

The TMA Response to the Department of Health's Consultation on Proposed Regulations for Smoking in Vehicles Carrying Children.

21 August 2014

Introduction:

The Tobacco Manufacturers' Association (TMA) is the trade association for tobacco companies that operate in the UK. It is funded by its three member companies: British American Tobacco UK Ltd, Gallaher Ltd (a member of the Japan Tobacco International group) and Imperial Tobacco Ltd.

<http://www.the-tma.org.uk/>

The TMA understands that these companies and/or their related entities will be responding to the consultation in their own right.

The TMA supports effective, evidence based tobacco control measures. For example, we called for a ban on proxy purchasing of cigarettes and tobacco products for under-18s in England and Wales (in relation to which powers to introduce regulations have been introduced by the Children and Families Act 2014) and support further utilisation of powers to confiscate tobacco from young people by police and police community support officers under the Children and Young Person Act 1933. We also support a range of youth access prevention measures including CitizenCard¹ – the UK's leading proof-of-age card and the 'No ID No Sale'² campaign.

Smoking in (private) vehicles

For the avoidance of doubt, the TMA believes that adults should not smoke in front of young children, either in the car or in any other enclosed space. However, we do not believe that regulation is the appropriate course of action to prevent this behaviour.

It is already against the law for an adult driver to smoke in their car or van, even if they are alone, where the car or van is a work vehicle³. Existing legislation⁴ also provides for smoking to be prosecuted, alongside other behaviours such as eating and drinking, if it creates a dangerous distraction for the driver⁵. Drivers and passengers who choose to smoke in their vehicles should

¹ www.citizencard.com

² www.noidnosale.com

³ The Smoke-free (Exemptions and Vehicles) Regulations 2007

⁴ Rule 126 Highway Code, updated 2007

⁵ There are, in fact, no statistics of any road traffic casualties caused by smoking whilst driving – Department for Transport Reported Road Casualties in Great Britain 2011 annual report.

therefore do so in full knowledge of the well-publicised health risks of smoking, with courtesy for those around them, and with respect for the law.

It is important to recognise that there is no scientific definition of 'fresh air'. There are many sources of airborne fine particulate matter, other than from proximity to a cigarette; sources such as diesel fumes and car tyre particles mean that the air quality outside a car, particularly in urban areas, may itself pose health risks.

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. 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 days⁶ following questions in the media over their accuracy⁷.

Parents who smoke should reflect on and consider changing their own smoking behaviour if they wish to avoid exposing their children to ETS. However the number of people who smoke in their car with children present is significantly smaller than the level of media attention and the consultation would suggest. For example, a panel of 1000 adult smokers polled by Mitchla Marketing/SSI in August 2014 for the TMA revealed that around 1% of smokers had smoked frequently⁸ (once a month or more) in front of a child in a vehicle over the past year. The evidence of the true scale of the problem is further reinforced by research from New Zealand⁹, where a roadside study of 149,886 vehicles found just 0.13% of the occupants smoked with children present.

A study by the UCD School of Public Health, published in the Irish Medical Journal, also found a very low prevalence of smoking in cars carrying children. Researchers observed 2,230 drivers in Dublin. Eight adult passengers and just one child were seen to be exposed to a smoking adult driver. The overall prevalence of smoking was just 1.39%. This area therefore presents a weak case for legislative action, especially given the high costs of enforcement it would incur.

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. It should also be noted that concerns have been raised about a ban on smoking in cars by the RAC¹⁰ and the Association of British Drivers¹¹.

⁶ 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

⁷ blogs.telegraph.co.uk/news/brendanoneill/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>
thesundaytimes.co.uk/sto/comment/columns/rodiddle/article825403.ece

⁸ When asked "Over the last 12 months have you smoked in a car with a child present?" of the 1033 adult smokers polled, 85% had not smoked in a car with a child present, compared to 1% who had smoked frequently (once a month or more), 3% who had smoked occasionally (once a month) and 10% who had smoked once or twice. (See appendix)

⁹ Patel V, Thomson G, Wilson N. Objective measurement of area differences in 'private' smoking behaviour: observing smoking in vehicles (December 2011)

¹⁰ The Observer, 14 May 2007, Pages 1, 3 'Call to ban smoking while driving' Juliette Jowitt

¹¹ ABD press release 20th May 2007

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.

Whatever one's views on smoking, it 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).

There is no justification for banning smoking in cars, and any such law is likely to be unenforceable. For public health campaigns to be successful in effecting a change in smoking behaviour they need to involve smokers rather than ostracizing them through prohibitionist policies.

There are alternatives to regulation and whilst the consultation is inviting comments only on the draft regulations we believe the government would be better placed investing time and resource in raising awareness with the small minority of smokers through public education campaigns. It should be noted that the TMA is happy to work with Government on education based campaigns to this end. The Government could also seek to encourage 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.

TMA response to the consultation questions

- 1. The regulations make it an offence to smoke in an enclosed private vehicle when there is more than one person present and a person under the age of 18 is present. This offence would fall on the person smoking regardless of their age. Do you have any comments on this approach?**

Section 2 (1) of the draft Regulations on Page 14 of the Consultation document states:

"Subject to the following paragraphs of this regulation, a private vehicle or any part of a private vehicle shall be smoke-free if—

- (a) it is enclosed,
- (b) there is more than one person present in the vehicle, and
- (c) a person under the age of 18 is present in the vehicle."

The Consultation document states "The only situation that is excluded is where the driver is under the age of 18, is the only person in the car and is smoking. In that situation, the vehicle would not meet the conditions to be smokefree under the proposed regulations, because there would not be more than one person in the vehicle".

