

Briefing on the smokefree part of the Health Bill 3rd Reading and Report Stage, Tuesday 14th February 2006

Why we are urging you to vote to remove exemptions for all pubs and private members' clubs...

- 1. Secondhand smoke kills**
- 2. Private members' clubs are workplaces too**
- 3. Exempting pubs and clubs will exacerbate health inequalities**
- 4. Exemptions will discriminate against workers and may lead to legal challenges**
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- 6. Smokefree legislation helps reduce smoking prevalence and doesn't increase smoking in the home**
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1. Secondhand smoke kills

- Secondhand smoke has been classified as a 'class A' substance (i.e. a 'known human carcinogen') by the US Environmental Protection Agency. Other Class A carcinogens include asbestos, arsenic, benzene and radon gas.
- In total around 50 international studies of secondhand smoke and lung cancer risk in never-smokers have been published over the past 25 years.
- Most recently in 2004, the World Health Organisation's International Agency for Research on Cancer (IARC) reviewed the literature and concluded that secondhand smoke is cancer-causing and that non-smokers living with smokers increase their lung cancer risk by approximately 20% for women and 30% for men. For non-smokers exposed in the workplace, the risk of lung cancer is increased by 16-19 per cent.²
- The Government's own advisory committee on the effects of smoking, the Scientific Committee on Tobacco and Health (SCOTH) concluded that there is an increased risk of lung cancer for non-smokers of about 24 per cent.³
- Professor Konrad Jamrozik of the University of Queensland estimated in a paper published in the British Medical Journal⁴ that exposure to secondhand smoke in the workplace causes 54 premature deaths each year among hospitality industry employees – or more than one a week - more than 600 deaths each year across the UK. This is more than three times the number killed each year in industrial injuries and accidents.

2. Private members' clubs are workplaces too

- There are over 20,000 licensed members' clubs⁵ in England covering a wide range of interests from sport and recreational clubs to political or working men's clubs.
- Government proposals to allow exemptions for private members' clubs are unworkable and unjust for all the same reasons as exemptions for pubs.
- Once the health and safety case and public health benefits are accepted it is not possible to allow for a compromise for private members' clubs. Their staff should be protected too.
- It is unacceptable that members of clubs should have the right to vote to damage the health of their staff. Children are often present in such clubs, and are at particular risk from secondhand smoke.

3. Exempting pubs and clubs will exacerbate health inequalities

- Smoking prevalence rates are substantially higher in poorer communities; this is the biggest single contributing factor to differences in life expectancy between social classes.⁶
- Exemptions for pubs and private members' clubs would exacerbate health inequalities because those on lowest incomes would be most likely to remain exposed to secondhand smoke in pubs and clubs, and because the exemptions would make low-income smokers less likely to quit.
- A survey of 1252 public houses and bars across England showed that 29 per cent of pubs and bars do not serve food and would currently be exempted from the legislation as written and that this percentage could increase from 29 per cent to 40 per cent if the exemptions were to remain.
- It also confirmed fears that a partial ban would widen the health gap between rich and poor. Using standard classifications of deprivation by postcode, the survey found that 45 per cent of pubs and bars in class 5 (the lowest quintile) would be exempt, compared to 14 per cent of pubs in class 1 (the highest).⁷

4. Exemptions will discriminate against workers and may lead to legal challenges

- Any attempt to exempt a category of workplaces from smokefree legislation would be subject to legal challenge.
- The date of "guilty knowledge" under the Health and Safety at Work Act 1974 (HSWA) has now clearly passed in relation to secondhand smoke. Therefore, employees made ill by such exposure in the workplace will have a case for damages against their employer, claiming negligence and citing a breach of the HSWA as evidence. This would remain possible in respect of any premises exempted from a general prohibition on smoking under the Health Bill.
- The Joint Commons and Lords Committee on Human Rights reported in January 2006 that exemptions from smokefree legislation for non-food pubs and clubs would breach human rights legislation⁸.

