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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.

The TMA is the trade association for tobacco companies that operate in the UK. Its three member companies are British American Tobacco UK Ltd, Gallaher Ltd (a member of the Japan Tobacco International group) and Imperial Tobacco Ltd.

Question 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?

The TMA believes that there is scope for engagement with smokers to discourage smoking in cars with children present and reducing this rate out of consideration for others. There is, however, no evidence that this is an issue that demands legislation into private space, including private vehicles; legislation that would deliver no real health benefit and be almost impossible to properly enforce.

Firstly, there is no evidence to suggest that smoking in cars with children is a major problem.

The number of people who smoke in their car with children present is significantly smaller than referenced within the consultation. A panel of 1000 adult (18+) smokers polled by Holden Pearmain in 2011 for the TMA revealed that fewer than 10% of adult smokers in the UK said they would smoke in their cars if children were present. The evidence of the true scale of the problem is further reinforced by recent research from New Zealand¹, where a roadside study of 149,886 vehicles found just 0.13% of the occupants smoked with children

¹ <http://journal.nzma.org.uk/nz/journal/125-1358/5272/> | (8) The Observer, 14 May 2007, Pages 1, 3 'Call to ban smoking while driving' Juliette Jowitt | (9) ABD press release 20th May 2007

present. The consultation also suggests that studies showed that 35% to 51%² of children are exposed to second hand smoke in a vehicle; however it doesn't state if that was a single occurrence before the age of 16 or a more frequent occurrence.

This is a disproportionate response to relatively rare problem.

Secondly, even if more parents were smoking in cars with children present, the consultation itself acknowledges that the impact of this is difficult to quantify.

The consultation assumes that because cars are confined and enclosed spaces, levels of 'second-hand smoke' (or Environmental Tobacco Smoke – ETS) are higher and more hazardous than they would be in other environments. However as stated on page 20, the consultation document refers to the difficulty in quantifying this impact:

'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.'

ETS is a mixture of exhaled mainstream smoke and side-stream smoke released from a smouldering cigarette and diluted with ambient air. It is not the same as smoke inhaled by a smoker. Therefore, the TMA supports the view within the consultation that ETS exposure in cars is difficult to quantify because two major factors vary from journey to journey; the level of ventilation, both that provided by a particular car and the additional ventilation from open car windows and sunroofs, and the period and intensity of exposure which will vary according to the length of the journey and the number of cigarettes smoked. Indeed, figures quoted by the British Medical Association (BMA) in 2011 on levels of ETS exposure in cars had to be revised down three times in as many days³ following a media outcry over their accuracy⁴.

Finally, the TMA believes that banning smoking in a vehicle with a child present could be effectively unenforceable. Unlike smoking bans at work or in indoor public places, which are enforced by the owner of the premises, a smoking ban in cars would have to be enforced by the police increasing their workload at a time of resource constraint. Concerns have been raised about a ban on smoking in cars by the RAC, the Association of British Drivers, and the Police:

"It is quite obvious that a ban on smoking in cars would be almost unenforceable and yet the responsibility to do so would rest with the police service. This will just add more pressure to an already overstretched resource."

Malcolm Campbell QPM, Former Commander, Metropolitan Police.

² http://www.scottish.parliament.uk/S4_MembersBills/Smoking_in_cars_consultation_S4.pdf

³ A BMA press statement 16th November 2011; b BMA correction 17th November 2011; c 18th November 29011 APPG Smoking & Health correspondence to Andrew Lansley MP, Secretary of State for Health

⁴ blogs.telegraph.co.uk/news/brendanoneill2/100118383/the-bma-admits-it-was-wrong-about-smoking-in-cars-yet-it-is-still-making-dubious-claims/ <http://www.dailymail.co.uk/news/article-2062498/Nanny-state-anger-ban-smoking-cars.html> <http://thesundaytimes.co.uk/sto/comment/columns/rodliddle/article825403.ece>

Question 11

Do you have any other comments on or suggestions relevant to the proposal?

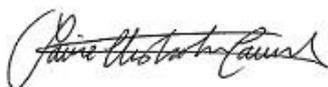
The TMA realises that ETS exposure in cars is difficult to quantify and believes that proposed legislation could be effectively unenforceable. The TMA believe legislation to ban smoking in cars with children would be completely ineffective and not achieve the aim of reducing the exposure of children to smoking in cars.

As an alternative to legislation the TMA believe that education and awareness programmes such as the Welsh Assembly Government's 'Fresh Start' campaign or the NHS 'Take Seven Steps' campaign, which aim to reduce smoking in the proximity of children, are likely to be more effective drivers of behavioural change than unnecessary and burdensome legislation.

The TMA would also like these initiatives to be supported by encouraging children, through the personal, social, health and economic (PSHE) education material on tobacco, to discuss smoking issues with their parents and make their views known.

Smoking is a legal activity and, as long as the car is not a work vehicle, it is private property. The implications of criminalising a legal activity on private property are significant, and legislative bans are likely to amount to an unjustified and disproportionate interference with fundamental rights, including the right to respect for private and family life, by national (the Human Rights Act 1998) and international law (including Articles 7 and 8 of the European Convention on Human Rights).

Yours sincerely



Jaine Chisholm Caunt
Secretary General