This appears to imply that a licensed 17 year old, who is driving a vehicle and choosing to smoke, would be committing an offence should a person aged 18 or over be in and/or enters the vehicle. The driver who is smoking would be committing the offence, but as the additional passenger/s are not under 18, it is unclear why an offence has been committed.

2. Do you have any comments regarding the proposal for the new offences to apply to caravans and motor caravans when they are being used as vehicles but not when they are being used as homes?

The TMA does not believe these Regulations are necessary or appropriate and therefore does not wish to comment on specific provisions.

3. Do you have any comments about the intentions regarding the enforcement of the proposed regulations?

4. Do you want to draw to our attention to any issues on the practicalities of implementing the regulations as drafted?

A smoking ban in private vehicles would have to be enforced by the police increasing their workload at a time when resources are subject to considerable challenges. As set out earlier, the draft regulations contain the type of anomalies that the police would be left to contend with. The enforcement of the regulations would be complicated further by the obvious difficulties in trying to identify those smoking with a small child present, particularly a moving vehicle, from a distance or in traffic. This would be further complicated by other factors such as the growth in the use of electronic cigarettes, which are not governed by smokefree laws, but may appear to the naked eye as a lit cigarette when seen in a vehicle.

It should be noted that over 70% of smokers polled in August 2014¹² felt that a ban on smoking in private vehicles would be either difficult or impossible to enforce.

In summary, if the police are to properly enforce these proposed Regulations then it may lead to a considerable increase in unnecessary stops and checks, taking them away from other duties.

The consultation makes reference to exemptions for a “convertible car with the roof completely down.” However, this requires further clarification in the regulations as some convertible cars may have different designs which could include enhanced safety structures such as roll-over bars.

5. Do you have any additional evidence that banning smoking in private vehicles when children are present would contribute to reducing health inequalities and/or help us fulfil our duties under the Equality Act 2010?

As the regulations are seemingly unenforceable then it is unclear how it will lead to a change in adult smoking behaviour that would in turn reduce health inequalities. Rather than impose an unenforceable law, the Government should invest in education of the small minority of smokers who

¹² TMA commissioned survey of 1,000 adult smokers by Mitchla Marketing/SSI in August 2014 (see appendix)

choose to smoke with children in a private vehicle. The consultation acknowledges that DH social marketing campaigns have achieved “success in changing both attitudes and behaviour” therefore resources would be better placed here.

6. Do you have any evidence that would inform the consultation-stage impact assessment including any evidence or information which would improve any of the assumptions or estimates we have made in the consultation-stage impact assessment?

The impact assessment and consultation make reference to “many children in England report being exposed to secondhand smoke in private vehicles”. The evidence from TMA commissioned surveys of adult smokers in 2010¹³, 2011¹⁴ and 2014 have consistently shown that less than 10% of adult smokers would smoke in a car with a child present, and when questioned further in the 2014 survey, it revealed that only 1% of adult smokers, admitted to smoking frequently (more than once a month) in a car with a child present. The surveys also suggest that in-car smoking behaviour is changing, as adults choose to smoke less frequently in their vehicle, particularly in front of other adults and children.

Conclusion

There is no justification for banning smoking in private vehicles with children present, and any such law is likely to be unenforceable. To reiterate what was said before, for public health campaigns to be successful in effecting a change in smoking behaviour they need to engage with the small minority of smokers who do smoke in a vehicle when children are present, rather than stigmatising them through prohibitionist policies.

Yours sincerely



Giles Roca
Director General

¹³ TMA commissioned survey of 1,000 adult smokers conducted by Holden Pearmain in May 2010

¹⁴ TMA commissioned survey of 1,000 adult smokers conducted by Holden Pearmain in July 2011

Appendix

**TMA commissioned online poll of 1,033 adult (18+) smokers conducted by Mitchla Marketing/SSI
(Fieldwork carried out in August 2014)**

Base: 1033 All interviews No weighting	Total	
QA1. How often do you smoke in the car / the vehicle you use?		
I smoke in the car / vehicle I use every time I use it	221	21%
I smoke in the car / vehicle I use from time to time	318	31%
I never smoke in the car	469	45%
Don't know	25	2%
Total	1033	100%

Base: 564 Exclude Never smoke in the car No weighting	Total	
QA2. If there were non-smoking ADULTS in the car/ vehicle you use, would you:		
Smoke as normal?	136	24%
Ask if you could smoke before doing so?	187	33%
Not smoke at all because there are other people present?	228	40%
Don't know	13	2%
Total	564	100%

136 smokers represents 13.2% of the 1033 adult smokers

Base: 564 Exclude Never smoke in the car No weighting	Total	
QA3. If there were CHILDREN in the car/ vehicle you use, would you:		
Smoke as normal?	68	12%
Ask if you could smoke before doing so?	48	9%
Not smoke at all because there are children present?	434	77%
Don't know	14	2%
Total	564	100%

68 smokers represents 6.6% of the 1033 adult smokers

Base: 1033 All interviews No weighting	Total	
QA4. If smoking in vehicles was banned, how easy do you think it would be to enforce?		
Very easy	122	12%
Quite easy	146	14%
Quite difficult	275	27%
Very difficult	241	23%
Impossible	223	22%
Don't Know	26	3%
Total	1033	100%

Base: 1033 All interviews No weighting	Total	
QA5. Over the last 12 months have you smoked in a car with a child present?		
No	877	85%
Yes, once or twice	100	10%
Yes, occasionally (once a month)	33	3%
Yes, frequently	15	1%
Don't know	8	1%
Total	1033	100%