5. Ventilation doesn't work

- Bar staff spend considerable amounts of their time away from the bar area in pubs. Smoke drifts and there is no recognised safe level of exposure to secondhand smoke.
- Ventilation systems may remove the smell of smoke but cannot effectively remove the harmful chemicals that it contains. Levels of air flow equivalent to those produced by tornados⁹ and wind tunnels¹⁰ would be needed for ventilation systems to effectively remove smoke.
- Systems can cost tens of thousands of pounds to install and are difficult and costly to maintain. This can be a particular burden for (non profit-making) private members' clubs. Reports have shown that many proprietors leave their ventilation systems switched off because the running costs are too high¹¹.
- Recent research in venues in Sydney, Australia has shown that designated "no smoking" areas in hospitality venues provide at best partial protection and at worst no protection at all against the damaging effects of secondhand smoke¹².

6. Smokefree legislation helps reduce smoking prevalence and doesn't increase smoking in the home

- There is evidence that going smokefree does not increase smoking in the home and in some cases might decrease smoking in the home.
- Smokefree laws can play a role in reducing exposure to secondhand smoke in the home through encouraging smokers to give up¹³ and through increasing the proportion of smokefree homes/homes with smoking restrictions^{14, 15, 16}.
- In New York, 124,000 fewer non-smokers reported exposure to secondhand smoke in their homes in 2004 compared to 2002, equivalent to a 34.5 per cent decline¹⁷.

- In Ireland, there was a significant decrease in the percentage of homes where smoking was allowed after the legislation was enforced.¹⁸

7. Partial legislation is “unfair, unjust, inefficient and unworkable”¹⁹ and will lead to an uneven playing field for business

- Many private clubs are in-effect bars – competing with pubs in their local area. Exempting them from smokefree legislation will create unfair competition and is bitterly opposed by the pub and hospitality trade as well as by the health lobby.
- Many clubs may also not wish to incur the bureaucracy and expense of regular ballots on smoking. Asking members to vote on exposing their staff to smoke puts them in a very difficult position.
- Voluntary compliance is key to the success of the prohibitions on smoking. It will minimise the need for enforcement activities and costs to regulators and businesses.
- Voluntary compliance will be maximised if all workplaces and public places become smokefree at the same time, allowing national media campaigns to provide simple straightforward messages with universal application. This will reduce the burden on the enforcement agencies both in giving specific advice about which premises are affected and in dealing with complaints of alleged and suspected breaches.
- The Government’s Better Regulation Taskforce opposed proposed exemptions in the Health Bill on the grounds that they would lead to more expensive and burdensome enforcement.

8. The public supports going smokefree

- Public support for completely smokefree pubs and clubs has shifted considerably in only two years. Over two thirds of the public support workplaces including pubs, restaurants and clubs going smokefree.
- A major new opinion poll (December 2005) surveying the general public in all four countries of the United Kingdom revealed that 67 per cent of people believed that all pubs and bars should be smokefree by law. The figure for England was 66 per cent, up from 51 per cent in Spring 2004.²⁰
- A further poll by ASH and the British Heart Foundation (January 2006) found that 70 per cent of the public believe that private members’ clubs should go smokefree as well as pubs.²¹
- Once the legislation comes in support will continue to grow. Research carried out by the Irish Department of Health three months after the legislation was implemented found that support had risen to 82 per cent.²²

9. Scotland, Wales and Northern Ireland will enjoy smokefree workplaces – why can’t England?

- Scotland’s comprehensive ban will come into effect on Sunday 26 March 2006.
- In May 2005, the National Assembly voted in favour of calling for powers to introduce comprehensive smoking restrictions covering all workplaces. The Health Bill will give the Assembly the powers it is seeking.
- Northern Ireland health minister Shaun Woodward announced on Monday 17 October 2005 that comprehensive smokefree legislation covering the province would come into effect in April 2007.
- If the UK Government has decided that comprehensive legislation is the right choice in Northern Ireland, why is it not also the right choice in England?

For more information please contact Nikki Pope on 020 7061 8324 or email nicola.pope@cancer.org.uk. You can also download a more detailed briefing from the Smokefree Action²³ website: www.smokefreeaction.org.uk.

