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The Unwelcome Guest: How Scotland invited the tobacco industry to smoke outside

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The Unwelcome Guest:

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- The Cross Party Group on Tobacco Control
- All the many political researchers and civil servants
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- Scotland CAN!¹
- The Scotland CAN! Communications Group
- The Scottish Tobacco Control Alliance

And lastly thanks to the majority of the Scottish population who support legislation ending smoking in Scotland's public places.

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¹Scotland CAN! members are listed in full in Appendix 1, p44.

Acronyms

ACoP	Approved Code of Practice
AIR	Atmosphere Improves Results
AOB	Against an Outright Ban
ASH	Action on Smoking and Health (in London)
ASH Scotland	Action on Smoking and Health Scotland
BAT	British American Tobacco
BMA	British Medical Association
COSLA	Convention of Scottish Local Authorities
CPG	Cross Party Group
ETS	Environmental Tobacco Smoke
FCTC	Framework Convention on Tobacco Control
FOREST	Freedom Organisation for the Right to Enjoy Smoking Tobacco
HEBS	Health Education Board for Scotland (later renamed NHS Health Scotland)
IARC	International Agency for Research on Cancer
LVA	Licensed Vintners' Association (Ireland)
MSP	Member of the Scottish Parliament
PM	Philip Morris
RCN	Royal College of Nursing
REHIS	Royal Environmental Health Institute of Scotland
SBPA	Scottish Beer and Pub Association
SCOT	Scottish Coalition on Tobacco
SCCOT	Scottish Cancer Coalition on Tobacco
SCOTH	Scientific Committee On Tobacco and Health
Scotland CAN!	Scotland CAN! (Cleaner Air Now!)
SHS	Secondhand Smoke
SLTA	Scottish Licensed Trade Association
SNP	Scottish National Party
STCA	Scottish Tobacco Control Alliance
STUC	Scottish Trades Union Congress
TMA	Tobacco Manufacturers' Association
WHO	World Health Organization

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Foreword

The fight by voluntary organizations and principled citizens against the tobacco industry has been one of the most dramatic David and Goliath public health, legal and political tales of the last decade. Most of the attention in holding the tobacco industry accountable for the effect of its products on human health and life has been focused initially on events in the United States, Canada, the EU and on stories such as my own. Recently however, with countries such as Ireland deciding to end smoking in all enclosed workplaces and public venues, this fight has become noticeably global. Today, the debate about how we control the damage caused by tobacco has expanded across the world. Also expanded are the countries that have successfully implemented tobacco control policies.

One of the strengths of the voluntary groups that have tackled the corporate tobacco giants has been their free and open exchange of information. In direct contrast to the tobacco industry with its millions of dollars, the small and often under-funded voluntary organizations have found that only by sharing their information and experiences can they tackle the tobacco industry and the costs that their products exact from society.

This report is a continuation of that tradition. Scotland is a small country but one that has suffered from low levels of public health for too long. The Scots are known around the world as big-hearted, but the real story is of a country with hearts weakened by high levels of coronary disease and a myriad of cancers. The fight to end smoking in enclosed public places in Scotland is remarkable, if only because few countries in the world have

seen such a large proportion of its people either killed or suffering from the diseases caused by tobacco.

The Scottish experience, outlined in whole for the first time in this report, is also remarkable for the similarities it has with other countries that have decided to end smoking in public places. Time and again, campaigners against the tobacco companies are seeing the same tactics and arguments used to defend the unregulated consumption of tobacco in public.

This report shows how these tactics were used in Scotland; it shows how campaigners for smoke-free laws learned how to combat these tactics from the experiences of colleagues in Ireland, New York, Australia and Canada. In its turn, this report now goes out as a guide to those campaigners and public health advocates in countries just starting their journey to smoke-free enclosed public environments and reducing the harm caused by a known human carcinogen on innocents.

In addition to the campaigners for smoke free environments, government must accept its duty to protect innocents as stated so clearly by J.S. Mill in 1864 in his essay *On Liberty*,

"that the only purpose for which power can be rightfully exercised over any member of a civilized community, against its will, is to prevent harm to others". Once Government has exercised its duty, the shackles of the tobacco industry will be broken and needless loss of life saved. This has been the documented experiences in Ireland, New York City and Canada, just to mention a few.

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These positive experiences are a deep contrast to the tobacco industry's predictions of doom.

If we, as moral citizens of the world, can confront the decades of obfuscation of the tobacco industry, focus on the intrinsic health dangers of tobacco, both to its active and passive user, and if we resist the manner in which the tobacco industry seeks to minimise control and promotes its product, then an

invaluable paradigm will have been learned for life in the 21st Century.

There is great "Power in One", and its impact is reflected in the following quotation, "few will have the greatness to bend history itself; but each of us can work to change a small portion of events, and in its total of these acts, will be written the history of this generation". (J.F. Kennedy)

Jeffrey Wigand, Ph.D., MAT, Ph.S.
aka, The Insider
September 2005

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Introduction

As Scotland's leading voluntary organisation for tobacco control, ASH Scotland has played a central role in combating the damage that tobacco causes to health in Scotland. The most high profile of ASH Scotland's campaigns has been to end smoking in enclosed public places. The Scottish Executive had taken a similar policy position on legislative action to reduce exposure to second-hand smoke (SHS), and so ASH Scotland were able to work effectively alongside the Executive to work towards obtaining Scottish legislation on smoking in public places. With this campaign successfully culminating in the passage of the Smoking, Health and Social Care (Scotland) Act (2005), 'The Unwelcome Guest' report is a timely way in which to bring together all the reasons why this campaign had to be fought, and how, in the end, it was won.

In 1998 the tobacco industry came to an agreement with the attorney generals of the state governments of the United States. After four years of legal battle, the tobacco industry was finally forced to accept that their products had caused massive and preventable damage to the health of American citizens. This agreement, the Master Settlement, stated that the largest tobacco companies had to pay \$206 billion dollars over 25 years to the states of America. It also made provision for the establishment of depositories of tobacco industry documentation.

These depositories allow anti-tobacco campaigners full access to industry documents dated up to 1998. For the first time, the full extent to which the tobacco industry promotes smoking, combats regulation and eludes responsibility, was

available for public knowledge. Insights into their activities in the UK and in Scotland are also available, thanks to the British American Tobacco (BAT) depository that was set up in Guildford, Surrey.

A 1990 Philip Morris (PM) document¹ summarises tobacco industry strategies to minimise the impact of the SHS issue at a European level:

- **"Maintain the debate on primary [health] issue and ETS [Environmental Tobacco Smoke],"**
- **"Expose faulty logic of the WHO [World Health Organization] and anti-smoking groups."**
- **"Activate restaurant trade against government smoking regulations,"**
- **"Counter biased and damaging surveys by antis [public health officials],"**
- **"Create public backlash against social engineering,"**
- **"Establish SRGs [Smokers' Rights Groups] as counterpart of Anti-groups," and**
- **"Position PM as a reasonable company and a credible source of information."**

As this report outlines, many of these strategies and tactics have been used by the tobacco industry in their attempts to combat introduction of the Scottish law protecting people from second-hand smoke.

