

Smoke-free success:

ASH Scotland presents the Scottish experience



“

Exactly one year ago today, Scotland took the boldest, bravest and biggest step towards improving our nation's health.

The smoking ban is making a difference where it matters the most, by preventing deaths and helping to keep families together for longer. The number of people in Scotland dying prematurely from heart disease, cancer and stroke is falling dramatically and will continue to fall as a direct result of the ban.”

Jack McConnell

First Minister

26 March 2007

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Introduction

In September 2005 ASH Scotland published a report entitled *“The Unwelcome Guest: How Scotland invited the Tobacco Industry to Smoke Outside”*.¹ The aims of the report were to:

- pull together for the first time a record of the campaign for smoke-free legislation in Scotland
- provide other countries contemplating going smoke-free with clarity, insights and courage in this record of Scotland’s achievement
- highlight tobacco industry tactics to try and combat the introduction of the Scottish law protecting people from second-hand smoke (SHS), drawing from tobacco industry documents.

Internal tobacco industry documents demonstrate the extent of tobacco industry activity to try and combat the introduction of smoke-free legislation in Scotland. As outlined in ‘The Unwelcome Guest’ report, the strategies used by the tobacco industry mirror those used to try and stall progress on introducing smoke-free public places in other European countries, such as to²:

- maintain the debate on the health hazards associated with SHS exposure
- activate the hospitality trade against government smoking regulations
- establish smokers rights groups as the counterpart to tobacco control groups
- deflect health-related arguments
- predict negative economic impacts for the restaurant and pub trade
- put forth alternative, and ineffective, policy options to deal with SHS.

Despite the global presence and power of the tobacco industry, and despite concerted, and often well-financed attempts to subvert smoke-free legislation in Scotland,^{3 4} the campaign for a smoke-free Scotland was successful. ‘The Unwelcome Guest’ report highlighted the major reasons for this including that:

“*Despite the tobacco industry’s superior financial resources, enactment of smoke-free legislation depends not on the tobacco industry but on how seriously the health advocates mobilise in support of the legislation. When the health community makes a serious commitment of time and resources, it wins, but when the health community fails to make such a commitment, the tobacco industry prevails, more by default than because it has superior financial resources.*”⁵

**Samuels, B.
and Glantz, S.,**
1991

- ASH Scotland and other voluntary health organisations lobbied strategically and in partnership for smoke-free public places
- legislation was fought for on health grounds. Senior politicians accepted the health evidence
- the Scotland CAN! (Cleaner Air Now) coalition, founded by ASH Scotland in 2000, specifically lobbied for smoke-free legislation. Over 60 businesses, trades unions, medical and children’s charities supported the ongoing campaign
- ASH Scotland worked consistently to promote smoke-free successes in other countries, and to publicise the scientific and medical evidence on SHS exposure
- the general public engaged in debate openly and across a long period of time, and there was lively media debate on the subject
- there was large parliamentary support for a ban on smoking in public places
- ASH Scotland sought to publicly expose the tactics the tobacco industry used to undermine the legislation.

Purpose of this report

Scotland going smoke-free was the most important and radical public health measure for a generation, and it marked a defining moment in Scottish devolution. It made Scotland the leader across the UK in tackling the issue of tobacco harm caused by SHS. ‘The Unwelcome Guest’ report told the story of our smoke-free journey up until the 30th June 2005, when the Scottish Parliament voted 97 to 17 (with 1 abstention) in favour of smoke-free legislation. “*Smoke-free success: ASH Scotland presents the Scottish experience*” documents Scotland’s journey of going smoke-free following on from the parliamentary vote, and up until the one-year anniversary of implementation of the smoke-free legislation. Using internal archives and published research, the report highlights the importance of partnership working and strategic lobbying, and the importance of clear communications regarding the indisputable scientific evidence about the dangers of SHS. The momentum built by ASH Scotland, other non-governmental organisations (NGOs), the Scottish Executive, and other statutory bodies through alliance working has played a powerful role in obtaining and maintaining Scotland’s smoke-free public places law. This momentum, combined with the relationships developed through partnership work for the same end, will stand us in good stead as we move on to tackle other tobacco control challenges in Scotland.

Smoke-free success: ASH Scotland presents the Scottish experience

1 The Stage 3 Parliamentary Debate: 30th June 2005

1.1 On 30th June 2005 the Scottish Parliament voted 97 to 17 (1 abstention) in favour of the Smoking, Health and Social Care (Scotland) Bill. The Conservative Party was the only party to block vote against the proposals.

1.2 As Maureen Moore (Chief Executive, ASH Scotland) stated, this was the day when *“tobacco control advocates in Scotland defeated the expensive lobbying and strategies of the tobacco companies and their allies, and won a victory.”*⁶

1.3 Media reports on the vote were largely encouraging, for example, stating that:

*“Individual freedoms of choice should be limited only for good reason. The ban is justified, necessary, and potentially of enormous benefit. Its day has come.”*⁷

1.4 It was later agreed that The Smoking, Health and Social Care (Scotland) Act would come into force on March 26th 2006. From this date, all enclosed and substantially enclosed public places would be required to be smoke-free by law.

2 Legal action as a means of fighting smoke-free laws

2.1 This same day (30th June 2005) FOREST (Freedom Organisation for the Right to Enjoy Smoking Tobacco) urged “publicans and restaurateurs to continue to fight the smoke-free law” and “make a stand for freedom of choice.”⁹ As highlighted in the prequel to this report, FOREST was one of the key players seeking to undermine smoke-free public places in Scotland. FOREST presents itself as independent from the tobacco industry, but it derives approximately 96% of its funding from tobacco companies and their allies.^{10 11} And since the late 1970s, when communities in the USA began passing local tobacco control ordinances, the tobacco industry has used the threat of litigation to deter them, often through surrogate or front groups^{5 12}, and including hospitality associations.^{13 14 15} The threat of legal action is a well known delaying tactic that the tobacco industry uses as a means of potentially overturning the introduction of smoke-free enclosed public places.¹⁶

2.2 Just eight days after the announcement that Scotland would implement smoke-free legislation on March 26th 2006, the Mail on Sunday newspaper reported that the smoking ban in Scotland would face a series of legal challenges upon

“March 26th 2006 will not just be the first day of summer, it will be the first day of a new future for our country. A healthier future. A future where Scots live longer...and our young people are fitter and better prepared to make the most of their ambitions. It is a future that we can all look forward to.”⁸”

Jack McConnell
First Minister
30 June 2005

implementation.¹⁷ The article also reported that the Tobacco Manufacturers Association (TMA) and the Scottish Licensed Trade Association (SLTA) were both questioning whether the Act complied with European Human Rights legislation.¹⁷ Neither the SLTA or the TMA progressed with legal action. It is well known that the tobacco industry in particular doesn't fare well when using the courts to challenge smoke-free public places laws.¹⁸

- 2.3 On the 3rd November 2005 the Scotsman newspaper reported that one of the largest privately-owned hotel and pub groups in the UK, the Swallow Group, was preparing for legal action against the smoke-free legislation in Scotland. The Swallow Group owned approximately 70 hotels and 120 tenanted and managed pubs across Scotland, and more than 750 hotels and pubs across the UK.
- 2.4 Alan Bowes, executive chairman of the Swallow Group, refused to go into much detail about the lawsuit. However, human rights law experts were reported in the Scotsman newspaper as saying it would be likely that the action would be pursued under Article 8 of the Geneva Convention, which guarantees "respect for private and family life". However, law experts were quoted as saying that "*Article 8, paragraph 2 permits interference of private life for protection of health. It seems a challenge on this basis would probably fail*".¹⁹
- 2.5 ASH Scotland's comments on the proposed legal challenge remained focused on the public health benefits of introducing smoke-free legislation in Scotland:

"The debate on smoking in public places was carried out for two years before the act was passed. Where was Alan Bowes during that time? ...ASH Scotland believes that this is a frivolous legal challenge that goes against the democratic will of Scotland and the right to better public health for everyone. If Mr Bowes wishes to waste the Swallow Group's money by venting his spleen in our courts, he will not get very far".¹⁹

- 2.6 For the next 3 months very little was reported on the Swallow Group's proposed legal action. However, on the 3rd February 2006, just weeks before Scotland's smoke-free law was to be introduced, the Press and Journal newspaper reported that bids to overturn the legislation had been stepped up. QC Crispin Agnew had been hired by Alan Bowes and Don Lawson, an Inverness licensee who had been central to establishing the Publican Partyⁱ in March 2005.²⁰ Their bid to overturn the legislation was reported to be costing £1million.²¹ Mr Bowes and Mr Lawson claimed that the Scottish Parliament didn't have the devolved power to pass legislation covering workplaces, and that the ban breached the human rights of members of private clubs. Mr Bowes was quoted as saying:

ⁱ The Publican Party was formed to oppose the Scottish Executive's ban on smoking in pubs. The Party put forward five candidates across Scotland for the elections in May 2007.

*“We’re now prepared and we are just waiting for the right time to attack. And believe me, we will be attacking. There are still too many grey areas in this legislation”.*²¹

2.7 Mr Lawson added that the regulations were a *“disproportionate interference with the right to respect private life”* as guaranteed under the European Court of Human Rights.²²

2.8 On the 4th March 2006 Mr Bowes reportedly lodged petitions against the ban at the Court of Session in Edinburgh, arguing that it breached human rights. It was later reported that the legal challenge to the smoking ban would take place on the 20th June. The Press and Journal reported that Don Lawson was only looking for one concession – to allow ventilated smoking rooms in pubs where possible.²³ However, almost three months after Scotland’s smoke-free law was implemented, on the 13th June 2006, the Press and Journal newspaper reported that the legal challenge against the ban had collapsed. Don Lawson was reported to have dropped his legal challenge a week earlier, citing *“intolerable pressure from Scottish ministers”* as his reason for doing so.²⁴ And on the 14th June, it was reported that Alan Bowes had formally abandoned the Swallow Group’s case.²⁵

2.9 Commenting on the collapse of the legal challenge, Maureen Moore (ASH Scotland) said:

*“Going smoke-free is about promoting and protecting health. ASH Scotland believes that we all have an equal right to not breathe in second-hand smoke in enclosed public places. Mr Bowes on the other hand argued that such rights should not be extended to bar staff, his own workers. That this case did not even make it to the courtroom underlines just how untenable such an argument is...Scotland went smoke-free in order to protect people from second-hand smoke and to challenge the damage tobacco causes to our health. The collapse of this case shows there are no grounds for a human rights challenge to Scotland’s smoke-free public places legislation.”*²⁶

2.10 It seems unlikely that the legal case would have succeeded if it had reached the courtroom, because before being enacted The Smoking, Health and Social Care (Act) Scotland 2005 was carefully scrutinised for compliance with European Court of Human Rights regulations, and all other relevant pieces of legislation.

3 Displacement theories: smoking in the home

3.1 The SLTA and FOREST were vocal in suggesting that banning smoking in public places would lead to increased smoking in the home in Scotland.^{27 28} **There is no published, peer-reviewed evidence that demonstrates that smoke-free workplaces and enclosed public places increase the exposure**

of children to SHS at home.²⁹ On the contrary, there is a growing body of international evidence, including data from the U.S., Australia, New Zealand and Ireland, which demonstrates that comprehensive smoke-free legislation contributes to reduced smoking in the home.^{29 30 31 32 33 34 35 36}

3.2 In July 2005, the Royal College of Physicians (RCP) published a report entitled *'Going Smoke-free: The Medical Case for Clean Air in the home, at work and in public places'*.²⁹ This report reviewed research into SHS, and the impact of banning smoking in public places. It found that bans encourage smokers to cut down, or quit completely – rather than smoke more at home. The report also concluded that making the UK smoke-free would benefit the economy by about £4billion a year.²⁹

3.3 ASH Scotland welcomed the report, and commented that scaremongering about the smoking ban legislation remained unjustified:

*"The Scottish Parliament may have passed the law for smoke-free public places in Scotland, but now we have to get ready to make that law a success. Reports such as this from the RCP will help to get the message across to the people of Scotland that second-hand smoke is a killer and that we have nothing to fear and everything to gain from implementing the clean-air legislation effectively."*³⁷

3.4 Five months after the RCP report was launched, in December 2005, The Observer³⁸ reported on unpublished research carried out by Dr Jerome Adda, University College London (UCL), which claimed that comprehensive bans on smoking in public places lead to increased smoking in the home and cause a displacement effect increasing exposure for the poor but decreasing exposure for the rich.³⁹ As this piece of research reported findings that were contrary to the established evidence base, ASH Scotland utilised in-house research expertise to analyse this study in greater depth. Unlike other published work in this area, this research has never been published in a peer-reviewed journal. The effect it claims to show of increased exposure in the home to children aged 8 and under does not reach the level of statistical significance ($p < 0.05$) generally adhered to by social scientists and researchers. This indicates that the suggested increase in home exposure identified is extremely small, and not significant in research terms. This piece of research is still sometimes used in attempts to undermine Scotland's smoke-free legislation⁴⁰, but ASH Scotland continues to ensure that other NGOs, parliamentarians and journalists are made aware of its shortcomings.