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- ¹ Health Select Committee Report, *Smoking in Public Places*, HC 485-1, December 2005.
- ² IARC Monograph, <http://www.iarc.fr>, 19 June 2002, (reported on BBC Online, Times, Telegraph, Guardian, Independent, Mirror).
- ³ Report of the Scientific Committee on Tobacco and Health. Department of Health 1998 and Secondhand smoke: review of evidence since 1998: update of evidence on health effects of secondhand smoke. London. Department of Health 2004. See <http://www.advisorybodies.doh.gov.uk/scoth/PDFS/scothnov2004.pdf>.
- ⁴ Jamrozik K. Estimate of deaths attributable to passive smoking among UK adults: database analysis. *BMJ* 2005; 330: 812-6.
- ⁵ Health Select Committee Minutes of Evidence, 24 November 2005, Q581.
- ⁶ Wanless D. *Securing Good Health for the Whole Population*. HM Treasury 2004.
- ⁷ Survey commissioned by ASH and Cancer Research UK. Conducted by IFF Research by telephone between July and August 2005.
- ⁸ Joint House of Commons and House of Lords Committee on Human Rights Sixth Report, January 2006.
- ⁹ Can Ventilation Control Secondhand Smoke in the Hospitality Industry? OSHA Ventilation Workshop Analysis. Repace Associates, Inc. June 2000. See http://www.ncth.ca/NCTH_new.nsf/0/672458655FBCE17385256F0200541C9B?OpenDocument.
- ¹⁰ Kotzias D. Ventilation as a means of controlling exposure of workers to environmental tobacco smoke (ETS). Paper presentation by Dimitrios Kotzias at the Smokefree Europe Conference, June 2 2005. http://www.smokefreeeurope.com/assets/downloads/dimitrios_kotzias.doc.
- ¹¹ Report of the New Zealand Health Select Committee Commentary on Ventilation, 2003.
- ¹² Cains T et al. Designated "no smoking" areas provide from partial to no protection from environmental tobacco smoke. *Tobacco Control* 2004; 13: 17-22. www.tobaccocontrol.com.
- ¹³ Fichtenberg CM, Glantz SA. Effect of smoke-free workplaces on smoking behaviour: systematic review. *British Medical Journal* 2002; 325:188.
- ¹⁴ Borland R, Mullins R, Trotter L, et al. Trends in environmental tobacco smoke restrictions in the home in Victoria, Australia. *Tobacco Control* 1999; 8: 266-71.
- ¹⁵ Gilpin EA, Farkas AJ, Emery SL, Ake CF, Pierce JP. Clean indoor air: advances in California, 1990-1999. *American Journal of Public Health*. 2002; 92 (5): 785-91.
- ¹⁶ Merom D, Rissel C. Factors associated with smoke-free homes in NSW: results from the 1998 NSW Health Survey. *Australian and New Zealand Journal of Public Health* 2001; 25(4): 339-45.
- ¹⁷ See <http://www.nyc.gov/html/doh/html/pr/pr062-05.shtml>.
- ¹⁸ Fong, G. T., Hyland, A., Borland, R., Hammond, D., Hastings, G., McNeill, A., Anderson, S., Cummings, K. M., Allwright, S., Mulcahy, M., Howell, F., Clancy, L., Thompson, M. E., Connolly, G. & Driezen, P. (2005). Reductions in tobacco smoke pollution and increases in support for smoke-free public places following the implementation of comprehensive smoke-free workplace legislation in the Republic of Ireland: findings from the ITC Ireland/UK survey. *Tobacco Control*, 000, 1-8.
- ¹⁹ Health Select Committee Report, *Smoking in Public Places*, HC 485-1, December 2005.
- ²⁰ You Gov poll commissioned by ASH and Cancer Research UK and conducted in December 2005.
- ²¹ Survey commissioned by British Heart Foundation and ASH. Conducted by BMRB International using the BMRB Access Omnibus (telephone) survey between 20-22 January 2006.
- ²² Office for Tobacco Control, *Smokefree Workplaces in Ireland. A One Year Review*, March 2005.
- ²³ Cancer Research UK is a leading member of the Smokefree Action coalition. Smokefree Action brings together leading UK health and medical organisations, professional bodies and other groups working towards smokefree workplaces and enclosed public places.