Scotland has shown world-class leadership in acting decisively to remove SHS from our

public places and workplaces. From March 26th 2006, every worker, child and member of the general public will be adequately protected from SHS exposure. This report pulls together for the first time a record of the campaign for smoke-free legislation in Scotland. From setting up coalitions with other organisations, participating in the Scottish Executive's consultation on smoking in public places, publicising the scientific and medical evidence on SHS exposure, and promoting smoke-free successes in other countries, ASH Scotland has been at the forefront of the campaign. 'The Unwelcome Guest' report tells that story.

The Scottish law may be passed, but the fight against the tobacco industry and their supporters continues. This report is published not just to put on record the extent to which the tobacco industry and its allies fought the Scottish legislation, but to shed some light on the nature of the ongoing battle they are waging to undermine Scotland's potential as a cleaner-air country. Finally, this report goes out to all the other countries contemplating going smoke-free, who, in the midst of tobacco industry propaganda, may find clarity, insights and courage in this record of Scotland's achievement.

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In the 1980s a number of highly influential reports were published that, when considered as a whole, would play a fundamental role in shaping national and international political and public opinion on the health hazards associated with SHS exposure.^{2 3 4 5 6} By 1987, the consensus among tobacco industry companies was that the growing evidence about the health effects of SHS was **"unhelpful"**.⁷ British American Tobacco, Rothmans, Gallaher, Imperial Tobacco and Philip Morris formed the Tobacco Manufacturers' Association Public Smoking Working Group to determine the most effective strategies to combat the growing body of information that proclaimed SHS was harmful. The group determined to:

"Maintain doubt [about the health effects of SHS] (principally via third parties)"

"...the group recommends...[becoming] more active in seeking out industry-independent spokespeople to counter-balance the growing body of unhelpful ETS research."⁷

Tobacco Industry Initiatives: Smoker's Rights Groups

One of the key players seeking to undermine smoke-free public places in Scotland has been the smoker's rights group FOREST (Freedom Organisation for the Right to Enjoy Smoking Tobacco). FOREST presents itself as independent from the tobacco industry,

but it derives approximately 96% of its funding from tobacco companies and their allies.^{8 9} The tobacco industry has created and deployed Smoker's Rights Groups throughout Europe and the United States as a strategy to defeat public health efforts to reduce tobacco use.^{10 11} A 26-page, 1985 "strictly confidential" report from British American Tobacco (BAT) outlines the goals of FOREST in the UK, to [help the tobacco industry] **"balance the public debate about smoking and to counter the work of anti-smoking pressure groups and campaigns."**¹¹ The British tobacco industry maintains a relationship with FOREST while preserving the appearance of being at "arm's length" from it – a relationship that **"has worked to the benefit of both parties."**¹¹

An internal 'regional representation report' from 1979 outlines FOREST's local representative in Scotland as Iain McTaggart Campbell. Recruitment of regional volunteers and representatives are described as the **"eyes and ears"** of the organisation.¹² In the 1980s FOREST commissioned work to assess the extent of public and proprietor support for smoke-free restaurants in Scotland. System Three conducted a survey to **"measure the views of restaurant proprietors, the people who are closest in contact with diners' opinions and demands."** FOREST reported that most owners were "opposed to government legislation".¹¹ At this point in time the issue of smoke-free restaurants in Scotland was **"not seen to be a problem."**¹³

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ASH Scotland and a number of Scottish cancer and tobacco prevention charities responded to the Scottish FOREST launch:

“FOREST knows that the introduction of restrictions on smoking in public places in Scotland will help reduce smoking and help people to quit...Tobacco companies are commercial enterprises whose imperatives have nothing in common with the public health community.”¹⁷

In June 2000, FOREST opened a Scottish branch in Edinburgh. MSPs were invited to a ‘Smoker Friendly Fry Up and Reception’¹⁴ at Edinburgh’s Oxygen Bar (one of Scotland’s first dedicated oxygen bars, which had then been told by the fire brigade to choose between selling oxygen or permitting smoking on its premises. The bar opted to permit smoking). The launch, attended by Brian Monteith MSP (Conservative, Mid-Scotland and Fife, and former FOREST spokesman), was branded ‘distasteful’ for undermining work to improve Scotland’s health.^{15 16} In addition, the Herald newspaper declared:

“The message about smoking must be getting across, even in Scotland, why else would they be opening an office here?”¹⁵

Tobacco Industry Initiatives: AIR and Courtesy of Choice

Internal documents demonstrate that the tobacco industry was proactively searching for allies across a range of public targets. These spanned the highest levels of public policy making (i.e. ministers, MPs and MSPs) to local activists.¹⁸ The aim was to create the impression that the majority, as well as powerful constituencies within society, favoured the industry’s view. This strategy is apparent in their collaboration with large PR firms to develop two major campaigns in the UK: the **Courtesy of Choice** programme (launched in 1995) and the **AIR**

(Atmosphere Improves Results) initiative (launched in 1997). A document entitled “UK HANDOVER” describes the TMA’s role in both campaigns:

“In both cases the tobacco industry works closely with partner associations in those sectors. Activities are principally handled by consultants.”¹⁹

The AIR initiative was funded by the TMA “to identify and promote practical techniques to resolve the public smoking issue.”²⁰ To this day AIR advocates ventilation and self-regulation as a solution to SHS exposure.

Industry documents cite the “**importance of creating catalysts**” via Courtesy of Choice events, “**to let one event influence another, to build on peer group pressure and keep the industry and its media carefully informed.**”²³ There were deliberate efforts initially to get hotels to “pilot” the programme and then to point to those pilots to get other hotels to sign up.²⁴ The major hotel chains, such as Hilton, Copthorne and others, followed suit. Courtesy of Choice visits were also made to Scotland. Scottish ‘pilot’ hotels were identified and their progress monitored.²⁵

By the late 1990s, tobacco industry alliance building was in full swing. AIR had organised “A Breath of Fresh Air” conference (1998), which focused on “**smoking management, through non-smoking areas, ventilation and air-filtration**”. The proposals by AIR

The Courtesy of Choice initiative, already a success in the US and in Belgium, was exported to the UK “to head off any perceived need for legislation” at a cost of around £128K.²¹ Clive Turner (TMA) expressed strong support for the initiative, writing “I am at a loss to know how we could otherwise tap into the hotel and leisure industry so cost-effectively.”²² Courtesy of Choice² was sold to hoteliers as a kind of seal of approval that would aid their market competitiveness.

were given centre stage.²⁶ Links had been built and maintained with key organisations including the Scottish Licensed Trade Association, the Association of Licensed Multiple Retailers, and the Federation of Licensed Victuallers’ Association. The TMA played a critical role in this respect, as described in its “Activity Reports” of this period. SLTA activities are outlined as follows:

“To help to combat the political pressures in Scotland we have been invited to address the SLTA Council in October and to liaise with the SBLRA and the major Scottish retailers (Bass, S&N) to accelerate change.”²⁷ (09/09/99)

All SLTA members were later mailed with an AIR compliance pack including AIR Charter signage and policy statements.²⁸

The Voluntary Approach

On 10th Dec 1998, the Government published ‘Smoking Kills’, the first White Paper on Tobacco Control. The White Paper stated that ‘completely smoke-free places are the ideal’ but added that a universal ban on smoking in all public places “is not justified whilst fast and substantial progress can be made in partnership with industry.”²⁹

ASH Scotland was disappointed with the UK Government’s approach to smoking in public places:

“We are calling for the government to use legislation to push forward restrictions on smoking in public places. A voluntary code will not adequately protect the public from the risks of passive smoking.”³⁰

As a result of the White Paper, the UK Government worked with principle hospitality trade bodies to agree a voluntary charter scheme designed to encourage venues to increase provision for non-smokers and improve overall air quality. Voluntary targets were set, which would be monitored and reviewed on a regular basis. The Public Places Charter on smoking was launched in England on September 14th 1999.