“Lifting the smoking blanket from our pubs, clubs and restaurants is undoubtedly the most significant measure in a generation to improve the nation's health. I am determined we will turn Scotland's poor health record around. The people of Scotland deserve a healthier, happier and longer future.”⁴¹”

Andy Kerr MSP,
Health Minister,
30 August 2005

4 ASH Scotland's AGM and the launch of 'The Unwelcome Guest' report

4.1 On the 27th September 2005, ASH Scotland launched 'The Unwelcome Guest' report. The launch of the report gained much media attention.

4.2 The TMA issued a press release hitting back at the report, saying:

"The TMA has never made a secret of its reasons for not wanting a complete ban on smoking in public places and we have obviously put forward our views when asked. Anti-smoking activists are simply stirring up trouble for no purpose whatsoever". "Our arguments centre around freedom of choice and what the public wants, the science of environmental tobacco smoke and the fact that ventilation does work. These are legitimate areas for discussion."^{42 43}

4.3 As outlined in 'The Unwelcome Guest' report, using the standards for ventilation promoted by the TMA funded initiative AIR (Atmosphere improves results)⁴⁴, an estimated 5 out of every 100 bar workers in the UK would die as a result of exposure to SHS in the workplace.⁴⁵ **Ventilation is a discredited solution to reducing SHS exposure.**

5 Strategies for enforcement

5.1 On the 21st October 2005, the Scotsman reported on an agreement between the Royal Environmental Health Institute of Scotland (REHIS) and the Scottish Executive, that managers of premises would be targeted first by Environmental Health Officers if there were breaches to the smoking ban, rather than the individual. This followed concerns by REHIS that members could be targeted if they had to target individuals. In the same article Jack McConnell was quoted on comprehensive legislation as saying:

*"I think it is better to be clear-cut. The international experience is that when things are clear-cut, everybody manages to adapt. Everybody who comes to Scotland will understand what the law is and it is much stronger than south of the border, where somebody is going to have to take action against an individual because they are standing two feet from a bar rather than three feet"*⁴⁷

“*"This law will save lives. The science is clear: the impact on business is negligible, the improvement on health almost immediate".*⁴⁶ **”**

Dr Jeffrey Wigandⁱⁱ commenting on Scotland's smoke-free legislation at ASH Scotland's launch of 'The Unwelcome Guest' report, September 2005.

ⁱⁱ Dr Jeffrey Wigand was the US tobacco executive turned whistle-blower whose experiences were portrayed in the film 'The Insider'.

6 A welcomed change of heart

- 6.1 Stuart Ross, Chief Executive of Belhaven Breweries and Chair of AOB (Against an Outright Banⁱⁱⁱ), was one of the most tireless opponents to the ban on ending smoking in enclosed public places in Scotland. However, after sending out a delegation of his own managers to observe the Irish smoking ban in action in 2005, Mr Ross reportedly admitted that Ireland had adapted successfully to their smoke-free public places legislation:

*“It’s not the end of the world. It’s just a big situation for people to manage. But the Irish have adapted to it. Why should Scotland be any different?”*⁴⁸

This change of heart by such a staunch opponent of the ban was welcomed by tobacco control advocates across Scotland.

7 Smoke-free legislation: a catalyst for action

- 7.1 A number of pubs and other premises went smoke-free of their own accord, in advance of the smoke-free legislation being introduced, and the media relayed stories outlining their positive experiences. One pub in Edinburgh which went smoke-free in December 2004 had found an increase in wet sales of 25% and food sales up 600-800% on average.⁴⁹ In December 2005, Scotland’s three largest football grounds, Hampden, Ibrox and Celtic Park, announced that they were planning to ban smoking ahead of the planned legislation. All three grounds went further than the legislation under which smoking would only have been banned in the concourses or stairwells.⁵⁰
- 7.2 In October 2005, NHS Health Scotland launched a campaign which ran until March 2006, encouraging smokers to use their local cessation service to help them stop smoking. TV adverts featuring personal accounts and testimonials from ex-smokers who used NHS cessation services were shown. A free DVD was made available to those thinking about quitting as was *Aspire*^{iv} magazine and *How to Stop Smoking and Stay Stopped*^v.
- 7.3 In February 2006, The Daily Record reported that 10,000 people had rung for advice on quitting since the campaign began.⁵¹ The Health Minister Andy Kerr said:

ⁱⁱⁱ AOB was formed in Autumn 2004 to represent independent licensees, pub groups and brewers in Scotland opposed to comprehensive smoke-free legislation. In early 2005, as outlined in the *Unwelcome Guest report 1* (p.29), AOB stepped up their efforts to thwart legislation using adverts in the local and national press.

^{iv} ‘Aspire’ is a magazine that is published by Health Scotland, and designed for smokers who are interested in quitting.

^v ‘How to stop smoking and stay stopped’ is a booklet that is published by Health Scotland, and designed for smokers who are seriously thinking about quitting.

"We don't want to get at smokers, we want to help smokers. We know that in Scotland 70% of Scots don't smoke and of those who do, 70% want to give up and that is why we announced an additional £5 million earlier this year to support people who want to kick the habit. This funding will increase to £11 million by 2007-08".⁵²

- 7.4 The following month the Health Minister announced that local authorities were to get £6 million spread over 3 years to enforce the smoking ban and enable councils to recruit extra environmental health officers and fund environmental health resources. Each local authority was able to decide how best to use the funding.⁵³
- 7.5 In addition, the Scottish Executive undertook an extensive public and business awareness-raising campaign in the run-up to March 2006. Adverts reinforcing the health basis of the legislation were aired on television, in cinemas, on radio and in local and national press. The Herald reported that the advertising campaign cost approximately £750,000.⁵⁴
- 7.6 At the launch of a TV advert in Glasgow, Roy Castle's widow Fiona praised Scotland's comprehensive smoking ban. *"I think you have got it right up here, and I'm just longing so that England will see sense and understand the importance of making all public places smoke-free. I think it's brilliant that Scotland has taken the lead on this".⁵⁵*

8 New quitters, new targets

- 8.1 In December 2005 it was reported that ahead of the impending smoke-free legislation, a record number of people were calling the NHS Health Scotland telephone quit support line 'Smokeline'. Smokeline operates from noon-midnight seven days a week and is free to call. Figures supplied by the Scottish Executive show that 58,594 people called the number in November 2005, against 55,561 for the whole of 2004 and 40,000 in 2003.⁵⁶
- 8.2 In addition, on the 15th December 2005, 100 days before Scotland went smoke-free the Scottish Executive announced new targets for reducing the number of adults who smoke, largely because previous targets had been achieved:
- "The new target aims to reduce the number of adult smokers by almost 186,500 by 2010 - over 30,000 of these will be smokers in deprived areas where smoking prevalence is above average.*
- The new target for adults aged 16 and over^{vi} is 22 per cent, rather than 26.5 per cent, by 2010. In the most deprived areas the target is to reduce the rate from 37.3 per cent in 2004 to 33.2 per cent in 2008.*

^{vi} The age range for the targets was also altered from 16-64 to 16+ so that there was no longer an upper age limit.

The original 2010 target for all adults, aged 16-64, was 29 per cent but that has virtually been achieved five years early.”⁵⁷

9 Scottish Executive guidance on the smoke-free law

- 9.1 On the 8th November 2005 the Scottish Executive published guidance for employers and those in control of public premises to help them get ready for the ban.⁵⁸ The guidance was developed in consultation with businesses and offered advice and information on the law. It outlined why the law was introduced, where the law would and wouldn't apply, how to meet the signage requirements, and what to do if someone breached the law. It also recommended that businesses implement a written smoke-free policy, and included a sample policy, no smoking signs and a brief guidance poster for bar and waiting staff.
- 9.2 The Edinburgh Evening News's editorial prophesised: *“This legislation will not bed in smoothly. It is a quantum leap from banning smoking in places like cinemas and places of work to all bars and restaurants”*.⁵⁹
- 9.3 The following month the Scottish Executive published updated guidance on smoking policies for the NHS and local authorities.⁶⁰ The guidance was commissioned by a Steering Group comprising the Scottish Executive, ASH Scotland, Tayside Health Promotion Centre, NHS Health Scotland, COSLA and the Care Commission. Producing these guidelines was factored into an existing project initiated by ASH Scotland, who had approached Health Scotland and COSLA with a view to updating existing guidelines for local authorities.⁶¹
- 9.4 The aim of the guidance was to enable the NHS, local authorities and care service providers to comply with the legislation, and it highlighted the benefits of going further than the requirements of the legislation. It also included advice for challenges such as domiciliary visits and guidance on developing and updating workplace smoking policies.
- 9.5 The guidance was subject to considerable media attention which focused mainly on the advice for domiciliary workers: The Scotsman had the headline *“Now Executive warns: No smoking at home”*⁶² and The Daily Record *“Now you can't even smoke in your home...at least when council workers visit”*.⁶³
- 9.6 Maureen Moore (ASH Scotland) responded:
- “Everyone deserves protection, no matter where they work, regardless of what they do. I'm delighted these new guidelines, which we helped draw up, will help protect employees and service-users from second-hand smoke”*.⁶³

- 9.7 The guidance also caused debate amongst some members of the Scottish Parliament. For example, Mike Rumbles, Lib Dem MSP on the Scottish Parliament health committee said *“This is politically-correct nonsense, it is political correctness gone mad. We have a good law to prevent passive smoking harming people by banning smoking in enclosed public places. Public places not private spaces. What is the Executive doing getting involved in people’s homes?”*⁶²
- 9.8 The Health Minister clarified the content of the guidelines, which were being misinterpreted, by saying: *“We have made it clear that residential accommodation is exempt from the legislation. For it to be otherwise would be an infringement of human rights. But we recognise there are instances where people will have to visit a residential property to do their job – and this guidance will help ensure that workers are exposed to passive smoking as little as possible”*.⁶²
- 9.9 Various press reports appeared in early January 2006 claiming that smokers could be banned from smoking outside. The reports referred to the guidelines issued in December to the NHS, local authorities and care providers, which suggested that outdoor workers be treated the same as indoor workers and be smoke-free while at work. Simon Clarke (FOREST) said *“This is giving the go-ahead for busy-body local councillors to conduct a form of social engineering”*. The Scottish Executive responded by pointing out that it was not compulsory for councils to enforce any of the advice given in the guidelines.⁶⁴

10 No exemption for theatres/on-stage performances

- 10.1 Intense media interest in the smoking ban in Scotland continued to generate articles and headlines into 2006, and the topic of smoking on stage in theatres received particular attention. Unlike similar bans in New York and Ireland, Scotland’s smoke-free legislation doesn’t contain an exemption for actors on stage or screen. ASH Scotland, SCOT/Scotland CAN!^{vii}, the Cross Party Group on Tobacco Control and other voluntary health organisations lobbied hard for smoking in theatres and on stage to be banned as part of the legislation in Scotland. SHS is harmful to everyone, and as the ban is designed to protect people, it should apply equally to actors, performers and theatrical audiences as it does to other workers and members of the public.

^{vii} SCOT, the Scottish Coalition on Tobacco, incorporates the Scotland CAN! (Cleaner Air Now) campaign. Members include ASH Scotland, Asthma UK; the British Medical Association; the British Heart Foundation; Cancer Research UK; Chest, Heart & Stroke Scotland; Macmillan Cancer Support; The Roy Castle Lung Cancer Foundation; Royal College of Physicians of Edinburgh, Royal College of Nursing Scotland and the Royal Environmental Health Institute of Scotland.

