ASH Scotland briefing on Jim Hume MSP’s *Proposed Smoking (Children in Vehicles) (Scotland) Bill*

*August 2013*

**Background**

Jim Hume MSP, Liberal Democrat Member for South Scotland is currently consulting on proposals to prohibit smoking in private vehicles in Scotland when children under the age of 16 are present. This consultation closes at **5pm on Friday 30th August**, and can be responded to by following the instructions in the consultation document available on the Scottish Parliament website at: http://www.scottish.parliament.uk/S4_MembersBills/Smoking_in_cars_consultation_S4.pdf

ASH Scotland encourages all public health stakeholders to respond to this consultation. The proposals will encourage debate on the important issue of protecting people from exposure to tobacco smoke, and the consultation document itself consists of only 11 short questions.

This briefing will summarise the proposals in the consultation document, and provide ASH Scotland commentary on each of the consultation questions.

**The proposals (for more detail, see consultation document)**

Jim Hume MSP’s consultation document on the proposed Bill describes how exposure to second-hand smoke (SHS) in confined spaces like vehicles can rise to high levels, and while it is harmful to all occupants, it is especially harmful to children.

The proposal is to prohibit smoking in a vehicle while a child aged under 16 is present - this ban would apply regardless of whether the vehicle was currently in motion, or where it was situated (on a public road or a private road/land).

- **Age of the child:** the proposal sets this as younger than 16 years, as 16 is the age when legal frameworks (e.g. the Age of Legal Capacity (Scotland) Act 1991) consider an individual able to make an informed choice.

- **Age of the offender:** the proposal is that an offence is created for anyone who is 16 or over smoking in a vehicle while a child under 16 is present, on the grounds that someone of this age would have the capacity to know they were breaking the law, and likely to be harming other occupants of the car through smoking.

- **Enforcement:** the proposal is that the Police Service of Scotland would have primary responsibility in enforcing this new law, in a similar fashion to their responsibility for enforcing laws prohibiting the use of hand-held devices while driving, or the compulsory use of seat belts.

- **Penalties:** the proposal is for a fixed penalty fine of £60, in line with penalties for use of hand-held devices or failure to use seatbelts - no motoring penalty points would apply.
ASH Scotland commentary on consultation questions

1. Do you support the general aim of the proposed Bill? Please indicate “yes/no/undecided” and explain the reasons for your response.

Yes.

We believe that no-one should be involuntarily exposed to the tobacco smoke of others. As the consultation document states, children can be particularly vulnerable to its effects, and are often unable to remove themselves from smoky environments, or seek out alternate means of transport.

2. Do you agree that legislation is a necessary and appropriate means of addressing the issues identified?

Yes.

Legislation can be important in sending a clear message that second-hand smoke is hazardous, and that children should not have to be exposed to it before they are competent to consent. Evidence from provinces in Canada that have introduced this measure shows that it has been effective in reducing child second-hand smoke exposure. However legislation should also be accompanied by other measures to inform, educate and persuade people in Scotland to take action to reduce others' exposure (both children and adults) to second-hand smoke.

3. What (if any) would be the main practical advantages of the legislation proposed? What (if any) would be the disadvantages?

The legislation, if accompanied by a supportive and positive media campaign, would raise public awareness and stimulate people to take action to reduce the harms of second-hand smoke to those around them. Evidence from Canada suggests some children who are exposed to second-hand smoke in vehicles would be prevented from such exposure by the law, and no evidence exists to suggest a displacement of smoking to other environments (such as the home) following its implementation.

The issue of difficulty of enforcement (or diversion of an enforcement agency’s time from ‘more important’ duties) has been raised as a disadvantage. However, we do not agree that this is likely to be a significant issue. Similar offences for lack of seatbelt use and use of hand-held devices exist, and compliance with these laws is monitored through routine traffic offence observation. It should not be necessary to divert more resources to enforcing a new smoking in vehicles law: infringements would be captured as part of the process of ensuring compliance with existing laws.

Difficulties may arise for enforcement officers in initially determining (if there is suspicion an offence is being committed) and confirming (to verify an offence has been committed) that either the child or the potential offender were of an age for an offence to be created. However, as the consultation document states, enforcement experience from other jurisdictions - such as Australia - suggest such barriers are not insurmountable.