In conjunction with the Charter, the Health and Safety Commission consulted to develop a UK wide Approved Code of Practice (ACoP) on smoking in the workplace. This would define the kind of smoking policies employers needed to operate to comply with existing health and safety legislation measures. The draft ACoP was launched in July 1999. The guidance suggested smoke-free public places were an option where reasonably practical, and that the hospitality

² Details of Courtesy of Choice activities can be found at <http://www.essentialaction.org/tobacco/qofm/0110a.html>
<http://www.smoke-free.ca/documents/ventilation.htm>

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AIR encouraged the hospitality industry to sign up to the Public Places Charter to prevent the need for legislation. They argued that introducing smoke-free areas would “lead to increased profit”, and that “signing up to the Charter will provide a good defence in passive smoking litigation cases.”³¹

trade might consider creating designated smoking areas and using improved ventilation.³² Maureen Moore (Chief Executive, ASH Scotland) responded by saying:

“**Failure to introduce comprehensive legislation on passive smoking is an abdication of public health responsibility. The proposed Code does not go far enough...We call on the Scottish Parliament to legislate to restrict smoking in public places.**”³³

These decisions at UK level had an overarching influence on the scope for change in Scotland. The Scotland Act had achieved Royal Assent in November 1998, leading to the establishment of the Scottish Parliament, which assumed its full powers upon inauguration on 1st July 1999. Tobacco control advocates in Scotland were agreed that the White Paper didn't go far enough in reducing exposure to SHS. The Scottish Executive endorsed the “Smoking Kills” White Paper and undertook to drive forward implementation of the tobacco control programme in a Scottish context.

Lobbying for a Smoke-Free Scotland

In the summer of 1998, ASH Scotland had convened an expert working group to look at smoking policies in public places in Scotland. This included members of COSLA, the BMA, UNISON and the Scottish Office. In March

1999, ASH Scotland published its policy paper on smoking in public places, which called for the Scottish Executive to make a commitment to reducing smoking prevalence and smoking related deaths via restrictions on smoking in public places. The policy paper highlighted the medical and scientific evidence demonstrating the risks associated with SHS, and highlighted a number of possible suggestions for different legislative options in Scotland. ASH Scotland proposed legislation that would allow for identified sectors to apply for exemptions. For example, bars and restaurants would adopt a stepped approach, introducing 25% non-smoking areas, increasing this after a time-limited period to 50% non-smoking areas. **This policy paper marked the start of ASH Scotland's intensive lobbying on the issue of smoking in public places.**

Simon Millson (BAT) outlined concerns about post-devolution lobbying opportunities for smoke-free public places in Scotland in an email to all staff (10th June 1999). He warned that **“following devolution...Scottish TMA lobbying groups have been established.”**³⁶

In August 1999, accumulating evidence on the health risks associated with SHS exposure prompted renewed calls for the Scottish Parliament to restrict smoking in public places. Hugh Henry MSP (Labour, Paisley South) stressed the **“need to look at ways of tackling Scotland's appalling health record.”**³⁷ At this time, Scotland's Chief Medical Officer Sir David Carter also

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AIR was involved in setting the ventilation standards for air cleaning equipment with the UK Department of Health. An email by Simon Millson (BAT) to BAT staff on the "UK White Paper on Tobacco Control" dated 20 November 1998 states:

“**The AIR project...has done an excellent job with the hospitality sector and the Department of Health, managing to offset any regulatory**

imposition and set targets with the hospitality trade associations in terms of rolling out a programme of installation of air filtration systems etc. in pubs and bars.”³⁴

*Research by ventilation expert Professor James Repace has since shown that using the standards for ventilation promoted by AIR, an estimated 5 of every 100 bar workers in the UK would die as a result of exposure to SHS in the workplace.*³⁵

pressed for a ban on smoking in public places in his annual report. As a result of these two calls, the issue of smoke-free public places in Scotland gained a lot of media attention. There were reports of backing for the idea of legislation by some members of the Scottish Parliament, but the majority of press coverage was extremely negative.

The main opposition voices in the Scottish media at this time were FOREST, Brain Monteith MSP and the SLTA. Simon Clark (FOREST) argued that the parliament had to be careful not to introduce a law that went against public wishes. In the same week, 3225 Scottish News of the World readers called a poll line on smoking in public places and 95% backed Hugh Henry's call (168 total).³⁸

FOREST claimed that there was no proper evidence on risks of passive smoking calling it **“the greatest myth of the 20th century.”**³⁹ **“Passive smoking is a hoax by the anti-smoking lobby.”**⁴⁰ The SLTA responded that

“**It would be ludicrous and unworkable to even suggest banning smoking” [in Scotland]...“ Even if was banned it would be impossible to police because you will always get civil disobedience.**”⁴¹

Members of the Conservative Party were opposed to the idea of legislation, with quotes appearing from spokespersons suggesting that going smoke-free would be **“ridiculous”**⁴² and that even the idea had **“a touch of the Nanny State”** about it.⁴³

A few weeks later, the Sunday Times reported that the tobacco industry was preparing to lobby the Scottish Parliament in an attempt to prevent the introduction of tight restrictions on smoking in public places:

“**Tobacco industry executives admit that they are worried that proposed curbs on smokers in Scotland's pubs and restaurants could pave the way for measures across Britain, threatening a market worth almost £13 billion a year. They intend to recruit sympathetic MSPs and put pressure on the Scottish Executive to abort the proposals.**”⁴⁴

In the same article, John Carlisle, the right-wing former Conservative MP who was spokesperson for the TMA at the time said that the industry was ready to **“lobby unashamedly”** to limit any anti-smoking moves by Holyrood.