- 10.2 Several objections were raised to this clause, and arguments against banning smoking on the stage still crop up from time to time - especially during the Edinburgh Fringe Festival. On 10th January 2006, Mark Thomson, director of the Royal Lyceum Theatre was reported to say: *"It's censorship in every way. For artists not to be allowed to apply a level of authenticity onto classic plays from the recent past will limit the level of work chosen. You're effectively rewriting the culture as well as the social history... Imagine, too, if someone wanted to put on a play about Winston Churchill. How do you present that without having him smoke a cigar?"*⁶⁵
- 10.3 In July 2006 comedian Mel Smith attempted to answer this question. He played the role of Winston Churchill in a production performed at the Assembly Rooms venue during the Edinburgh Fringe Festival. Mr Smith threatened to flout the smoking ban, and lit up a cigar whilst hanging out of his dressing room window during a photo-call for his Fringe show. Edinburgh City Council warned that it would shut the whole venue if the law was broken, and that the venue's artistic director would lose his Fringe licence for good if the actor smoked during his performance.⁶⁶
- 10.4 Although Mel Smith threatened to light up during his show, he didn't go through with it. The Scotsman editorial the next day said:
- "Mel Smith gets full credit for inventing a new way of getting publicity for a Fringe show – one that does not involve nudity or swearing. As these things go, it was quite Churchillian in its audacity. Alas, it can only be used once".*⁶⁷
- 10.5 ASH Scotland and the Scottish Executive responded by reiterating the health reasons why the legislation was brought in. Maureen Moore (ASH Scotland) said:
- "The theatre is a workplace. This law was brought in to protect people in the workplace. It is the law in Scotland and an actor is not above the law. While he or she is here they just have to adhere to it. When actors take drugs on stage they don't really inject. And when they have sex on stage they don't really have sex. So why use real smoke when there's a real health risk to actors and audience?"*⁶⁸
- 10.6 In December 2006 it was reported that smoking on the stage would also be banned in Wales when their smoke-free legislation came into force on April 2nd 2007.⁶⁹ The Welsh Assembly took the decision not to allow a clause to be inserted into its legislation as in England and Northern Ireland, where smoking on stage is permitted as part of a performance if artistic integrity makes it appropriate.

11 The Scottish Prison Service revises its smoking policy

11.1 The Scottish smoke-free legislation didn't apply in prisons or young offenders' institutions as they are governed by the Prisons Scotland Act 1989. However, prison rules were changed on March 26th 2006 (the date of implementation of Scotland's smoking ban) to acknowledge changes to smoking provisions in other enclosed and substantially enclosed public places. From this date smoking indoors became limited to prisoners' cells. Where prisoners are required to share a cell, they may only smoke in it if the Governor designates it as a smoking area. A disciplinary offence of smoking in an area where it is not permitted has been created, and this offence is dealt with under the existing internal prisons discipline system. The Scottish Prison Service undertook a new programme of cessation support to help those prisoners who smoke and wish to quit.

11.2 On the 23rd February 2006 The Scotsman reported on the fear of violence in Scotland's jails as a result of these changes. Steve Farrell, Prison Service Union said:

"Tobacco keeps a sense of calm within the prison environment. When you take that away from prisoners, particularly in the west of Scotland, where the smoking culture is particularly strong, they are going to react. The question everyone is asking is, 'Will it lead to violence?' That's a real fear. There's always a potential for riots when you are forcing prisoners to stick to rules they do not like".

11.3 Derek Turner of the Prison Officers Association said it was "difficult to call" how prisoners would react, but pointed out that smokers were becoming a minority group "even in prisons". A spokesman for the Scottish Prison Service said counselling and Nicotine Replacement Therapy (NRT) were being offered to the inmates in the run-up to the ban.⁷⁰

11.4 With operational leadership from Governors and staff, and prisoner assent, the outcomes associated with restricting smoking in Scotland's prisons have been extremely positive. The change has been widely accepted, and there continues to be a steady demand for cessation support.⁷¹

12 Media countdown

12.1 In the 20 days prior to implementation the Scottish media counted down to a smoke-free Scotland with articles and features appearing on a daily basis regarding the law and how to quit.

- 12.2 The Scottish Sun made reference to Dublin and introduced readers to the phenomenon of ‘smirting’ – smoking and flirting. A survey by Hospitality Ireland in 2005 revealed that 45% of respondents had found love through smirting and the Scottish Sun warned *“So as from March 26, Scots could be healthier, wealthier...and more in love”*.⁷²
- 12.3 The Daily Record reported that Cancer Research UK expected 300,000 Scots to stub out when the smoking ban started.⁷³
- 12.4 An analysis article in The Scotsman outlined the pub trades anger at a perceived lack of Scottish Executive guidance for planning for the smoking ban. Paul Waterson of the SLTA stated: *“if you ask if we are prepared, the answer is no, because environmental health boards and planning authorities are not prepared. Despite all the seminars, there remain many different interpretations of the act, different measures of enforcement, and in some cases we are even in the dark as to the definition of ‘an enclosed space’”*.
- 12.5 COSLA (Convention of Scottish Local Authorities) responded: *“The publicans would complain, wouldn’t they? Planners make decisions based on the interests and circumstances of the local area. The legislation is about making wholly enclosed areas smoke-free, and if organisations want to provide [outdoor] areas to smoke, it’s entirely up to individual councils on how they permit that. That’s what local democracy is all about”*.⁷⁴

13 Public opinion in the run-up to the ban

- 13.1 On the 5th March 2006 a national opinion poll published by GfK Research Group for No Smoking Day (NSD) showed that 41% of smokers in the UK were preparing to quit on 8th March 2006, the largest proportion of smokers ever to attempt to give up on NSD.⁷⁵
- 13.2 On NSD, the results of a new MRUK omnibus survey on attitudes to smoking in public places and levels of support for smoke-free legislation in Scotland were published. The findings showed continued support for the smoke-free legislation amongst smokers and non-smokers, and continued high levels of awareness of the new law.⁷⁶
- 13.3 Six days later a published poll commissioned by Cancer Research UK found that 84% of Scots aged 18-24 believed that a smoke-free Scotland was something to be proud of.⁷⁷ Cancer Research UK also launched a poster campaign to mark the introduction of Scotland’s smoke-free legislation. The posters showed a stubbed out cigarette, crushed into the shape of Scotland, with the phrase ‘Smoke-free and proud’ underneath. The image appeared on poster sites, in press, in pubs and on

buses across Scotland in the lead up to the introduction of the legislation.

- 13.4 In addition, a Scottish Sun survey revealed that 46.6% of Scotland's smokers thought the ban on smoking in pubs and clubs would make them more likely to quit. 78% thought smokers would obey the law. The paper polled 646 people in Aberdeen, Edinburgh and Glasgow over 3 consecutive weekends.⁷⁸

14 Written guidance on the ban - the Gallaher way

- 14.1 Gallaher is one of the world's largest tobacco companies. Based in the UK, it employs 12,000 people worldwide and earns 70% of its profits in Britain, Ireland, Austria and Sweden, where demand is falling.⁷⁹ Although the company has suffered 'substantial declines' in several countries, these are largely offset by growth in Eastern Europe.⁸⁰ The company, whose British cigarette brands include Benson & Hedges, Silk Cut and Mayfair, has expanded into Russia, Kazakhstan and other eastern European countries to try and offset declining cigarette markets in western Europe.⁸¹

- 14.2 Nigel Northridge, Chief Executive of Gallaher, states that the company "operate[s] with a demonstrated sense of responsibility and responsiveness to the issues relating to smoking and health".⁸² Yet Gallaher denies the extent of health hazards associated with exposure to SHS. It acknowledges that SHS can be a "source of annoyance to non-smokers"⁸³, but states that "the conclusions reached [on the dangers associated with SHS exposure] by those in the public health community appear to be based upon inconclusive science".⁸³ BAT's position on SHS is similar.⁸⁴ In addition, both companies fail to acknowledge that their products are addictive^{85 86}, whilst the consensus amongst health experts is that cigarettes are as addictive as heroin or cocaine.^{87 88}

- 14.3 In March 2006, Gallaher produced a booklet aimed at licensed pub and restaurant owners entitled "*Bright ideas for the ban: A guide to changes in the law regarding smoking in Scottish licensed premises*".⁸⁹ Within this booklet, Gallaher highlighted findings from their work with the licensed trade in Ireland. They stated that:

- licensees who provided facilities for their smoking patrons in advance of the ban saw no reduction in trade.

- licensees who continued to offer tobacco products for sale within their venue had higher levels of productivity than those who delisted tobacco products.

- licensees who initially destocked tobacco in their venues restocked products within 2 months because of customer demand

The booklet also highlighted that there are 1.032 million smokers in Scotland, and stated that licensed premises in Scotland should “*continue to stock tobacco products...Smokers in your venue are invaluable to you and your business*”.⁸⁹

- 14.4 Gallaher owns a substantial share of the UK cigarette market (37.1% by the end of 2005).⁹⁰ Total group sales in 2004 amounted to 170.6 billion cigarettes.⁹¹ The guidance they sent out to licensees in Scotland represented an attempt to ensure that cigarette sales were not hit by the ban, as they had been in Ireland. Gallaher has about 50% of the Irish cigarette market share, and in September 2004 they reported that tax increases and the Irish smoking ban had contributed to a 7.5% fall in the total cigarette market. This means that about 260 million fewer cigarettes were sold between January and June 2005 in Ireland. Experts forecast that if this trend continued, tax returns from tobacco would fall by 81 million euros by the end of the year.⁹²
- 14.5 In September 2005, Gallaher posted an 8.1% decline in cigarette sales in the UK, and it was reported that “Gallaher struggles with smoking bans that are spreading throughout Europe”.⁸⁰ In March 2007, Gallaher said that the ban on smoking in public places in Scotland contributed to a 3-4% fall in the Scottish cigarette market. The firm, which is being taken over by Japan Tobacco, nevertheless posted a 4.9% rise in underlying profit to £597 million.⁹³

15 One week to go...

- 15.1 In the week prior to implementation there were a number of news articles about enforcement and last-ditch attempts to undermine the ban with predictions of social unrest and violence.
- 15.2 Independent MSP Brian Monteith warned, “*These are Draconian regulations. The danger here is that councils are putting all the responsibility on publicans...This can only lead to violence, if bar and restaurant owners have to try and enforce this stupid legislation themselves*”. Keith McNamara, spokesman for REHIS responded: “*We will have to be circumspect about how we do this in potentially inflammatory situations...However, this smoking ban is the biggest change in health law ever to happen in Scotland, and we must get the message put to the public that we are serious about enforcing it*”.⁹⁴

- 15.3 On the 22nd March 2006, the SLTA held their annual conference. Tadg O’Sullivan, chief executive of the Vintners’ Federation of Ireland (VFI) told the delegates that the smoking ban in Ireland had been an *“absolute disaster”*, resulting in 6000 closures and 12,000 job losses.⁹⁵ However, these figures were in sharp contrast to official figures later released from the Quarterly National Household Survey. Survey findings indicated that the average quarterly employment in the hospitality sector, including bars, was 111,000 in 2005, an increase of 3,200 on 2004.⁹⁶ In 2006, the average quarterly employment in the hospitality sector rose again to 116,300, an increase of 5,300 on 2005.⁹⁶
- 15.4 Edinburgh City Council enforcer John Rafferty told the Scotsman how they were planning on enforcing the ban. *“We’ve learned from Ireland that the best way to begin these changes is to have a strong public presence...From Sunday, we will be popping into bars and clubs and making sure that managers are coping. But we won’t be slapping fines on anyone without giving them an adequate warning, and we’re not really interested in following smokers home. We’re planning a very ‘softly softly’ approach, because you can’t change a nation’s culture overnight. We just want to ensure the public know exactly what’s expected.”*⁹⁷
- 15.5 In his monthly press conference the First Minister said that enforcers should be sensitive in the early days, and also spoke of an increased understanding that banning smoking in public places was the right thing to do for Scotland. *“This is the law. People should adhere to it. But I think those that enforce it should ensure, at least in the early days, they don’t provoke situations that are unnecessary.”*⁹⁸
- 15.6 The Edinburgh Evening News reported that around 10,000 reusable ashtray pouches were due to be handed out across Edinburgh from the day of implementation. Those caught dropping cigarette butts faced a £50 fine and the potential for a larger fine if they refused to pay.⁹⁹

