Don't Know

The Council implements a wide range of health-improving activities and Edinburgh's Joint Health Improvement Plan highlights the need for further action in relation to smoking issues.

2. Would you support a law that would make enclosed public places smoke-free? (Public places include workplaces and public transport)

Yes

No

Don't Know

The City of Edinburgh Council would support legislation in this area. An opportunity to comment on draft legislation and definitions would be welcomed. Successful implementation would depend, in part, on clear definitions of public places. Particular difficulties are anticipated in relation to the definition of a semi-enclosed public space. For example, would bus shelters be included as a semi-enclosed space?

There is evidence of a gap between the claims that the voluntary code in some areas has been successfully implemented, and the data provided by surveys carried out by environmental health officers (Birmingham City Council (2002) and Leeds City Council (2002)). Legislation would be the most effective means of minimising risks from passive smoking in public places.

Legislation should be Scotland-wide as a minimum to encourage clarity and ease of implementation. The provision of additional support for those who wish to cease smoking alongside the introduction of legislation would be welcomed.

Consideration should be given to enforcement of any legislation. It is proposed that this should fall to local authorities, and could be absorbed into work that is already carried out in relation to Environmental Health - for example, health and safety at work and food hygiene inspections, advising businesses and responding to complaints from the public. This additional statutory burden would require appropriate resourcing.

Although there is an expectation that legislation will be complied with, in the Council's experience clear legal sanctions should be in place and enforced where necessary. It is suggested that a duty be placed on the person or organisation in charge of premises to ensure compliance with the legislation, with offences being reported to the Procurator Fiscal, and individuals smoking in a prohibited area receiving an appropriate fixed penalty.

The Council recognises that a health and safety enforcement role is also carried out by the Health and Safety Executive (HSE) and that health and safety at work legislation is

reserved to Westminster. The Council would welcome the inclusion of 'workplaces' in any smoking prohibition but can foresee practical enforcement difficulties at premises where the HSE deals with general health and safety issues but the local authority deals with workplace smoking only. The Council would welcome clarification on this issue.

3. If a law was introduced, do you think there should be any exemptions to it? (i.e. any enclosed public places where smoking should be allowed)

Yes

No

Don't Know

There are a number of situations where local authorities act as both an employer and service provider which can cause difficulties in relation to smoking. The difficulties are caused by the conflict, as an employer, of enforcing 'no smoking at work' policies and the duty to take reasonable care, in areas where services are provided in places that should be considered as a home environment. Examples include residential homes, hostels and individual's homes where services are provided. Clearly, none of these should be considered public places, even though public services are provided.

Another example is provided by Social Work Day Centres, most of which operate a no smoking policy, but allow clients to smoke. Exemptions in these cases should be considered to provide flexibility in situations that are seen to be appropriate, and where very real operational difficulties could arise if the law is strictly enforced.

In public facilities where significant trading organisations operate, a 'no smoking' policy is adhered to. In relation to the hire of Council premises any organisation or person granted use of Council premises for meetings or events is informed that as part of the let, they will be required to conform to arrangements which seek to protect non-smokers from environmental tobacco smoke where practicable. The introduction of legislation would be welcomed as a way to resolve these issues.

4. If we decide not to introduce a law, what more could be done to encourage individual businesses to take voluntary action to become smoke-free or to provide more smoke-free provision?

Considerable national resources have already been used to promote non-smoking and encourage the cessation of smoking. In addition, at a local level, Council-led initiatives to encourage limitation of smoking include the pioneering implementation of Children's Certificates for licensed premises. The certificates include the condition that smoking would not be permitted in areas covered by the certificate during its hours of operation, and is seen as successful because of the perceived commercial benefit. Since the introduction in 1990, take up of these certificates has increased from 5 in 1994 to 62 at present.

Although difficult to evaluate, it is felt that voluntary actions have been taken as far as effectively possible, and that further progress would depend on legislation. Consideration has been given to the efficacy of ventilation systems. However, maintenance issues raise concerns about their long-term effectiveness and, on balance, ventilation systems are viewed as having limited impact.

The current situation in relation to smoking is seen as similar to that before the introduction of legislation on the wearing of seat belts in cars, where the introduction of legislation ended the public debate and established a new status of compliance.

5. What else could we do to reduce people's exposure to second-hand smoke?

Legislation is now seen as the most effective way of reducing people's exposure to second-hand smoke.

6. Please let us know about any other views you have about smoking in public places

It is felt that great emphasis should be placed on encouraging young people not to start smoking. This is backed by the Council with the following measures:

- Trading Standards officers have been involved in the Lord Advocate's tobacco test purchasing pilot and they are also leading a cross-border DTI funded initiative dealing with the problem of under age sales for the full range of age restricted products, including tobacco.
- Extending opportunities to promote good health and well-being and address health inequalities reflecting National Priorities for Values and Citizenship and Learning for Life (Education Service Improvement Plan Update 2003-2007). This issue will be addressed in the Department's Health Strategy to be launched on 1 October 2004.

RESPONDEE INFORMATION FORM

Please complete the details below and attach it with your response. This will help ensure we handle your response appropriately:

1. **Name:** The City of Edinburgh Council
Address: City Chambers, High Street, Edinburgh EH1 1 YJ

Consultation title: Smoking in Public Places

2. **IF YOU ARE RESPONDING ON BEHALF OF A GROUP OR ORGANISATION:**
Your name and address as respondees *will* be made available to the public (in the SE library and/or on SE website). Are you content for your response to be made available also?

Yes

No