“**We recognise that with measures such as the poll tax Scotland has in the past been used as a sounding board for controversial issues by the Westminster Government. We are very conscious that a move there could be the frontrunner for Westminster.**”⁴⁴

The report also noted that the TMA had retained a Scottish lobbying firm, then called McGrigor Donald, to **“be the industry's eyes and ears”** north of the Border. It was also reported that David Swan, the TMA's chief executive, was meeting with Scottish Executive civil servants that week to discuss

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*A powerpoint presentation on “TMA Draft Budget and Priorities 2000/01” (02 March 2000) includes £50,000 allocated for work on the “**Scottish Challenge**”.⁴⁶ A financial report for the nine month period ending 31 December 2000 confirms that the £50,000 funding was to the **McGrigor Donald Scottish Challenge**, £6000 more than budgeted because of a “**high level of activity in Scotland**”.⁴⁷*

‘the industry’s concerns’. In the months that followed, the TMA would intensify their efforts and include direct lobbying of MSPs and Scottish opinion formers. Key MSPs and journalists had been invited to a prestigious dinner at the Edinburgh Sheraton Hotel, to be hosted by John Carlisle.⁴⁴

The plans outlined in this report are supported by tobacco industry documents from around the same time. Minutes of a meeting of the TMA Campaign Groups (9 Sept 1999) state “**Scotland. Active monitoring is being conducted. DS (David Swan) and CO (C Ogden) to visit Scottish Health Officials in Edinburgh**”.⁴⁵

Lobbying activity of voluntary groups on smoke-free public places also stepped up several notches around this time with a number of new initiatives set up in order to move the campaign forward effectively, and to counter increased lobbying efforts from the tobacco industry and their allies.

The first of these new initiatives was the **Scottish Cancer Coalition on Tobacco (SCCOT)**, which was launched by ASH Scotland in October 1999 during Europe Against Cancer Week. SCCOT was an alliance of ASH Scotland and the leading cancer charities; Roy Castle Lung Cancer Foundation, Macmillan Cancer Relief, Centre for Tobacco Control Research, Cancer Research UK, Cancer BACUP and Marie Curie Cancer Care.

The SCCOT coalition was established by

ASH Scotland to raise awareness of the links between cancer and tobacco use and to provide a forum to advise and inform the Scottish Parliament. With an increased number of MSPs committed to reducing tobacco-related mortality in Scotland, and as a direct result of the SCCOT initiative, the Scottish Parliament Cross Party Group (CPG) on Tobacco Control³ was formed in December 1999. A major function of the CPG was, and still is, to raise the profile of tobacco control issues within the Scottish Parliament.

The Scottish Voluntary Charter

In October 1999, ASH Scotland and HEBS (Health Education Board for Scotland) commissioned the MVA to carry out a survey of smoking policies in the Scottish leisure industry. The aim of this survey was to provide baseline data from which to monitor the forthcoming Scottish Voluntary Charter on smoking in public places. On 11th May 2000, ASH Scotland and HEBS published the findings of this survey. Out of 1007 businesses, 58% allowed the public to smoke on the premises. Only 47% of businesses, 15% of pubs and 8% of betting shops had smoking policies in place.⁴⁸ A follow up survey would be conducted in 2003, to evaluate the effectiveness of the voluntary charter in Scotland.

The Scottish Voluntary Charter was launched on 23rd May 2000, by the then Health Minister Susan Deacon, at the SLTA’s annual conference in Dundee.

³ Further details on the Cross Party Group on Tobacco Control are available at: <http://www.scottish.parliament.uk/msp/crossPartyGroups/groups/cpg-tobac.htm>

Obtaining support for the use of ventilation is a tactic also outlined in BAT's 'Project Care' report, which is described as concerned with "resocialising smoking" by gaining support for air filtration. "The ultimate objective is to win the support of non-smokers to retaining the availability of the indoor environment for smokers" ⁵³

Deacon called on the hospitality industry to embrace the Scottish Charter, but warned that legislation on smoking in public places would not be ruled out if the licensed trade failed to support it.⁴⁹ Maureen Moore (ASH Scotland) said **"if the Charter does not work, the Scottish Parliament should legislate to enforce restrictions on smoking in public places."**⁴⁹ FOREST applauded that proprietors had been "given the flexibility to decide a smoking policy based on customer demand."⁵⁰ Paul Waterson (SLTA) said:

"Our position is that we believe the air our customers and staff breathe should be as clean as possible.... 'I think a smoking ban is unnecessary and undesirable but we realise there has to be some form of management. The evidence is there to prove that if you have an efficient ventilation system and smoking management system in place, it can be a bonus."⁵¹

Obtaining hospitality trade support for the use of ventilation

The SLTA's position on the use of effective ventilation systems is indicative of tobacco industry initiatives intended to promote ventilation to the hospitality trade as an acceptable solution to the problem of SHS exposure. In addition to the Courtesy of Choice and AIR tactics already outlined, the tobacco industry often makes use of public relations firms in order to assist in developing

and selling messages to the UK public. This is demonstrated in a report produced for BAT by the public relations firm Spring O'Brien entitled **"Pubs, Bars and Smoking, Solving a Growing Problem, A proposal for improving indoor air quality from Spring O'Brien Limited"**. The report outlines an initiative to demonstrate that ventilation is the way forward to protect businesses, with the objective as follows:

"To encourage all trade retailers to enhance their ventilation and so avoid legislation aimed at minimising smoking on their premises" and "To establish a co-operative approach with a major industry body representing the major 'players' in the licensed trade."⁵²

Written parliamentary questions and answers from this time demonstrate that the Scottish Executive was committed to seeing a marked improvement in non-smoking facilities in leisure and hospitality amenities. Emphasis was also placed on the MVA follow up survey that was planned for 2003 as a crucial provider of this information:

"The Executive will consider the need for further measures on the effects of passive smoking when the results of a recent survey, commissioned by HEBS and ASH Scotland on public perceptions of passive smoking are known, together with the impact of the Scottish Voluntary Charter on Smoking in Public Places and the HSE's (Health and Safety Executive) proposed code of practice on passive smoking in the workplace."⁵⁴

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*The use of this strategy is supported in a later report by consultants Weber Shandler (March 2001) on "Social Reporting: Issues & Process". This describes the need to "open up the channels for constructive dialogue with stakeholder groups, many of whom are naturally hostile to tobacco" and to "Use the process to build alliances and long term relations with these groups". The long-term objective is identified "to gradually position BAT as a responsible and responsive company."*⁵⁷ Additional documents show close monitoring of groups supporting tobacco control. Literature produced by ASH Scotland, for example, can be found in the Guildford depository.

The Scotland CAN! coalition

A highly significant step in lobbying for smoke-free public places in Scotland came with the arrival of **Scotland CAN! (Cleaner Air Now)**. The coalition was launched on the 31st May 2000, following the public announcement of the Scottish Voluntary Charter. Scotland CAN! was founded by ASH Scotland specifically to campaign for smoke-free public places in Scotland, and to raise public awareness of the harmful health impacts of SHS. At Scotland CAN's high profile launch, the coalition unveiled the names of over 60 businesses, trade unions, football clubs, medical and children's charities that supported the campaign to restrict smoking in public places. The launch was also supported by Hugh Henry MSP and the actor Richard Wilson.