16 March 26th 2006: Scotland’s public places become smoke-free

- 16.1 Scotland’s smoke-free legislation came into force at 6am. ASH Scotland issued a press release putting this historical change in the law into context:

“In later years, people will look back on the legislation for smoke-free public places much in the same way that today we look back on the laws that got rid of industrial smog or provided for clean drinking water. ASH Scotland is very proud of the new law on smoke-free enclosed public places. By going smoke-free, we are taking a huge step forward. Unlike the tobacco industry and the licensed trade, we have always sought to communicate the most reliable scientific evidence about tobacco. Small voluntary organisations cannot compete against the power of Big Tobacco

*“This far-reaching and bold step will protect the health of hundreds of thousands of Scots who find themselves exposed to second-hand smoke every year. It will also help many people to give up smoking and encourage a no-smoking culture for future generations. The comprehensive nature of the legislation will also help us to close the health inequalities in our society, with smoking a major contributor to disease and reduced life expectancy in our least well off communities.”*¹⁰⁰

Andy Kerr MSP,
Health Minister
21 March 2006

“Scotland will be proud that it has gone smoke-free ahead of any other part of the UK. The smoking ban is absolutely the right way forward. It is right for Scotland, for our nation’s health, our nation’s economy and our tourist industry. This country has always been a great place to live, to work, to bring up your children and even just to visit. Today, it just got better. In the years ahead, people will look back on today as the day that Scotland took the largest single step to improve its health for generations. It is a day for all Scots to be proud of our nation. Scotland - the best small country in the world.”¹⁰⁴”

First Minister

Jack McConnell,

26th March 2006

in terms of money. All the scientific evidence however was underlining the dangers of second-hand smoke and the need for action. The growing number of countries around the world that are putting smoking bans into place proves not just the strength of the evidence, but also the long-term possibility that failure by governments to act could expose them to litigation in years to come. The rest of the UK has now decided to follow Scotland’s lead and end smoking in public places, truly this is an idea whose time has come.”¹⁰¹

- 16.2 By now, the media were also broadly supportive of the new law. For ASH Scotland and SCOT/Scotland CAN!, one focus had been to communicate to the media the indisputable scientific evidence about the dangers of SHS. By working as part of a broad alliance of health and medical charities, a momentum was built that carried us to success. On the 26th March 2006, The Sunday Herald proclaimed “Welcome to a new, smoke-free day”, and presented six key facts which illustrated why the law was needed. These included: “Passive smoking is associated with 865 deaths in Scotland among non-smokers every year” and “The average smoker will lose 10 years of life because of the effects of their smoking”.¹⁰²
- 16.3 In an opinion column Stewart Maxwell MSP^{viii} pointed out that despite the ban there was still much to be done in tobacco control: “Today marks a significant victory in the war against tobacco, but much more remains to be done. This is a war than can be won”. He called for the legal age for purchasing tobacco to be raised from 16 to 18, stopping point of sale advertising and regulating cigarette packaging so that packets are plain and graphic health warnings replace the current text warning. Mr Maxwell also said that the law on underage sales must be properly enforced.¹⁰³
- 16.4 The following day newspapers were full of coverage of the first day of the ban. The Scotsman reported that “Scotland looked to have made a smooth transition to a smoke-free future”, as no fines were issued in the major cities. The Daily Record also reported that the ban “began without a hitch”.¹⁰⁵
- 16.5 The Daily Record’s editorial proclaimed: “In a month’s time, the ban will hardly be a talking point. In a year’s time, we’ll look back and ask: “Remember when pubs were full of smoke?” Smoke-filled pubs will be up there with black and white TVs, four-star petrol and football shirts without adverts on them. Times change but the world carries on”.¹⁰⁶

^{viii} Stewart Maxwell MSP introduced the Prohibition of Smoking in Regulated Areas (Scotland) Bill to the Scottish Parliament on 3rd February 2003. The aim of the Bill was to limit exposure to SHS by prohibiting persons from smoking in public places where food was supplied and consumed. The Bill took partial steps to prohibit smoking in enclosed public places, and the Scottish Parliament’s Health Committee concluded in January 2005 that the bill didn’t go far enough in providing protection from SHS. But during this time, the Bill crucially raised awareness and focused attention on the vitally important issue of exposure to SHS.

- 16.6 It was reported that the national compliance line received only 23 calls on the day of implementation, with 5 logged as alleged breaches of the ban.¹⁰⁷

17 Reports indicate increased number of quit attempts

- 17.1 There were also early indications that an increased number of people were attempting to quit smoking. On the 31st March, the Scotsman newspaper reported that NHS Smokeline, Scotland's telephone quit support line, had received a four-fold increase in calls in the first 3 days following implementation. Smokeline normally receives around 100 calls per day, but on the first 3 days following implementation, the number of calls increased to 450 per day.¹⁰⁸
- 17.2 A few weeks later a national pharmaceutical retail store reported that its sales of Nicotine Replacement Therapy (NRT) had more than doubled in Scotland since the ban came into force. The biggest increase was in Glasgow where sales were up 110% on the previous year and 10% ahead of the rest of Scotland. It was reported that purchases in the rest of the UK rose by 15% in comparison.¹⁰⁸

18 Early days – the reported impact on the Scottish pub trade

- 18.1 The overwhelmingly positive smoke-free implementation experience was largely echoed by publicans in the first few days and weeks of the new law being introduced. The media ran numerous articles on the impact of the smoking ban on pubs, with the stories largely positive. When asked about sales over the first weekend of smoke-free trading, even Jim Hughes, owner of the Black Bull Hotel and Railway bar in Moffat and SLTA president admitted that his takings had gone up by 30% compared to the previous weekend.¹⁰⁹
- 18.2 A number of publicans reportedly felt that business had remained steady^{110 111} whilst others suggested business had probably picked up since the smoking ban was introduced.¹¹² J.D. Wetherspoon's (which runs 38 pubs in Scotland) reported an increase in sales of 3.2% in the 13 weeks to 23 April across the UK. Finance director Jim Clarke said *"There has been such publicity (about the ban) that it has created its own momentum, and people may have been coming and trying the pubs who might not have been using them in the past"*.¹¹³
- 18.3 Enterprise Inns (which owns 139 outlets across Scotland) reported increased sales following on from the introduction of the smoking ban.¹¹⁴ Punch Taverns (Scotland's biggest pub operator, which manages or leases approx 520 pubs in Scotland) noted no significant impact on sales, and a growth in food sales with more families coming through the doors.¹¹⁵

Pub operator Mitchells and Butlers (which operates about 100 Scottish pubs) said that their pubs had continued to generate good sales growth, with “a sizeable uplift in food sales”. Like for like sales in the first 7 weeks of the ban were up 5.8%.¹¹⁶ And Maclay Inns (runs 21 bars across Scotland) reported an impressive increase in food sales and unaffected wet sales.¹¹⁷

- 18.4 Around this time the findings of a MORI poll were published, demonstrating that more than 75% of residents in Edinburgh thought that the smoking ban had a positive effect on going out.¹¹⁸
- 18.5 The SLTA and Scottish Beer and Pub Association both said they would wait to comment on the impact on trade, with the SLTA saying it would wait 3 months before commenting.
- 18.6 Whilst the reported impacts on the pub trade in the first weeks of the new law being introduced were overwhelmingly positive, there was a minority of reports suggesting that the ban had caused economic disaster. For example, it was reported just 5 days after implementation that the smoke-free law had already claimed its first victim. Sandy Robertson, landlord of The Auchmill Inn, Aberdeen had been forced to close after “suffering a huge drop in takings” since the ban came in.¹¹⁹ In addition The Morning Advertiser reported that some pubs had seen trade drop by 10%.¹²⁰
- 18.7 At this stage it was too early to say precisely what the impact of Scotland’s legislation on smoke-free public places had been on the pub trade. However, these reports didn’t tally with the view of many publicans that Scotland’s smoke-free legislation was, at worst making no difference to trade and, at best, having a positive impact on pub sales.
- 18.8 In March 2007, Campaign for Real Ale (CAMRA) published a survey demonstrating that pubs are continuously under threat from closure, and for a variety of complex reasons. Reports from 197 CAMRA branches across the UK found that approximately 56 pubs a month are closed permanently, and at any time 1,300 are shut and facing an uncertain future. Approximately 80% of pubs permanently closed are in urban areas. The last CAMRA survey, published in 2005, showed only 26 pubs a month were closing. These latest figures suggest that the problem is escalating, and CAMRA suggest that this is due in part to the high demand for housing in the UK, which has led to some community pubs in towns and cities being closed in order to make space for housing developments. In addition, CAMRA suggest that many pubs are being converted into restaurants, shops and offices.¹²¹

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18.9 The CAMRA survey demonstrates that UK pubs are under threat from closure from a variety of sources, and on an ongoing basis. However, there is no evidence to suggest that pubs, cafes or restaurants go out of business as a direct result of smoking bans being introduced. Smoke-free legislation has been passed in every conceivable type of community, from small towns and rural areas to a number of states, and economists have studied the impacts on communities across the spectrum. **No objective, peer-reviewed study ever conducted has found a significant negative economic impact associated with smoke-free legislation.**¹²² The best designed most rigorous studies consistently report no impact or a positive impact of smoke-free restaurant and bar laws on sales and employment. It is noteworthy that all the studies concluding a negative impact have been funded by the tobacco industry.¹²³

19 Early days – reported levels of compliance

19.1 The media kept a keen interest in compliance levels in the early days following implementation. BBC News reported that in the first week of the ban Glasgow City Council had issued 10 warnings and a fixed penalty fine. Enforcement officers visited 387 premises and the most common fault found was not complying with signage requirements.¹²⁵

19.2 The Peking Inn in Glasgow was the first venue in Scotland to be fined for contravening the law, following an incident on the 27th March when a customer was allowed to smoke in the restaurant. The restaurant owner appealed against the penalty notice but lost and agreed to pay the £200 fine.¹²⁶ The first reports of individuals to have been fined for breaching the smoking ban were both taxi drivers. One of these two fines was later cancelled.^{127 128}

“ We are proud of the smoke-free law Scotland is bringing in on 26 March. It takes account of evidence and experience from other countries and is comprehensive, world-class legislation, which will help protect people from exposure to toxic second-hand smoke. The very few exemptions have been carefully debated and are there for good reasons.¹²⁴ ”

Maureen Moore OBE,
ASH Scotland,
9 February 2006

20 Early day challenges - litter and noise issues

- 20.1 The outcomes associated with going smoke-free in Scotland have been overwhelmingly positive, with two minor exceptions. Two issues which were not fully anticipated were increased cigarette-related litter on streets, and the issue of increased noise.
- 20.2 In Edinburgh, in a bid to stop smokers flicking butts on to the streets, around 10,000 reusable ashtray pouches were handed out across the city from the start of the ban. In addition dozens of metal wall-mounted ashtrays had already been fitted by landlords outside pubs to cater for smokers, while every litter bin in the city centre was already fitted with a stubbing-out plate.
- 20.3 However, 3 weeks into the ban, it was reported that the number of £50 fines issued in Edinburgh for dropping cigarette litter had trebled since the 26th March, the day the smoke-free law was introduced.¹²⁹ Later in April Aberdeen City authority reported an increase in the amount of cigarette litter since the smoking ban came into effect. Aberdeen City Council said there had been a significant increase in discarded butts, although additional litter bins had been placed at bus stops and other hotspots.¹³⁰ In July Perth & Kinross Council launched a litter campaign. Leaflets were distributed to businesses advising them to provide cigarette bins and to sweep the pavement daily.¹³¹
- 20.4 On the 23rd June 2006 it was reported that there had been an increase in the number of complaints about noise outside pubs and restaurants since Scotland's smoke-free legislation came into force. Licensing officials were said to be working hard with licensees to resolve the problem.¹³² The issue of noise resurfaced the following month, when it was reported that 44 Edinburgh pubs and clubs would face repeat visits from licensing officers following complaints about noise disturbances associated with people smoking outside premises.¹³³

21 One month anniversary of Scotland's smoke-free law

- 21.1 On the 26th April 2006, one month after implementation of the ban, The Daily Record proclaimed "Scotland's smoking ban has been a resounding success".¹³⁴ Some publicans reported a marked increase in takings and most Scots had complied with the law. It was estimated that fewer than 30 warning letters had been sent to licensed premises about people lighting up and most warnings had been related to no-smoking signs. Complaints to the national compliance hotline averaged 20 a day and Environmental Health Officers had looked into nearly 14 a day.¹³⁵

22 26th June 2006 – the 3 month post-implementation mark

22.1 On the 3 month anniversary of the introduction of smoke-free legislation in Scotland ASH Scotland issued a press release publicising reports from publicans of how positively Scotland's smoking ban had come in.