4. Do you agree that a ban should apply to smokers while in a car with children under 16 years of age?

Yes.
We agree with the consultation document that the age of 16 is reasonable, on the grounds that this is the age when a person is normally considered to have the capacity make informed, competent choices of this nature.

However, if the law is framed on these grounds, we would suggest the scope for the ban should be expanded to other vulnerable groups whom the law also considers to be worthy of special protections from harms caused by others. This includes ‘adults at risk’: who are particularly vulnerable because they are unable to safeguard their own well-being or interests, and who may have a disability, illness, or impairment that means they are more vulnerable to being harmed¹.

We recognise that some ‘adults at risk’ are themselves smokers, and it would be inconsistent and illogical for an offence to be created if another individual smoked in their presence in a vehicle while they themselves were also smoking, or if they had simply consented to smoking occurring. However, existing legal frameworks such as the Adult Support and Protection (Scotland) Act 2007 state that the adult in question’s wishes and feelings must be considered - so a reasonable balance between offering extra protection from second-hand smoke to adults at risk, and respecting the wishes of adults at risk who smoke (or who are content to travel in vehicles where others are smoking) can be struck. We would encourage investigation of these opportunities to extend the scope of the proposal beyond children under 16.

5. Do you agree that the age of an offender shall be anyone aged 16 or over?

Yes.

The justification in the consultation document for this decision is reasonable.

6. Do you agree with making the fine for an offence (£60) in line with offences for failing to wear a seat belt and the use of a hand-held device while driving?

Yes.

This is proportionate with other traffic offences, and we agree it would be inappropriate to apply motoring penalty points for offences under this proposed law.

7. What types of vehicles should the ban apply to? Do you believe that these proposals should include convertible cars irrespective of whether the top is down?

We believe that this law should apply to all vehicle types, including convertible cars, for clarity of enforcement.

However we note that the proposals may raise issues for people and groups in Scotland who have their primary home or residence in environments that would be classified as vehicles for the purposes of this law (e.g. travelling communities). It is acknowledged that it is not appropriate to legislate to prohibit smoking in private homes, yet this may be the de facto result of the proposal. This could result in this law having a negative equality impact. Hence we suggest that further work should be done to determine if it is possible to frame the law in such a way as to mitigate this problem (of vehicles that are also used as a primary home or residence), while still maintaining clarity of enforcement for the majority of vehicles.

¹ From the Adult Support and Protection (Scotland) Act 2007: http://www.legislation.gov.uk/asp/2007/10/part/1
8. What is your assessment of the likely financial implications (if any) of the proposed Bill to you or your organisation? What (if any) other significant financial implications are likely to arise?

As described in our response to question 3, we do not believe there are likely to be significant financial implications resulting from requiring enforcement of the proposed Bill.

9. Is the proposed Bill likely to have any substantial positive or negative implications for equality? If it is likely to have a substantial negative implication, how might this be minimised or avoided?

As evidence shows it is children and young people from more disadvantaged areas who are more likely to be exposed to second-hand smoke in vehicles, the proposed legislation has the potential to have a positive equality impact.

As noted in response to question 7, there are issues concerning the potential prohibition of smoking in some vehicles which are also considered homes - this may have a negative equality impact on groups who can already suffer stigma and discrimination, and consideration should be given as to how to mitigate this and still achieve the aims of the proposed Bill.

10. What lead-in time should be allowed prior to implementation of the ban and how should the public be informed?

It is important, as in some provinces in Canada and also Wales, to carry out proactive, public-facing, media work to alert people in Scotland to these prospective changes before they come into force. This could focus on the positive message of protecting vulnerable people (both children and adults) from a harmful substance - it is important the harm that second-hand smoke can cause is kept high in public consciousness, both before and after any passage of a law. Perhaps involvement of the DVLA could be sought to utilise their resources to inform drivers of the change in law.

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

The proposal represents a welcome step to begin debate on how to extend the protection of the very successful 2006 indoor public places law to protect vulnerable groups in other settings. We note that compliance with the 2006 law is very high, and from early on it has been largely self-policing. We would hope that the current proposal would have similar results. We call for consideration of how protection by the law could be extended to other vulnerable groups, and at the very least all public information and awareness raising activity should recognise that second hand smoke impacts on adults as well as children.

For more information
ASH Scotland has published a review of the evidence on smoking in vehicles: www.ashscotland.org.uk/smokinginvehicles which is freely available and reviews the scientific evidence on this issue.