Paul Waterson (SLTA) responded to the launch claiming that Scotland CAN! could:

“scupper the delicate negotiations, by putting publicans on the defensive... We need to encourage licensees to sign up and implement their own measures – not have them imposed.”⁵⁵

Tobacco Industry Monitoring of Smoke-free Activity

The following month, overtures to “UK scientific stakeholders” were discussed in BAT emails. It was noted that:

“meetings with ASH and CRC [Cancer

Research Campaign] have been arranged...A more proactive planned approach is needed for the other UK stakeholders.”⁵⁶

Other listed organisations to make contact with included the National Asthma Campaign and the Roy Castle Foundation.⁵⁶

The tobacco industry invested a considerable amount of energy on intelligence gathering on the 'anti-tobacco brigade', although the documents currently available run to the mid/late 1990's and so do not offer much detail on how this has been subsequently used.

Developing an Appropriate Climate for Smoke-Free Legislation

ASH Scotland and Scotland CAN! agreed to hold off from campaigning for specific legislation until the effects of the voluntary charter could be measured. The MVA follow-up survey would be repeated in October 2002. ASH Scotland had identified good practice from California and Australia on introducing smoking in public places restrictions - clear public information campaigns on SHS, followed by incremental approaches to restrictions seemed to be the most effective way of moving forward – starting from least controversial areas (i.e.

workplaces) - before dealing with the most contentious areas (i.e. pubs and bars). A proper long-term strategy was the key ingredient to success.

The external environment was not amenable to smoke-free legislation – this had been clearly demonstrated by the extremely negative response in the media to Hugh Henry's (1999) call for restrictions on smoking in public places.

ASH Scotland and Scotland CAN! used the time up until completion of the MVA follow up survey to focus on developing an appropriate climate for legislation by strategic awareness raising for the general public, for MSPs, and for the Scottish media.

In Autumn 2002, ASH Scotland and Scotland CAN! made the case to Scotland's political parties for legislation to restrict smoking in public places by holding fringe events at the Liberal Democrat, Conservative and SNP conferences. Scotland CAN! meeting minutes dated 15th November 2002 noted that: **“it does not look likely that many MSPs would accept banning smoking in public places as policy at this time.”**⁵⁸

Voluntary organisations continued to argue for an evidence-based public information campaign to highlight the health risks of exposure to SHS. Scottish MPs were lobbied to press the UK Government to adopt the proposed Approved Code of Practice on smoking in the workplace. More than two years had passed since the Health and Safety Commission recommended that the Government should adopt the ACOP, and there was still no sign that this commitment to protect workers in the UK would be realised. At this time, it was estimated that about 3 million people in the UK were exposed to other people's smoke at work, and evidence on the increased risks of lung cancer, heart disease and other life threatening conditions as a result of SHS exposure continued to grow.

As part of the media awareness raising

strategy, ASH Scotland approached the Evening News (15th January 2003) with the suggestion that an article be placed on SHS and smoking in public places. They replied that this was not thought to be newsworthy at the present time. Less than two years later, the newspapers would be phoning for public-places related comments on a day-to-day basis.

With the Scottish Parliament elections due on 1 May 2003, ASH Scotland set to work on a manifesto for tobacco control in Scotland. The Scottish Parliament had a very real opportunity to build on its achievements of its first term. The ASH Scotland manifesto called for tobacco to be at the top of the Executive's priority list for public health, reflecting its position as Scotland's biggest cause of preventable death and ill-health. The document outlined how the Scottish Parliament could take further steps to reduce tobacco use and cancer rates in Scotland, and called for legislation on smoke-free public places. It also made the case for the introduction of policies to promote smoke-free workplaces; for the development of education campaigns based on other countries' successes in tackling exposure to SHS; and for increased investment in smoking cessation services in Scotland. The manifesto was sent to all parliamentary candidates before the election, and was marketed as a blueprint for tobacco control in the next Parliament.

Membership of the Cross Party Group (CPG) had now increased to include MSPs from across the political spectrum, and a number of voluntary organisations were also represented on the group. CPG members stepped up their lobbying of the Scottish Executive during 2003, with an increased number of parliamentary questions and motions related to smoke-free public places in Scotland. In response to a question posed on the effectiveness of ventilation by the then Convenor Brian Adam MSP (Scottish National Party, Aberdeen North), the new Deputy Health Minister Tom McCabe stated:

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“The Scottish Executive does not endorse ventilation systems alone as offering complete protection against the health risks associated with passive smoking.... there remains no scientific evidence or consensus about whether there is any safe level of exposure to ETS.... The most effective protection from Environmental Tobacco Smoke (ETS) is a completely smoke-free environment.”⁵⁹

When asked what plans the Scottish Executive had to ensure that people who wished to use leisure facilities could do so without exposing themselves to any health risks associated with SHS, Tom McCabe answered:

“The Scottish Executive proposes to begin a wide reaching public consultation later this year on how best to extend the provision of smoke-free areas in public places, including local leisure facilities.”⁵⁹

The MVA follow-up survey

The results of the MVA survey conclusively showed that the voluntary approach was failing to protect public health in Scotland. After more than two years, seven in every ten Scottish pubs permitted smoking throughout, and four in every five businesses in the Scottish leisure industry did not have any smoking restrictions at all.⁶⁰ The hospitality industry argued that they had met three out of four of the targets that they had set themselves. ASH Scotland responded:

“The survey exposes the myth that most public places in Scotland have introduced some form of smoking policy. The failure to implement policies means that neither staff nor customers are being protected from the health risks of passive smoking. We are particularly concerned that pubs and bars in poorer areas are least likely to have smoking policies in place. We can no longer turn a blind eye to the fact that tobacco use is increasingly entrenched

amongst the poorest in Scottish society and will continue to be so if this inequality remains unchallenged.”⁶¹

Whilst Tom McCabe welcomed the progress being made by the Scottish Voluntary Charter, he was reportedly disappointed by the small proportion of firms in the food and entertainment sector that had complied with all the charter's requirements.⁶² The Executive pledged to conduct a review of the national tobacco control strategy, and to produce an action plan on smoking that was specifically designed to meet Scotland's needs. One part of this plan would be the wide-ranging public consultation on smoking in public places. Tom McCabe stated:

“We are ruling out nothing at this stage and an extension of the voluntary approach remains an option. We will consult on this, and other possible options, including statutory controls in order to see how we can best achieve the extension of smoke-free areas in public places.”⁶²

Following this announcement, ASH Scotland and NHS Health Scotland⁴ developed a series of recommendations for further action on a number of tobacco control issues. These recommendations would be used to inform the Scottish Executive's future strategy on tobacco control, at what marked the end of the UK government's three-year strategy on tobacco. On 13th January 2004, the resulting publication, 'Reducing Smoking and Tobacco-Related Harm: a Key to Transforming Scotland's Health'⁶³ was launched. On the same day the Scottish Executive published their Tobacco Control Action Plan: 'A Breath of Fresh Air for Scotland.'⁶⁴ The action plan responded to the recommendations in the ASH Scotland/NHS Health Scotland report, and included a commitment from the Scottish Executive to consult on extending smoke-free provision in public places, including restaurants and pubs.

⁴ NHS Health Scotland was established on 1st April 2003 from the merger of HEBS (Health Education Board Scotland) and PHIS (Public Health Institute of Scotland).