22.2 Before the smoke-free legislation was passed, in February 2005, Paul Waterston and Stuart Ross of the SLTA gave evidence to the Scottish Parliament's Finance Committee. They predicted the smoking ban would devastate their industry. They produced statistics claiming that annual profits in licensed premises could decline by £86 million, that employment in the licensed trade could be expected to decline by 2,300 jobs and that some 142 average-sized licensed premises could close down as a result of decreased trade.¹³⁶ Maureen Moore (ASH Scotland) said:

"The SLTA made a huge mistake in teaming up with the TMA, Imperial Tobacco and FOREST. They were so desperate to stop Scotland going smoke-free they teamed up with the last people on earth you would trust to make health a priority. Going smoke-free has been excellent for Scotland. Good for health and good for business".

22.3 The SLTA had said on numerous occasions that it would not comment on the impacts of smoke-free legislation until 3 months had passed. On the 3 month mark they refrained from commenting. Approximately one month later an SLTA spokesman said it would take at least a year to be clear on the impact of legislation.¹³⁷

23 The 3 month mark – compliance figures

23.1 The Scottish Executive issued three month compliance data to cover the period March 26th - April 30th. 15, 540 premises were inspected during that period:

- 99.4% of all premises complied with respect to not allowing smoking on the premises in the first 3 months
- 73.7% of all premises complied with the requirement of displaying no-smoking signs
- 3 fixed penalty notices were issued to premises for permitting smoking in no-smoking premises (in Dundee, Glasgow and Renfrewshire)
- 3 fixed penalty notices were issued to individuals for smoking in no-smoking premises (all in Dundee).¹³⁸

23.2 The Health Minister responded saying:

*“This shows that the overwhelming majority of Scots have embraced the ban and the improvements it will bring to the health of our nation”.*¹³⁹

24 The 3 month mark – public opinion

24.1 The Health Minister also announced results of an MRUK omnibus survey on attitudes to smoking in public places in Scotland and levels of support for the smoke-free legislation. The omnibus survey was conducted in May, August, and November 2005 and January, March and May 2006 to track public opinion on the smoking ban before and after implementation. 1,040 interviews were undertaken in the March and May surveys, evenly split across genders with a spread of ages and socio-economic groups:

- 61% of respondents said that they supported the law, with support increasing steadily from 56% in May 2005
- 73% of respondents thought the law had been ‘very successful’ or ‘successful’. 83% of non-smokers, 82% of ex-smokers and 60% of smokers thought the law was ‘very successful’ or ‘successful’
- 35% of smokers felt the new law had helped them to reduce the amount they smoked.¹⁴⁰

24.2 On the same day Cancer Research UK published a survey of 1,026 adults living in Scotland, including smokers and non-smokers. 24% of respondents surveyed said that they would be more likely to visit pubs and bars than before the smoke-free law was introduced. 45% said they would go just as frequently, and only 10% said they would go less often.¹⁴¹

24.3 Professor Alex Markham (Chief Executive, Cancer Research UK) said: *“Scotland should be proud of having moved so fast to embrace smoke-free legislation. While the rest of the UK plays catch-up, Scotland has led the way in showing how to ensure a smoke-free future. These encouraging results indicate that businesses will also benefit from this move towards a healthier Scotland”.*¹⁴¹

25 The 3 month mark – impact on bingo halls

25.1 On the 9 June 2006 the Bingo Association reported that 5 bingo halls had closed in the first three months since implementation and that operators were experiencing declines of between 17 and 27%. Steve Baldwin, a spokesman for the association said:

*“Nobody envisaged the severity or speed with which this was going to bite...You can walk into a pub, buy a drink and take it outside to enjoy it with a cigarette but you can't do that with a bingo card”.*¹⁴²

- 25.2 The Bingo Association later called for a £10m tax break to cover losses blamed on the smoking ban. The association reportedly called on the Chancellor to repay bingo operators VAT.¹⁴² Smoke-free legislation was also blamed for a 14% drop in sales at Mecca Bingo clubs, a 6% drop in admissions and 9% drop in spending per head.¹⁴³
- 25.3 It was suggested that smokers were taking cigarette breaks outside rather than spending on slot machines or the tabletop games, hence the overall drop in profits experienced. However, a few weeks later a spokeswoman for Mecca Bingo reportedly said that business was holding steady and, in some cases, it was on the increase again.¹⁴⁴

26 The 3 month mark – impact on smoking cessation services

- 26.1 Around this time reports were also coming in of increased activity for Scotland's smoking cessation services. Grampian Smoking Advice Service reported a 72% rise in the number of people registering with the service in the month leading up to the ban. The service also saw a 59% rise in the number of people registering in April 2006 compared with April 2005. Inquiries to the NHS Grampian workplace smoking cessation programme increased by 50% compare with 2005 and there was a 32% increase in the actual delivery of services in the first quarter of 2006.¹⁴⁵ Similarly, in July 2006 cessation services in Fife reported that the number of quitters had doubled since the smoke-free legislation was introduced in March.¹⁴⁶

27 The rise of another tobacco industry friendly group

- 27.1 Whilst the following section doesn't relate specifically to smoke-free legislation, it illustrates part of a longer-term pattern of identified tobacco-industry-friendly (and funded) groups operating in Scotland.
- 27.2 In August 2006, a survey by Retailers Against Smuggling – which is said to represent over 16,000 independent retailers across the UK - revealed that almost half (44%) of corner shopkeepers surveyed were aware of counterfeit tobacco being sold in their neighbourhoods. It was also reported that 71% of those surveyed believed that the way to reduce tobacco smuggling cross border shopping is to reduce/freeze tobacco taxes.¹⁴⁷ Ken Patel, the National Spokesman of Retailers Against Smuggling, reportedly said that *“the only reason smugglers target the UK is because the high tax levels in this country provide them with the greatest potential profit in the EU”.*¹⁴⁸

“ I have not met a single person who wants to turn the clock back and reintroduce smoking in restaurants and pubs – indeed feedback has been quite the opposite.¹⁵⁴ ”

Andy Kerr MSP,
Health Minister,
24 August 2006

27.3 The Scottish spokesperson for Retailers Against Smuggling is Fiona Barrett. Fiona Barrett and Ken Patel are both shopkeepers, and they are also both members of the Tobacco Alliance (TA).¹⁴⁹ Retailers Against Smuggling is a campaign led by the Tobacco Alliance, which was formed over 20 years ago to voice the views of retailers of tobacco on all matters related to tobacco tax.¹⁵⁰ It is important to note that the Tobacco Alliance is funded by the TMA.¹⁵¹

27.4 Retailers Against Smuggling hold a position on tax and smuggling that mirrors that of the TMA. On the 29th September 2006 the TMA issued a press release related to new UK legislation on smuggling on behalf of its principal member companies; BAT, Gallaher Ltd, and Imperial Tobacco Ltd. Tim Lord, Chief Executive of the TMA stated that ... *“The fundamental problem is the high level of tobacco tax which makes the UK the prime target market for the smugglers. Tax restraint, as demonstrated by the Chancellor in recent budgets, has a large part to play in helping win the battle against these criminals”*.¹⁵²

27.5 The tobacco industry is well aware that increasing the price of tobacco products through taxation is the most cost-effective measure a government can take to reduce tobacco use.¹⁵³ Given the proven efficacy of raised taxes in lowering tobacco consumption, it is not surprising to learn that the tobacco industry funds Retailers Against Smuggling.

28 The SLTA survey into economic impacts of the smoking ban

28.1 Whilst the SLTA had said that it would take at least a year to be clear on the effects of legislation,¹³⁷ less than one month later (August 2006) they released the results of a survey into the economic impact of the ban on their members. The survey found that across its members, there was a:

- 10.8% decrease in wet sales
- 2.6% drop in food sales
- 46% of licensees reported a drop in number of regulars visiting
- 51% said regulars were spending less
- 17% said they had less new customers
- 5% reported an increase in visits by regulars
- 7% reported that regulars were spending more
- 20% reported more new customers
- Restaurants reported a 39 per cent increase in sale of food and 21 per cent in drinks.

28.2 Based on these figures, the SLTA was reported to be considering seeking compensation from the Scottish Executive for members who had lost business or had been shut down. A Scottish Executive spokesperson said *“There is absolutely no question of compensation being given to pubs and clubs”*.¹

- 28.3 The SLTA survey findings contrasted sharply with the experiences reported by licensees both in surveys and in the media up until this point. Pub and bar managers were still largely reporting that the ban had either had little effect, or that trade figures had been very good.¹⁵⁶ On closer inspection the disparity between widely reported experiences on the ground, and figures cited by the SLTA, is easily explained.
- 28.4 Scotland has more than 5,000 licensed premises. The SLTA comprises approximately 1700 members. Only 21.4% of SLTA members (365 licensees) responded to the survey, and so **this survey only represented the views of 7.3% of licensed premises in Scotland.**
- 28.5 Despite the unrepresentative nature of the survey it attracted a lot of media attention, and not all of it was favourable. The Scottish Sun carried the front page headline *“Puff diddies: pub chiefs’ crisis claim rubbished”*¹⁵⁷ and the Metro’s front page read *“Landlords’ smoke ban claims are ‘desperate’”*.¹⁵⁸
- 28.6 ASH Scotland’s response to the SLTA survey was a press release, stating:
- “Before the legislation came in, The SLTA made a number of forecasts regarding its supposed impacts. They predicted a huge decline in profits for licensed premises, mass job losses within the licensed trade and that some 142 average-sized licensed premises could close down as a result of decreased trade. This scale of devastation has clearly completely failed to materialise...Now they are publicising the unsubstantiated opinions of a small minority of their members, without factoring in all the wider economic pressures on pubs and small businesses, and presenting these as if they told us something meaningful. It smacks of desperation”*.¹⁵⁹
- 28.7 The SLTA also released survey data to coincide with the 1 year anniversary of implementation of Scotland’s smoking ban. The survey reportedly claimed that a third of Scottish pubs had had to lay off staff due to the smoking ban.¹⁶⁰ In addition, it claimed that drink sales remained 11% below pre-ban levels and that food sales were down by 3%. The SLTA sent the survey out to all its members, but only about one third (530 pubs) responded. **This survey only represented the views of 10.6% of licensed premises in Scotland.**

29 Scottish smoking ban produces rapid health improvements

- 29.1 In October 2006 findings from a study by Dundee-based researchers were published, which assessed the health of 77 bar workers before and after the smoke-free legislation was introduced.¹⁶² Bar workers showed significant improvements in respiratory symptoms and lung function within the first few

“There can be little doubt that of all the policies introduced since devolution, the ban on smoking in public places has been the greatest success”...
*“Some would still claim the legislation reeks of the Nanny State and maybe they are right. But perhaps this is one instance where Nanny does know best.”*¹⁶¹”

Edinburgh Evening News
 editorial,
 31st August 2006

months of the smoking ban coming into force. In addition, bar workers with asthma reported reduced airway inflammation and improved quality of life. The proportion of bar staff showing health-related symptoms attributable to cigarette smoke fell from over approximately 80% to 53% in 2 months. Lead researcher Dr Daniel Menzies said: “*without question, the ban has had an extremely beneficial effect on the people at the front line behind the bar counter*”.¹⁶³

29.2 Maureen Moore (ASH Scotland) responded: “*These results are the first scientific indication that it was right for Scotland to go smoke-free*”.¹⁶⁴ And the Record’s editorial proclaimed “*the ban has been an all-round success*”.¹⁶⁵

29.3 These findings were supported by a survey commissioned by Cancer Research UK, published on 11th September 2006. 545 bar staff working in different locations across Scotland were asked about their perceived impacts of the smoking ban on health in the workplace:

