

The TMA response to the Scottish Governments Consultation on Electronic Cigarettes and Strengthening Tobacco Control in Scotland

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 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' campaign².

TMA response to the consultation questions

21. Do you agree that it should be an offence for an adult to smoke in a vehicle carrying someone under the age of 18?

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 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.

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.

Environmental tobacco smoke (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.

Education and awareness programmes such as the Welsh Assembly Government's 'Fresh Start' campaign, the NHS 'Take Seven Steps' and the Scottish Government 'Take It Right Outside' 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

⁶ A BMA press statement 16th November 2011; b BMA correction 17th November 2011; c 18th November 2011 APPG Smoking & Health correspondence to Andrew Lansley MP, Secretary of State for Health

⁷ blogs.telegraph.co.uk/news/brendanoneill/2/100118383/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>

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

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 we believe the Scottish 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 Scottish Government on education based campaigns to this end. The Scottish 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.

22. Do you agree that the offence should only apply to adults aged 18 and over?

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

24. Do you agree that Police Scotland should enforce this measure?

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. The enforcement of the regulations would be complicated 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.

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 measures then it may lead to a considerable increase in unnecessary stops and checks, taking them away from other duties.

26. Do you agree that there should be an exemption for vehicles which are also people's homes?

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

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

Smoke-free (tobacco) children and family areas

35. Do you think more action needs to be taken to make children's outdoor areas tobacco free?

The TMA do not believe that banning smoking in children and family outdoor areas will significantly reduce their exposure to second hand smoke, reduce the number of young people smoking and reduce cigarette related litter.

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.

Environmental Tobacco Smoke (ETS) is rapidly dispersed in the open air. One key study concluded that ETS is not present at all upwind or more than 2 metres away from a smoker. The study stated 'No evidence demonstrates that the duration of outdoor exposure — in places where people can move freely about — is long enough to cause substantial health damage...in trying to convince people that even transient exposure to second-hand smoke is a potentially deadly hazard, smoking opponents risk losing scientific credibility.'¹³ It is therefore difficult to justify introducing an outside smoking ban on health grounds.

Other reasons given for introducing outdoor smoking bans are to prevent children from seeing and copying adult smokers so called 'modelling behaviour' and concerns about litter from cigarette butt stubs.

Modelling behaviour has been researched extensively, but while there is statistically strong evidence for parental and older sibling smoking as a predictor of youth smoking, there is no reliable evidence at all that outdoor smoking bans have any effect on modelling or smoking initiation.¹⁴ Focusing on provision and publicity for targeted cessation services would be more viable and sensible alternative to introducing a ban on smoking in outdoor places to tackle young people smoking

Litter is a problem for the whole community, and discarded cigarette butts play a part in this. Adult smokers should take responsibility for disposing of their cigarette butts safely, and the TMA's member companies all supply 'Stub-Tidy' portable ashtrays to help them do so. However, cigarette butts smoulder, and so cannot easily be taken home like other litter, so provision of adequate public refuse facilities must form part of any solution. Focusing on improving the provision of public refuse facilities, promoting Stub-Tidies and increasing anti-litter education would be a sensible and viable alternative to banning smoking in outdoor places to reduce cigarette litter.

¹³ Professor Michel Siegel, 5 May 2011, New York Times, A Smoking Ban Too Far, accessed at nytimescom/2011/05/06/opinion/06siegel.html

¹⁴ Fagan, Najman, 2005, The Relative Contributions Of Parental And Sibling Substance Use To Adolescent Tobacco, Alcohol, And Other Drug Use Journal of Drug Issues, 35(4), 869-883 accessed at http://espace.library.uq.edu.au/eserv.php?pid=UQ:7757&dsID=musp_2005_fagan_.pdf

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.

Banning smoking in outdoor places won't have any significant impact on second hand smoke outcomes, tackling young people smoking and reducing litter. There are more sensible viable alternatives which would be more effective in achieving these desired outcomes such as increasing provision and publicity for targeted cessation services, improving the provision of public refuse facilities, promoting Stub-Tidies and increasing anti-litter education.