A week before these publications were launched, the First Minister Jack McConnell was widely reported in the press as saying that he thought an outright ban would be 'impractical'. He hinted that he was considering an alternative solution:

“I think there are issues here about an overall ban being impractical, but perhaps having a designation of certain areas which people can choose to use...Having that sort of designation facility available, either nationally or at local licensing authority level – that has some potential.”⁶⁵

Maureen Moore (ASH Scotland) responded;

“The consultation has not even begun yet and already the First Minister has signalled that he is not in favour of a complete ban. I have been assured that that is his personal opinion, but I was hoping for completely open minds on this issue.”

In an address to the CPG a few weeks later, Tom McCabe stated that health improvement in Scotland needed to be pushed forward, and that this was not happening quickly enough. Tom McCabe was becoming something of a champion in terms of pushing the agenda forward to the Cabinet, and leveraging for change with a wide range of politicians and external partners. The work towards preparing the Tobacco Control Action Plan for the Scottish Executive had been very influential, and coupled with the MVA finding that seven in ten pubs still allowed smoking throughout despite a voluntary approach, this helped to prepare the groundwork. In addition, the desire of the new Scottish Parliament to show decisive leadership was strong. There is no doubt that Tom McCabe was pivotal in moving the policy agenda forward at this time.

Following the Scottish Parliament elections of 2003, Stewart Maxwell MSP (Scottish

National Party; West of Scotland, and a member of the CPG emerged as the most engaged backbencher on the issue of tobacco control. On 4th February 2004, Maxwell launched his Private Member's Bill on Regulating Smoking in Public Places. If passed, the Bill would prevent people from being exposed to SHS in certain public places by prohibiting smoking where food is supplied and consumed. This announcement brought with it increased lobbying on both sides, and at this time the battle lines were drawn on smoke-free legislation in Scotland.

'Accommodation' and 'freedom of choice'

Tim Lord (TMA) argued that “**businesses ought to deliver what their customers want...If that is a ban on smoking, then fine but if customers want to smoke they should be allowed to.**”⁶⁶ Lord claimed that independent research showed little public support for a New York style ban and the majority of the general public favoured practical measures to reduce exposure rather than an outright ban.

“On this issue, people in Scotland feel pretty much the same as most of the British public. They have a very practical, common-sense attitude to smoking in hospitality outlets, preferring to accommodate smokers and non-smokers where possible.”⁶⁷

Stewart Maxwell's Bill: The Health Committee Call for Evidence

The Scottish Parliament's Health Committee issued a call for evidence on Stewart Maxwell's Bill, which ended in April 2004. The Bill continued to focus attention on the vitally important issue of exposure to SHS.

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In 1982, a tobacco industry commissioned report demonstrated that smokers actually preferred smoking restrictions:

“The first conclusion that resulted from the research we conducted is that a majority of adults want smoking restrictions in public places...As an example, we asked smokers if they felt smoking restriction should exist in restaurants. Of smokers living in regulated areas, 79% agreed with this statement versus only 36% of smokers living in non-regulated areas.”⁶⁸

ASH Scotland was concerned though that the Bill was only partial, and would not apply to the majority of public places where SHS exposure causes harm. Even if the Bill became law, many workers and members of the public would continue to be exposed to SHS. Comprehensive smoke-free laws had already been implemented successfully in parts of the US and in Canada, and were due for introduction in the Republic of Ireland (March 2004), Norway (June 2004) and in New Zealand (Dec 2004). The Scottish pro-health lobby continued to campaign for comprehensive smoke-free legislation that would reflect best practice from other smoke-free countries. Compelling evidence of this kind was now starting to emerge.

The tobacco industry and their allies were arguing against smoke-free public places using a number of different strategies, including the ‘Economic Impacts’ argument. Written and oral evidence submissions to the Health and Finance Committees demonstrate this.

‘Economic Impacts’ argument

The Finance Committee called the SLTA to provide oral evidence on the Bill on 1st June 2004. Chairman Stuart Ross and Secretary Colin Wilkinson represented the SLTA. They argued here that ‘the Bill would incur costs of £85m on the licensed trade, as pubs would have to carry out works in order to serve food and permit smoking.’⁶⁹ The Scottish Pub and Beer Association (SPBA) claimed that going

smoke-free would encourage their customers to stay at home and thereby have a detrimental impact on trade. They argued that licensed trade jobs would be lost and that the tourist trade would be detrimentally affected.⁶⁹ The TMA pointed to economic disaster in Ireland, stating that the Licensed Vinters’ Association (LVA) had recently reported a downturn in business of 12-15% there.⁶⁹ Imperial Tobacco pointed to a decline in trade since the New York smoke-free act had come into force.⁶⁹

The tobacco industry and their allies routinely predict that enactment of smoke-free legislation will severely impact restaurant and bar sales, employment and even tourism. This strategy has been used in every province, town and country that has introduced smoke-free legislation, and has routinely been discredited.

Contesting the scientific evidence

In their submissions to the Health Committee,⁷² the TMA, Imperial Tobacco, the SLTA and FOREST all contested the scientific evidence on SHS exposure:

“The studies that have been undertaken are not conclusive proof that passive smoking causes disease and are not sufficient in themselves to warrant a ban on smoking in public places.”
(Tim Lord, TMA)

In California in 1987, a 100% smoke-free ordinance in Beverly Hills was rolled back, partly in response to claims that the ordinance was responsible for reducing restaurant revenues by 30%, claims which later turned out to be unsubstantiated.⁷⁰ The truth is that no properly conducted economic study shows a negative economic impact of smoke-free legislation. Some studies even show that a smoke-free measure improves business. Methodologically sound studies use objective data such as tax and business receipts, collected by a neutral party with no interest in the SHS issue. They collect and analyse data for several years before a law goes into effect so that underlying economic trends and seasonal/random variations can be accounted for. Of the reported studies that conclude a negative economic impact, none has been funded by a source clearly independent of the tobacco industry.⁷¹

“ I find it interesting that, a couple of weeks ago, the Royal College of Physicians published a report claiming that one bar worker dies a week as a result of passive smoking. My simple question is: where is the hard evidence for that? The RCP has been quick to come up with estimates and calculations, but I am afraid that it has produced no hard evidence whatsoever.” (Simon Clark, FOREST)

“ It is extremely difficult to achieve any rational dialogue on the science, as regulators have adopted the position they wish to for political purposes from the highly inconclusive data and do not engage on the statistical and rather esoteric scientific issues.” (Steve Stotesbury, Imperial Tobacco)

The tobacco industry has a long track record of attempting to ‘maintain doubt’ on the issue of SHS exposure and associated health hazards. Tobacco companies have attempted on a number of occasions to discredit public health authorities that have produced reports describing the dangers associated with SHS. A 1994 Philip Morris document states: **“Smoking bans are the biggest challenge we have ever faced. Quit rates go from 5% to 21% when smokers work in non-smoking environments.”** The document lists strategies for engaging in a **“pre-emptive strike”** on the issue, including the task of ‘discrediting the EPA’ (the US Environmental Protection Agency, which in 1993 declared that SHS is a class A carcinogen).⁷³