- 92% of Scottish bar staff surveyed said their workplaces were healthier post legislation
- 78% believed the legislation would benefit their health in the long term
- 89% of bar workers that smoked reported their workplaces were healthier post legislation
- 69% believed it would benefit their health in the long term.¹⁶⁶

30 Evaluating the impact of Scotland’s smoke-free legislation

30.1 Scotland’s smoke-free legislation has the potential to have a major impact on public health. In order to scientifically assess potential impacts across a range of key outcome areas, Health Scotland, in conjunction with the Information Services Division (ISD) Scotland and the Scottish Executive, have developed a comprehensive evaluation strategy to assess the expected short-term, intermediate and long-term outcomes of Scotland’s ban on smoking in public places.¹⁶⁷ Using routine health, behavioural and economic data and commissioned research, seven research teams, comprising more than fifty researchers, are assessing the impact of the smoke-free legislation related to smoking prevalence and tobacco consumption, tobacco-related mortality and morbidity, economic impacts on the hospitality sector, and health inequalities. An international conference is being held in Edinburgh, on the 10-11 September 2007, to showcase the findings from this work, and present additional research evidence on the impacts of smoke-free legislation in Europe and elsewhere.^{ix}

31 The 6 month mark - 26th September 2006

31.1 To mark the 6 month anniversary of the implementation of Scotland's smoke-free legislation, First Minister Jack McConnell held a reception at his official residence in Edinburgh, Bute House. He invited a range of people whose lives have been improved by the ban to the reception. Health Minister Andy Kerr commented:

*"So far, I've been really encouraged by the extremely positive response we've had for the smoking ban both in Scotland and beyond... People across the country are using the ban as an incentive to give up smoking. Others are simply enjoying the opportunity to go out and socialise without having to breathe in second hand smoke. But it's in the years to come that I expect to see even bigger benefits. So much of our poor health in Scotland is linked to smoking, and I think this legislation will have a real impact on that in the long term."*¹⁶⁸ *"Everybody in Scotland should focus on what has been a successful lifestyle change over the past six months, which will have a positive impact for years to come."*¹⁶⁹

31.2 To celebrate the 6 month mark, the SCOT/Scotland CAN! communications group^x submitted a joint letter to the Scotsman newspaper on behalf of all members. The letter outlined the positive impacts of smoke-free legislation both as reported in Scotland and as experienced in the Republic of Ireland, New Zealand, Norway, and in parts of the U.S. The letter also noted that the smoking ban in Scotland wouldn't have worked without the hard work of Scotland's licence-holders, who were to be congratulated for the manner in which they helped implement the new law and make it a success. The Scotsman editorial said *"Six months after the Scottish Executive introduced its controversial ban on smoking in public, most people are having a tough time remembering when it [smoking in public places] was allowed"*.¹⁷¹

32 Snapshot survey of post-ban tobacco sales in Scotland undermines industry arguments

32.1 In October 2006 the Sunday Times published an article which claimed that cigarette sales in Scotland had increased by 5% since the smoking in public places ban was implemented, according to figures from the Scottish Grocer's Federation (SGF). The article claimed that Scots spent £6.3m a week on cigarettes before the ban but that post-ban sales increased to £6.6m on average a week. These findings were given widespread coverage by the national press.

“The smoking ban has been a great success and I think everyone in Scotland should be proud of helping to make it work. This has been the public health triumph of a generation.**”**¹⁷⁰

Maureen Moore OBE,
ASH Scotland,
6 month mark

^x As outlined in 'The Unwelcome Guest'¹ report (p.26), SCOT/Scotland CAN! established a communications working group in November 2004 in order to progress the campaign for smoke-free legislation. The group consisted of existing member organisations and included members with a press/PR remit. From early 2005, it also included representation from the PR Agency that led the Scottish Executive's high profile campaign for the smoke-free legislation. Establishing a communications group encouraged information sharing, meant that key messages could be agreed and scheduled in advance, and enabled the coalition to respond quickly to tobacco industry arguments with messages that the whole coalition could sign up to.

32.2 The SLTA stated: *“These figures appear to confirm what we predicted all along; that the ban would not lead to a decline in sales of cigarettes. The government and anti-smoking campaigners insisted it would. Now they are back-peddling and saying it was only ever about protecting people from passive smoking. It is quite clear that it [the ban on smoking in public places] has not delivered what they said it would”*.¹⁷²

32.3 However days later the SGF issued a press release to clarify the findings of the study, which didn’t receive the same level of coverage as the original story. The survey was outlined in an internal report, and represented only a snapshot of sales figures from 17 stores. Following an initial dip in sales of tobacco products after implementation, the findings revealed that sales then rose by approximately 5% across the 17 stores, but with wide variance from store to store. The SGF pointed out that this could be due to the increased cost of tobacco and increased home consumption of alcohol during the World Cup.

32.4 Commenting on the survey findings, John Drummond, Chief Executive of the SGF stated that the figures were *“only ever intended to be indicative and should not be considered as an accurate picture of tobacco sales in Scotland”*.¹⁷³

*“Given the small sample size and the variance amongst individual stores, SGF did not find any discernable impact on tobacco sales as a result of the smoking ban. The SGF believes that there is no evidence of any overall increase or decrease in tobacco sales post-smoking ban. Whilst we would welcome research into the impact of the smoking ban on tobacco sales, the results of our internal survey should not be represented as such.”*¹⁷³

33 FOREST poll hails the smoking ban a success

33.1 On the 9th November 2006, the findings of a survey conducted by Populus, on behalf of FOREST, were published. Between the 27th October and the 1st November 2006, 1010 adults aged 18+ across Scotland took part in a telephone interview. Results were weighted to be representative of all adults in Scotland, so that 24% of the sample smoked, 23% were ex-smokers, 8% smoked occasionally, and 47% had never smoked. **63% of respondents believed that the current policy banning smoking in public places in Scotland was ‘about right’**. 24% believed that the current policy goes too far, whereas 11% believed that the current policy doesn’t go far enough. 8% of people polled stated that further restrictions on the sale and consumption of tobacco should be the Scottish Executive’s number one aim.

33.2 Despite these very positive findings, with 76% of people in favour of the existing ban or wanting an even stronger ban, FOREST claimed that *“where smoking is concerned the Scottish public clearly believe that enough is enough”*.¹⁷⁴

33.3 Maureen Moore (ASH Scotland) responded:

“Going smoke-free has worked well in Scotland, so well in fact that even the tobacco industry can’t deny it. After years of telling us that second-hand smoke wasn’t harmful, that people in Scotland would rebel against going smoke-free and that our economy would be damaged by such laws, FOREST has been reduced to publishing opinion polls that only reinforce the fact that most Scots are in favour of smoke-free public places”.¹⁷⁵

34 Opponents step up their efforts in other parts of the UK

34.1 On the 27th October 2005 the Health Improvement and Protection Bill was published outlining plans for smoke-free legislation in England. At this stage of the Health Bill private members clubs and pubs not serving food were exempt from the legislation, which was expected to come into force during summer 2007. BAT (British American Tobacco) and Gallaher both publicly welcomed the proposed legislation.¹⁷⁶ However, on the 14th February 2006 members of Parliament voted by a large majority to follow Scotland and end smoking in most enclosed public places, thus removing the exemptions for pubs and clubs. The overwhelming vote by MPs for a comprehensive ban clearly demonstrated the strength of alignment with the Scottish legislation.

34.2 The Bill became law in July 2006, and will take effect on the 1st July 2007. Separate measures apply in Wales and Northern Ireland. Comprehensive smoke-free legislation was implemented in Wales on the 2nd April 2007 and in Northern Ireland on the 30th April 2007.

34.3 The tobacco industry and their allies undoubtedly refocused a proportion of their attentions from Scotland to emerging debates in other part of the UK. One of the earliest examples of this is demonstrated in the TMA press release responding to the publication of ASH Scotland’s ‘Unwelcome Guest’ report in September 2005. The TMA noted that *“although too late for Scotland now...in England the Government should allow smoking rooms in restaurants and pubs that serve food”* and *“smoking rooms in workplaces where both employers and employees agree”*.¹⁷⁷

- 34.4 FOREST's website demonstrates continued attempts to influence the smoke-free debate in England, and to a lesser extent in Wales, Northern Ireland, Jersey and Guernsey.¹⁷⁸ At the time of writing this report, FOREST's website states: *"Although we have clearly lost the latest battle [in Scotland], FOREST is committed to fighting for choice and we will NOT give up, whatever the future holds. Watch this space!!"*¹⁷⁸
- 34.5 Freedom2Choose^{xi} launched a new website in December 2006, and are tracking smoke-free progress in the Republic of Ireland, Scotland, Northern Ireland, Wales and England.¹⁷⁹ In January 2007, Freedom2Choose reportedly teamed up with Sir Crispin Agnew, the QC who led Alan Bowes' legal challenge to Scotland's smoking ban. Freedom2Choose claimed this was a "major step forward" in their campaign for a legal challenge against the English smoking ban.¹⁸⁰ One hundred days before the ban on smoking in public places was due to come into force in England, it was reported that Freedom2Choose would take their case to the High Court using Article 8 of the European Convention on Human Rights which guarantees the right to private and family life.¹⁸¹
- 34.6 In Scotland, objections to the Smoking, Health and Social Care (Scotland) Act 2005 by the TMA, the Swallow Group and Don Lawson were reportedly based on human rights issues raised in relation to Article 8 of the Convention.^{17 22} It is worth reiterating that law experts were quoted at the time of these objections as saying that *"Article 8, paragraph 2 permits interference of private life for protection of health. It seems a challenge on this basis would probably fail"*.¹⁹

35 One-year anniversary of Scotland's smoke-free law

- 35.1 Amongst others, ASH Scotland and the Scottish Executive issued press releases to mark the one-year anniversary of Scotland's smoke-free legislation. Maureen Moore paid tribute to the commitment and dedication of all those who worked to communicate the health reasons for having the law, and who helped to support local communities in bringing it in smoothly.¹⁸² The Scottish Executive's press release¹⁸³ highlighted the first release of statistics from the national smoking cessation monitoring in Scotland. Information Services Division (ISD) Scotland, which compiles Scotland's national health statistics, released figures showing that 46,000 people across Scotland had set quit dates in the past year by contacting NHS smoking cessation services. At 3 months post quit date, 18% were still not smoking.¹⁸⁴ In addition, findings of an MRUK public

^{xi} The Freedom2Choose campaign opposing the introduction of smoke-free public places was launched in September 2005, coinciding with the Scottish Executive's public consultation process. The founder of Freedom2Choose was Rod Bullough, managing director of Blackpool-based tobacco vending machine supplier Duckworth. Freedom2Choose's Scottish spokesman at the time of the launch, Liam Stratton, was general manager of a wholesale tobacconist and vending machine operator in Glasgow.¹

opinion poll showed that 70% of the population supported the new law, and almost 80% considered it a success.¹⁸³ Scottish Executive figures demonstrated that compliance levels had been excellent – never less than 95% in the first nine months since the legislation was introduced.¹⁸⁵ First Minister Jack McConnell said:

“Exactly one year ago today, Scotland took the boldest, bravest and biggest step towards improving our nation’s health.

The smoking ban is making a difference where it matters the most, by preventing deaths and helping to keep families together for longer. The number of people in Scotland dying prematurely from heart disease, cancer and stroke is falling dramatically and will continue to fall as a direct result of the ban.

The decision was controversial at the time. There were those who said it couldn’t work. But I am convinced that it has absolutely been the right way forward for Scotland - not just for our nation’s health, but for our economy and our tourist industry.