Other well documented examples include the tobacco industry’s attempts to subvert the International Agency for Research on Cancer’s (IARC) 1998 epidemiological study on lung cancer and SHS^{74 75}; their strenuous campaigns to try and discredit the 1998 SCOTH report⁷⁶; and their attempts to subvert World Health Organization (WHO) efforts to control tobacco use.^{77 78 79}

Whilst campaigns to discredit leading health organisations are devised at the highest levels of tobacco companies, the role of tobacco industry officials in carrying out these strategies is often concealed. In their campaign against WHO, internal documents reveal that tobacco companies concealed their activities behind a variety of ostensibly independent quasi-academic, public policy, and business organisations whose tobacco industry funding was not disclosed. The documents also show that tobacco company strategies to undermine WHO relied heavily on international and scientific experts with hidden financial ties to the industry.^{77 78 79}

Aims to counter the health evidence on SHS

In their evidence to the Health Committee, the SLTA claimed:

“ We have strong evidence that relatively simple ventilation can cut out ETS gases and particles, including by extension any carcinogens, by between 85% and 95%, thus greatly reducing exposure of staff

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and customers. To support this we have commissioned the University of Glamorgan to carry out research in a typical Scottish pub and we currently await their findings. Once completed, we will be releasing the data and will forward a copy to the Health Department.”⁶⁰

The goal of “**building IAQ (indoor air quality) industry and science without visible tobacco industry presence**” is documented in a 1987 Philip Morris internal company presentation.⁸¹ The tobacco industry often uses third parties and other industries as surrogates for carrying out its activities and research to undermine public health policies. This strategy means that the tobacco industry can disseminate its opinions without obvious industry fingerprints. To this end, internal documents describe the extensive funding of opinion surveys, market research, and scientific research on ventilation and health effects of SHS exposure, to give legitimacy and credibility to the tobacco industry’s arguments. The tobacco industry uses consultants to create a body of conflicting research that reflects the tobacco industry’s viewpoint, and, as the medical journal *The Lancet* put it, to “seed the medical literature with pro-tobacco misinformation.”⁸² Perhaps the most well known example of this is Philip Morris’ ‘Whitecoat Project’, named after the white coats that scientists wear. This was a vast project aimed at hiring scientific experts around the world to criticise the findings of the Surgeon General and the other public health authorities who had published reports warning of the dangers of SHS.⁸³

Disputing the health risks

In oral evidence to the Health Committee the TMA and FOREST were the only organisations to dispute that exposure to SHS is associated with significant health risks.⁸⁴ FOREST’s written evidence to the Health Committee clearly states, “**FOREST does NOT accept that passive smoking is a significant risk to the health of the non-smoker.**”⁸⁵

Maureen Moore (ASH Scotland) responded:

“A recent calculation of the possible impact of a smoking ban in workplaces in Glasgow alone suggested that up to 1,000 fewer people a year would die of heart disease, respiratory disease and cancer...There are rules for lots of things in society. When we have a product whose use affects other people’s health, we should take action to ensure that public health is protected. We do that with speed limits and we do it with seat belts. We do not allow other carcinogens in the workplace and we certainly should not be allowing this carcinogen (SHS) in the workplace.”⁸⁴

The ‘Right to Breathe Clean Air’ debate

In the same oral evidence sessions, when asked whether people have a right to breathe clean air, Simon Clark (FOREST) replied:

“I have no doubt about my answer to that - people do not have a right to breathe clean air... We live in an urban, industrial society. We are surrounded by car fumes; we are surrounded by chemicals from furnishings, carpets, wallpaper and paint work...In a perfect world and a utopian society, of course we would all like to breathe clean air, but that is not how the world is.”⁸⁴

Tobacco companies and their allies often seek to refocus the SHS debate onto subjects such as outdoor air pollution, vehicle emissions, and individual civil rights and freedoms. Philip Morris outlined this strategy in a 1987 ETS project plan produced for INFOTAB:

“**Objective 2: To position ETS (environmental tobacco smoke) as just one (and a very minor) factor in a complex atmospheric mix which also includes petrol/diesel fumes, dust, bacteria, particles of dead skin...solids of all kinds,**

Philip Morris documents also describe how the company needs the strategy to avoid getting into health-related discussions, where it invariably loses:

“Opponents of tobacco will always use the health argument for any and all restrictions...When the tobacco industry involves itself in the health debate, it invariably loses...Objectives: Force proponents of anti-tobacco legislation to justify their positions on grounds other than health alone. (Only by bringing the debate past health and into the social arena can we effectively attack such measures)”⁸⁸

pollen, and in industrial situations an enormous variety of chemical fumes and substances”⁸⁶

“The ‘right to smoke-free air’ theme used successfully by anti-smokers should be re-positioned to refer principally to outdoor air, in such a way as to shift regulatory and media attention away from smoking and in the direction of industrial emissions, vehicle emissions, the depleted ozone layer, radioactivity, etc.”⁸⁷

Another striking example of deflecting health-related discussions was provided by the SLTA in their 2005 evidence to the Scottish Parliament’s Finance Committee. They claimed that the plan for smoke-free legislation:

“fails to capture the cost of expensive geriatric health care and attention if longevity is achieved through the ban. Further, no attempt has been made to calculate the cost to the country of providing pensions for smokers who live longer as a result of the smoking ban.”⁸⁹

Maureen Moore (ASH Scotland) responded:

“To stand in front of the Scottish Parliament and say that ending smoking in public places should be scrapped because people will live too long is appalling.”⁹⁰

Pressure on Ministers to introduce smoke-free public places intensified as Scotland’s Chief Medical Officer Dr Mac Armstrong lent

his weight to the proposal to go smoke-free (April 2004). The ‘Health in Scotland 2003’ report stated that going smoke-free could save up to 1000 lives a year in Glasgow alone, and that comprehensive smoke-free legislation was a “clear, obvious and logical next step” that would “satisfy the wishes of the vast majority of people in Scotland.”⁹¹ There were also reports in the media that the First Minister was retaining an open mind about the Executive’s consultation on steps to create a smoke-free Scotland. He would be ‘using a forthcoming trip to Ireland to see how the ban was operating there.’⁹¹

The Scottish Executive Consultation Process

The Scottish Executive open public consultation process was launched on 7th June, and ran until 30th September 2004. The consultation process included 12 public forum meetings, and those held in the major Scottish cities had a panel of speakers including Ministers, and representation from organisations including ASH Scotland and the SLTA. A written consultation process was also launched. With the importance of a solid evidence base for making policy decisions, Health Scotland commissioned research on behalf of the Scottish Executive to support the consultation. This included research into passive smoking and associated deaths in Scotland, workplace smoking policies⁹³, and an international review of the health and economic impact of regulating smoking in public places.⁹⁴

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*Another accusation that has surfaced many times is that of the ‘health fascist’, which has been rather ungraciously hurled at many of the key figures involved in Scotland’s quest to become smoke-free. Whilst on the surface it may seem little more than a petty, childlike spat, tobacco industry documents frame it as part of a larger Europe-wide strategy to portray efforts at smoking restriction proposals to the media as “**extremist**” and “**indicative of intolerance and health fascism**”. A 1992-1994 Philip Morris EEC (European Economic Community) Region 3 Year plan also contextualises this within the wider objective to “**position PM as a reasonable voice and position the antis as extremists.**”⁹⁶*