This country has always been a great place to live, to work, to bring up your children and even just to visit. The smoking ban has made it even better.”¹⁸³

- 35.2 Around this time, the findings of a study comparing SHS levels in Scottish pubs before and after the legislation was introduced were published. The study compared levels of particulate matter in a random selection of 41 pubs in two Scottish cities, in the 8 weeks preceding the implementation of Scotland’s smoke-free legislation, and then again two months after the ban was introduced. Levels of SHS were reduced at post-ban visits by an average of 86%, with indoor air quality comparable to outdoor levels. The study produced the largest dataset of pre- and post-ban SHS levels in pubs of all worldwide smoke-free legislations. It concluded that the Smoking, Health and Social Care (Scotland) Act 2005 has reduced both the occupational exposure of workers in the hospitality sector, and that of non-smoking customers.¹⁸⁶

36 Looking to the future

- 36.1 Despite the success of going smoke-free, tobacco still poses a huge challenge to Scotland’s health. Approximately 35 smokers in Scotland die every day from diseases caused by tobacco.¹⁸⁸ Most Scots who smoke have started by the time they reach the age of 16¹⁸⁹ and one in five babies are born to a mother who smoked during early pregnancy.¹⁹⁰

“ There is still a huge challenge for smoking and health in Scotland... Smoking still kills, despite the triumph of going smoke-free in public places.¹⁸⁷ ”

Maureen Moore OBE,
ASH Scotland,
23 January 2007

- 36.2 ASH Scotland used the one-year anniversary to call for further action to reduce the harm caused by tobacco in Scotland, drawing from its manifesto for the May 2007 Scottish elections, which was launched in January 2007.¹⁹¹ ASH Scotland's manifesto calls for further measures to deter children from smoking; additional cessation help for pregnant women who smoke; and for an end to the display of tobacco products in retail outlets through the introduction of out-of-sight (under the counter) tobacco sales. Ending over the counter sales is something that could be achieved by amending existing Scottish regulations.
- 36.3 The SCOT/Scotland CAN! coalition celebrated the one year anniversary of Scotland's smoke-free legislation with the launch of its own manifesto¹⁹² for the 2007 Scottish Elections. SCOT's proposals stressed the need to raise the purchase age of tobacco to 18 backed by effective enforcement measures, and introduce out-of-sight sales to remove the high visibility of tobacco products at retail outlets.
- 36.4 The British Medical Association (BMA) also used the anniversary to call for more action to tackle smoking, releasing details of a survey of more than 600 doctors in Scotland. The survey revealed that 70% feel smoking is still the most important public health issue in Scotland. In addition:
- 96% of doctors said that enforcing age restrictions for the purchase of cigarettes was important to tackle teen smoking rates
 - 93% endorsed the introduction of a licence to sell cigarettes so that those who continue to sell cigarettes to under-age children would lose their licence
 - 92% backed a campaign to develop and implement a campaign to tackle maternal smoking
 - 86% supported raising the purchase age of cigarettes from 16 to 18.

Dr Peter Terry, Chairman of BMA Scotland, said:

"Although smoke-free legislation is making a huge difference to the health of patients across Scotland, we cannot become complacent about the continued high smoking rates in Scotland.

"Scots have embraced the smoke free legislation and many have chosen to quit, however, much more must be done to reduce the number of smokers in Scotland, particularly among the young and pregnant women." 193

- 36.5 The Scotsman also ran an interview with Stewart Maxwell MSP, in which he reportedly stated that the Executive “*must now do more to prevent people from smoking*”.¹⁹⁴ He also called for the minimum age for purchasing cigarettes to be raised to 18, for the end of point-of-sale advertising, and for stricter enforcement measures to be imposed on tobacco sales. In addition, he highlighted the need for more resources targeted at people living in deprived areas, where smoking is highest, to help them quit.¹⁹⁴
- 36.6 Work is already underway in Scotland to reduce the number of people who start smoking. As documented in the Unwelcome Guest report¹ (p.33), at the Stage 3 Parliamentary Debate on Scotland’s smoke-free legislation (30 June 2005), a majority of the Scottish Parliament’s Health Committee agreed to give ministers new powers to change the law on tobacco sales, so that the minimum age for buying tobacco in Scotland can be raised. The powers would be written into the Smoking, Health and Social Care Act (Scotland) 2005, but would need to be activated through regulation.
- 36.7 In the Autumn of 2005 Duncan McNeil MSP and the BMA both urged the Scottish Executive to raise the age for purchasing cigarettes in Scotland to 18. ASH Scotland, SCOT/Scotland CAN! and the Cross Party Group on Tobacco Control in the Scottish Parliament called for a range of accompanying enforcement strategies to be put in place to support any change to the current law.^{195 196 197}
- 36.8 The Smoking Prevention Working Group (SPWG) was established as a sub-group of the Scottish Ministerial Working Group on Tobacco Control. The SPWG was asked by the Scottish Executive to make recommendations to help develop a new long term smoking prevention strategy to guide future tobacco control activity at local and national level. The group, which was chaired by Dr Laurence Gruer, Director of Public Health Science at NHS Health Scotland, was also tasked with advising Ministers on the question of evidence to support raising the age of sale for tobacco products.
- 36.9 The SPWG included key academics in the field of youth smoking, representatives from health boards, ASH Scotland and the Scottish Executive. The group met on six occasions between August 2005 and May 2006, and the resulting report – ‘Towards a future without tobacco’ was published on the 22nd November 2006.¹⁹⁸ The report sets out 31 recommendations, mainly aimed at preventing children and young people in Scotland from starting to smoke and becoming regular smokers. The report’s recommendations include:

- moving the age at which cigarettes can be bought from 16 to 18
 - licensing cigarette sales to make this reform more effective
 - prosecution and heavy fines for retailers that sell cigarettes to children
 - ending the display of cigarettes in shops via out-of-sight sales.
- 36.10 The Scottish Executive will publish a full response to the report in due course. In December 2006, it launched concurrent consultations on raising the age at which tobacco can be bought, and the recommendations of the SPWG's report. Responses to both consultations are available online^{199 200}, and include submissions from the TMA, Philip Morris Ltd and Retailers Against Smuggling.
- 36.11 The calls made by Scotland's NGOs for additional action to reduce the number of people who smoke in Scotland are mirrored within the SPWG's report. The consensus among NGOs on future tobacco control priorities in Scotland was reached as a result of coalition working. ASH Scotland and SCOT/Scotland CAN! members in turn discussed key future tobacco control issues with MSP members of the Cross Party Group on Tobacco Control in the Scottish Parliament. ASH Scotland provided MSP members with evidence-based briefings highlighting the rationale for potential future work on issues including ending the display of cigarettes in shops via out-of-sight sales. ASH Scotland and SCOT/Scotland CAN! members used the evidence base, and examples of international good practice, to advise the SPWG on potential areas for inclusion in their report of recommendations for a smoking prevention strategy for Scotland.
- 36.12 The proposals by NGOs and the SPWG build on the good work that was started by ending smoking in public places in Scotland. ASH Scotland and other NGOs are engaged in campaigning for additional tobacco control measures in Scotland. However, internal tobacco industry documents demonstrate that the tobacco industry work to undermine attempts to progress tobacco control in all areas, and not just related to the introduction of legislation on smoke-free public places.^{xii} With so many countries starting discussions related to implementing the Framework Convention on Tobacco Control (FCTC),^{xiii} there are a number of potential lessons to be drawn

^{xii} Norbert Hirschhorn MD's 'Tobacco Documents Bibliography' cites publications based on research and analysis of tobacco industry documents published since 1988. Detailed information on this resource is available from: <http://www.library.ucsf.edu/tobacco/docsbiblio.html>

^{xiii} In May 2003, the member countries of the World Health Organisation adopted an historic tobacco control treaty, the Framework Convention on Tobacco Control (FCTC), which has the potential to reduce the global toll of tobacco related death and ill-health. The FCTC provides the basic tools for countries to enact comprehensive legislation across a number of tobacco control areas. Further information is available from the Framework Convention Alliance website, at <http://www.fctc.org/>

from the NGOs strategic campaign for smoke-free public places in Scotland which could assist with other tobacco control campaigns.

- 36.13 From Scotland's experience of implementing legislation to end smoking in public places, here are the lessons that ASH Scotland wishes to communicate to others:

a) Countering The Tobacco Industry And Their Allies

- Tobacco industry documents should be used to highlight effectively false arguments and strategic undermining of science, including the use of front groups.
- Findings from surveys and opinion polls that contradict the evidence base should be analysed carefully from a research perspective. The tobacco industry and their allies use poor quality surveys and opinion polls as one means of trying to argue against legislation on SHS.
- Rebutting false arguments made by the tobacco industry and their allies is vital. However, being selective and concentrating only on key opposition arguments ensures that the most important issues remain at the centre of debate.

b) Communications

- The central message in SHS communications is the health message. It is important to remain focused and not get sidetracked onto tobacco industry initiated issues that detract from this key message.
- Communicating the evidence base in a user-friendly way to the media will help to ensure that key pieces of information are communicated to the general public.
- Developing positive communications messages will assist in ensuring that the general public and the hospitality sector are aware of the opportunities and benefits associated with going smoke-free.
- Tailoring communications strategies for different audiences will ensure that key messages are easily understood.

c) Coalitions

- Forming alliances and networks is crucial to success, as is keeping members engaged, updated and motivated.
- Pooling resources as required will assist with co-ordinating larger scale campaign strands.
- Promoting positive change as an alliance adds additional weight to campaign work because of the ability to combine expertise and communications skills, and because of the high levels of public recognition and trust held by member organisations.
- Identifying media spokespersons with specific expertise enables communications to be channelled and responded to most efficiently and effectively.
- Once the Government makes it their policy to end smoking in enclosed public places, widening the parameters of coalition work to involve local authorities and trade unions will assist with identifying any potential implementation challenges.
- Ensuring that politicians are adequately briefed on key issues is vital to ensure that they communicate an evidence-based position, and to increase awareness of misinformation and tobacco industry arguments.

d) Campaigning

- Rely on published, peer-reviewed evidence as a basis for campaign work.
- Learn from international experience and good practice, and promote successes in other countries.
- For any piece of legislation that is implemented, ensure that adequate time and resources are allocated to comprehensively evaluating its impact.

36.14 Scotland's NGOs will be guided by these principles as they move forward in campaigning for a full programme of measures to assist in further reducing smoking rates in Scotland. Tobacco is a uniquely dangerous substance. Going smoke-free was a triumph for those committed to reducing the harm caused by tobacco use in Scotland. ASH Scotland is fully committed to making the case for the introduction of additional measures to continue to reduce Scotland's poor health record, and to prevent future generations from becoming addicted to smoking,

Epilogue

Maureen Moore (Chief Executive, ASH Scotland)

In March 2006, Maureen Moore was given the NCH Scotland Woman of Influence 2006 award. The awards exist to encourage, support and recognise influential women in Scotland who have made an outstanding contribution to society.

In May 2006, Scotland on Sunday voted her the 2nd most powerful person in Scotland.

In June 2006, Maureen was awarded an OBE for services to healthcare in the Queen's 80th birthday honours list.

Andy Kerr MSP, Health Minister

In November 2006, Andy Kerr MSP was given the Herald Diageo 'Scottish Politician of the Year' award for his work to bring in the smoking ban.

Stewart Maxwell MSP

In November 2006 Stewart Maxwell MSP was made an honorary vice president of the Royal Environmental Health Institute of Scotland. This award was made in light of his ongoing dedication and commitment to work on tobacco control in Scotland, and in recognition of the impact that groups such as the Scottish Parliament's Cross Party Group on Tobacco Control has in improving Scotland's public health.

Chronology

30 June 2005	The Scottish Parliament votes 97 to 17 (1 abstention in favour of the Smoking, Health and Social Care (Scotland) Bill).
8 July 2005	The Glasgow Evening Times reports that the Scottish Licensed Trade Association has asked lawyers to investigate if it is possible to appeal against the legislation.
18 July 2005	The Scottish Executive reveals that a number of celebrities, including Brian Cox, Lorraine Kelly and Gail Porter, are supporting Scotland's smoke-free legislation.
19 July 2005	In his annual report England's Chief Medical Officer Sir Liam Donaldson calls for a crackdown on tobacco smuggling and recommends that smokers should be limited to importing 200 cigarettes from the EU.
21 July 2005	The Prohibition of Smoking in Regulated Areas (Scotland) Bill, Stewart Maxwell's Member's Bill, is withdrawn. The Jersey States vote to end smoking in indoor workplaces and place new restrictions on tobacco advertising and vending machines.
31 July 2005	Tobacco industry sponsorship of sport is prohibited under the Tobacco Advertising and Promotion Act 2002. Brandsharing regulations also come into force.
4 August 2005	Results from the 2003/04 Scottish Household Survey show a decline in overall smoking rates in Scotland from 28% in 2003 to 27% in 2004. A large decline in the number of 16-24 year old women smoking from 32% in 2003 to 24% in 2004 is revealed.
5 August 2005	The Smoking, Health and Social Care (Scotland) Act 2005 receives Royal Assent.
15 September 2005	Dr Bill O'Neill, Scottish secretary of the BMA, urges the Scottish Parliament to raise the age for purchasing cigarettes to 18.
27 September 2005	ASH Scotland publishes <i>The Unwelcome Guest: How Scotland Invited the Tobacco Industry to Smoke Outside</i> at its AGM which is addressed by Dr Jeffrey Wigand.
10 October 2005	Health Minister Andy Kerr launches a new NHS Health Scotland stop smoking advertising campaign which encourages smokers to use their local cessation service.

17 October 2005	The Minister for Health in Northern Ireland, Shaun Woodward MP, announces that all workplaces and enclosed public places in the province will be smoke-free in April 2007.
27 October 2005	The Health Improvement and Protection Bill is published outlining plans for smoke-free legislation in England. At this stage the Health Bill exempts private members clubs and pubs not serving food.
4 November 2005	Additional funding is announced for local authorities to enable them to enforce the smoke-free law. £6.1 million over 3 years is allocated by the Scottish Executive.
8 November 2005	The Scottish Executive issues guidance for employers and those in control of premises on Scotland's smoke-free legislation and announces that the legislation will come into force at 6am on 26th March.
15 November 2005	A host of sports stars give their backing to Scotland's smoke-free legislation, including Sir Alex Ferguson and 400 metre runner Lee McConnell.
21 November 2005	A smoke-free home initiative launches in East Glasgow. Breathe Easy aims to help parents protect their children from the harmful effects of second-hand smoke.
28 November 2005	A hard-hitting Scottish Executive advert highlighting the dangers of second-hand smoke to health launches today, it runs until 26th March.
29 November 2005	The Scottish Executive publishes the Scottish Health Survey for 2003. It shows that 31% of Scots aged between 16-64 smoke cigarettes, down from 34% in 1998. It also shows that there is a persistent gap in smoking rates between rich and poor Scots.
10 December 2005	New Zealand celebrates its first year of smoke-free public places.
15 December 2005	100 days before Scotland goes smoke-free the Scottish Executive announces new targets for reducing the number of people who smoke.
21 December 2005	The Scottish Executive published updated guidance on smoking policies for the NHS, local authorities and care services. Commissioned by a Steering Group comprising of the Scottish Executive, ASH Scotland, Tayside Health Promotion Centre, NHS Health Scotland, the Convention of Scottish Local Authorities (COSLA) and the Care Commission, the guidance aims to enable the NHS, local authorities and care service providers to comply with the legislation and, where feasible, encourages them to work towards completely smoke-free policies.

4 January 2006	First Minister Jack McConnell outlines details of a funding package to provide additional support to Scotland's most deprived communities to stop smoking.
17 January 2006	ASH Scotland launches Tobacco Information Scotland, a national gateway to tobacco control information funded jointly by the British Heart Foundation and the Scottish Executive.
14 February 2006	The House of Commons votes for England to follow Scotland and end smoking in most enclosed public places during a free vote on the issue.
7 March 2006	ASH Scotland condemns court action which aims to halt Scotland from going smoke-free. Petitions were lodged at the Court of Session in Edinburgh by Swallow Hotels, London and Edinburgh Inns, Edinburgh City Football Club Limited and Donald Lawson.
8 March 2006	No Smoking Day 2006 falls 18 days before Scotland goes smoke-free in all its enclosed public places, Health Minister Andy Kerr tells Scotland that there has never been a better time to quit smoking.
14 March 2006	A poll commissioned by Cancer Research UK found that 84% of Scots aged 18-24 believe that a smoke-free Scotland is something to be proud of.
19 March 2006	ASH Scotland's chief executive Maureen Moore is named NCH Scotland's Woman of Influence.
26 March 2006	The Smoking, Health and Social Care (Scotland) Act enters into force at 6am. Scotland becomes the first part of the UK where smoking is not permitted in the majority of wholly and substantially enclosed public places.
29 March 2006	The Republic of Ireland celebrates 2 years of smoke-free success.
26 April 2006	One month anniversary of a smoke-free Scotland.
27 May 2006	The UK Department of Health launches a public consultation on picture health warnings on tobacco products, which runs until 25th August.
28 May 2006	Maureen Moore, chief executive of ASH Scotland, is ranked second in the Scotland on Sunday poll of Scotland's most powerful people.
31 May 2006	World No Tobacco Day 2006 carries the theme "Tobacco: deadly in any form or disguise".

13 June 2006	The legal challenge to Scotland's smoke-free legislation is dropped. Alan Bowes, Chairman of the Swallow Group had vowed to challenge the legislation in the Scottish courts. The case was due to be heard on June 20th but was formally abandoned today.
26 June 2006	Three month anniversary of a smoke-free Scotland. Cancer Research UK publishes the results of a survey in which 24% of Scots said they were more likely to visit pubs and bars than before the smoke-free law. The Scottish Executive releases the latest results of the MRUK omnibus survey on support for Scotland's smoke-free legislation; 61% of Scots said they supported the legislation and 100% were aware of it. The Scottish Executive also releases the first set of compliance data; 99.4% of premises comply with respect to not allowing smoking on the premises.
2 July 2006	Smoke-free legislation is implemented in Guernsey.
17 July 2006	The Department of Health in England launches a consultation on the smoke-free regulations that accompany the Health Bill. It runs until 9th October.
19 July 2006	Supermarket chain ASDA announces that it will raise the age at which customers can buy cigarettes to 18 from 1st September 2006.
3 August 2006	The Scottish Household Survey is published. It finds that in 2005 26% of people aged 16 and over in Scotland smoked. This is a 1% decline from 2004 and a 4% decline from 1999.
10 August 2006	A survey by Retailers Against Smuggling finds that 51% of corner shopkeepers in Scotland and Northern Ireland are aware of counterfeit tobacco being sold in their area. Retailers Against Smuggling is the campaign of the Tobacco Alliance which is funded by the Tobacco Manufacturers Association.
23 August 2006	The Scottish Licensed Trade Association (SLTA) releases the results of a snapshot survey on the economic impact of the smoking ban on its members. They claim that sales of alcohol have fallen by more than 10% since the smoking ban came into force. However a large number of SLTA members did not respond to the survey.
11 September 2006	Cancer Research UK publishes a survey which finds that 92% of bar workers believe their health has improved since the introduction of Scotland's smoke-free legislation.

26 September 2006	<p>Six month anniversary of smoke-free legislation in Scotland. Scots whose lives have been improved by the new law join Health Minister Andy Kerr at Bute House in Edinburgh to mark the anniversary.</p> <p>ASH Scotland holds its AGM which looks to the future of tobacco control.</p>
11 October 2006	<p>Research by Dundee University published in the Journal of the American Medical Association (JAMA) finds that the health of bar workers has dramatically improved since Scotland's smoke-free legislation was implemented.</p>
6 November 2006	<p>In his first report as Scotland's Chief Medical Officer Dr Harry Burns says that a Scotland virtually without lung cancer is a real possibility in the future.</p>
9 November 2006	<p>A Populus survey for FOREST finds that 63% of Scots think that the current policy on smoking is about right.</p>
16 November 2006	<p>Andy Kerr is named The Herald Diageo Scottish Politician of the Year 2006 for his work in bringing in the smoke-free legislation.</p>
22 November 2006	<p>The Smoking Prevention Working Group report <i>Towards a Future Without Tobacco</i> is published. It sets out recommendations on how Scotland can do more to help young people to choose not to smoke. The report was commissioned by the Scottish Executive.</p>
7 December 2006	<p>Health Minister Andy Kerr launches concurrent consultations on raising the age at which tobacco can be bought and the recommendations of the Smoking Prevention Working Group's report <i>Towards A Future Without Tobacco</i>. Both consultations run until 28th February 2007.</p>
2 January 2007	<p>Jersey's smoke-free legislation comes into force.</p>
15 January 2007	<p>The Scottish Medical Consortium approves Champix for use in Scotland's smoking cessation services. Champix, also referred to as Varenicline, is a non-nicotine based medicine designed to help people stop smoking.</p>
23 January 2007	<p>ASH Scotland launches its manifesto for the 2007 Scottish Parliament elections. It calls for action to limit the availability of cigarettes, extra help for pregnant women who smoke and a full programme of measures to deter young people from starting smoking.</p>
February 2007	<p>The Scottish Executive runs a series of consultation seminars throughout Scotland on the recommendations of The Smoking Prevention Working Group report <i>"Towards a Future Without Tobacco"</i> and a draft Order to raise the age of sale for tobacco products to 18.</p>

1 February 2007	Smoke-free legislation partly enters into force in most public places and workplaces in most public places and workplaces in France. Bars and restaurants have until January 2008 to go smoke-free.
6 February 2007	The Scottish Parliament's Health Committee hears evidence on the impact of Scotland's smoke-free legislation. Research published in the journal <i>Tobacco Control</i> comparing levels of particulate matter in 41 Scottish pubs pre- and post-legislation finds that exposure to second-hand smoke reduced by 86% in bar workers.
22 February 2007	The Publican Party launches its campaign for the Scottish Parliament elections in May. The party wants an amendment to the smoking ban to allow ventilated smoking areas in pubs.
21 March 2007	Chancellor Gordon Brown announces in his Budget speech that the VAT on smoking cessation aids will be reduced from 17.5% to 5% for one year from July and that the duty on cigarettes will increase in line with inflation.
22 March 2007	The Scottish Licensed Trade Association (SLTA) releases the results of another snapshot survey of its members on the economic impact of the smoking ban. They claim that drink sales are 11% below pre-ban levels and a third of respondents had laid off staff. Only a third of members responded to the survey.
26 March 2007	The 1st anniversary of smoke-free legislation in Scotland. The Scottish Coalition on Tobacco celebrates the anniversary and looks to the future with the launch of its manifesto for the Scottish Parliament elections. ISD Scotland releases the first statistics from the national smoking cessation monitoring. The figures show that 46,466 quit attempts were made in 2006.
2 April 2007	Smoke-free public places legislation is implemented in Wales.
5 April 2007	The Scottish Executive publishes responses to the consultations on raising the tobacco purchase age from 16 to 18 and on the recommendations of the Smoking Prevention Working Group report ' <i>Towards a Future Without Tobacco</i> '.

23 April 2007	The BMA publishes its report <i>“Breaking the cycle of children’s exposure to cigarette smoke”</i> . The report describes the damage that adult smoking causes children, and recommends evidence-based policies that need to be adopted to break the cycle of children’s exposure to tobacco smoke.
30 April 2007	Smoke-free public places legislation is implemented in Northern Ireland.
31 May 2007	World No Tobacco Day 2007 carries the theme of “smoke-free environments”
1 July 2007	Smoke-free public places legislation will be implemented in England.
10-11 September 2007	‘Towards a Smokefree Society’ conference is held in Edinburgh with the overall purpose of mobilising further effective action on smoke-free legislation.

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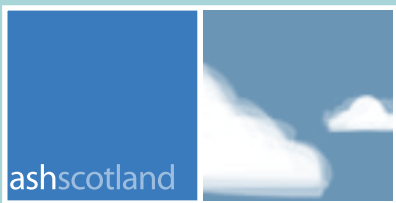
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Glossary of terms

BAT	British American Tobacco
BMA	British Medical Association
CAMRA	Campaign for Real Ale
COSLA	Convention of Scottish Local Authorities
FCTC	Framework Convention on Tobacco Control
FOREST	Freedom Organisation for the Right to Enjoy Smoking Tobacco
LVA	Licensed Vintners Association
NGOs	Non-governmental organisations
NRT	Nicotine Replacement Therapy
NSD	No Smoking Day
RCP	Royal College of Physicians
REHIS	Royal Environmental Health Institute of Scotland
SGF	Scottish Grocer's Federation
SHS	Second-hand smoke
SPWG	Smoking Prevention Working Group
SLTA	Scottish Licensed Trade Association
TA	Tobacco Alliance
TABS	Teenage Attitudes and Behaviours
TMA	Tobacco Manufacturers Association
YSP	Youth Smoking Prevention



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