The Scottish Executive hosted an international conference held in Edinburgh (September 9th 2004). The conference focussed on global evidence on public places legislation from Ireland, New York, Canada and Australia, and the health risks associated with SHS exposure were also outlined by internationally renowned speakers such as Dr Peter Boyle, Dr Sinéad Jones and Dr Ron Borland. The SLTA (Stuart Ross) and the Vintners Federation of Ireland (VFI) were also given a platform at this event. Stuart Ross branded the conference “**heavily laden in favour of health propaganda**” within the first few minutes of presenting, and outlined research claiming that a 25% reduction in turnover was already being reported in the Republic of Ireland. Tadhg O’Sullivan (Chief Executive, VFI) similarly labelled the conference programme “**Skewed towards the anti smoking lobbyists**”, and spoke of “**immediate and severe**” economic impacts post-legislation in New York and the Republic of Ireland.⁹⁵

ASH Scotland and Scotland CAN! submitted detailed evidence-based responses⁹⁷ to the Scottish Executive’s consultation, outlining the scientific and medical evidence, re-iterating the weaknesses inherent in the Voluntary Charter; outlining numerous public opinion polls that demonstrated a steady increase in public support for comprehensive smoke-free legislation, and highlighting the successes that other countries had seen where legislation had already been passed. The submissions also challenged the myths regarding economic decline head on with

evidence to the contrary from New York and parts of Canada. In addition, ASH Scotland cautioned the Scottish Parliament Health Committee, outlining increased concerns that a balanced public debate was being skewed by licensed trade campaigns to subvert the smoke-free proposals. Organisations such as the SLTA were increasingly trying to centre discussions around pubs and licensed premises only. The effect of this was to focus public discussions away from the health evidence and a fuller discussion about enclosed public places, and onto alleged economic impacts for a narrow sector of society only.

This reflects a tobacco industry tactic used from the late 1980s onwards across Europe.⁹⁸ By this time the industry had identified the decline of social acceptability of smoking in Europe as a major threat to its viability. This recognition led to the development of a comprehensive strategy to fight the SHS issue. Courtesy, tolerance and economic decline were the key issues used to divert the public’s and policy makers’ attention from the health issue.⁹⁸

During the Scottish Executive’s consultation period, the Sunday Mail⁹⁹ reported (15/08/04) that Tennants and Belhaven breweries had requested 200,000 extra consultation forms between them from the Scottish Executive. Belhaven were also reported to have asked for a 2-month extension to the consultation (Sunday Mail, 15/08/04). The Chief Executive of Belhaven, Stuart Ross, was also the SLTA Chairman.

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Those opposed to smoke-free legislation continued to speculate in the media that jobs would be lost if Scotland went smoke-free; that the ban in Ireland was causing hardship and economic decline; and that there was a lack of public support for the measure and inconclusive scientific evidence on SHS. ASH Scotland, Scotland CAN! and associated health organisations kept reiterating in the media their demand for the First Minister to consider the scientific, medical and economic evidence, and to take a decisive stance and show leadership in pushing forward with action to reduce exposure to SHS in Scotland. In early August, the then Deputy First Minister Jim Wallace showed support for the legislation, saying that **“the weight of argument in favour of a ban on smoking in public places is increasingly compelling”**, but adding that the Executive were awaiting the outcome of the consultation process.¹⁰⁰

In the run up to the Ministerial visit to Dublin, the Irish Office of Tobacco Control reported that 97% of bars were compliant with the smoke-free legislation there.¹⁰¹ Paul Waterson (SLTA) claimed that the poll results **“fly in the face of the public’s opinion on a smoking ban in pubs and clubs.”**¹⁰²

The impending Ministerial visit to Dublin was challenged and slated by smoke-free opponents, including Brian Monteith MSP, who argued that the trip was

“...meant to fool people into thinking he (The First Minister) is carefully weighing up the results of Ireland’s smoking ban, but it is little more than an empty gesture as his mind is already made up.”

Monteith continued that no amount of evidence showing economic decline in the Irish pub trade would:

“stop him (The First Minister) using his parliamentary majority to force through a ban in Scottish restaurants, and probably pubs too. Even that will not satisfy the anti-tobacco extremists who will then

press for a complete ban in all public spaces including parks and beaches. Of course supporters of smoking bans will deny their true agenda, but one only needs to see how biased McConnell’s consultation process is to know that public opposition to a ban and the financial difficulties experienced in Ireland will be completely ignored.”¹⁰³

On return from Dublin, and on the back of discussions with the Irish Health Minister Michael Martin and health officials, Jack McConnell stated:

“I am certainly more convinced now that at the very least something approaching an all-out ban is enforceable, practical and desirable in Scotland.”¹⁰⁴

He stressed the importance of finishing and reporting on the public consultation in order to make an informed judgement, and confirmed that Ministers would make their decision before Christmas 2004. His comments were criticised by the opponents to smoke-free legislation, who claimed that they pre-empted the consultation outcomes:

“This is the biggest issue they (the Executive) have ever consulted on, but it appears everybody has made up their minds already, before we have seen what the public think” (SLTA)¹⁰⁵

“If the Executive is to make a radical break and impose a smoking ban, then it needs to be more serious about gaining consent than simply relying on a quick visit to Dublin” (The Scotsman Editorial, 01/09/04)¹⁰⁶

It was clear from the SLTA’s consultation submission that they were developing new arguments. The SLTA argued that they with other organisations had met with Scottish Executive representatives to ask them ‘to legislate a five-point three year plan that would make a ‘major contribution to improving health prospects in Scotland.’¹⁰⁷ The 5 point-plan was to: ban smoking at the

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By the end of the Scottish Executive consultation period, over 53,000 written responses had been received, the most for any Scottish Executive consultation ever held. Eighty two percent of respondents thought that further action was needed to reduce exposure to SHS. Eighty percent of respondents said they would support a law creating smoke-free enclosed public places, with few exemptions.

bar counter in all licensed premises; ban smoking in any area where and when hot food is served; ban smoking in any areas from which the public is excluded; allocate a year-on increasing percentage of floor space to non-smoking (starting at 30% and rising to 50% in year 3); and ensure that smoking policies are displayed at the entrance to the premises. The SLTA said that this, combined with efficient ventilation systems, would create a smoke-free environment for diners.¹⁰⁸

The 'Accommodation' Argument

The SLTA's suggestion of 'phasing in' smoke-free public places provides a good example of the way in which the tobacco industry has increasingly focussed the smoke-free debate in the hospitality industry. The core message used to recruit allies in the hospitality industry has been 'accommodation' of smoking and non-smoking patrons (without mentioning employees). These proposals have had great appeal in the past to policymakers who have felt pressured to address smoking in public places, since a phased approach gives the appearance of taking action without having any protective health effects. Phased approaches are an industry tactic aimed only at delaying and weakening smoke-free legislation. The irony is that the tobacco industry has convinced many in the hospitality industry to embrace expensive ventilation systems that don't work, in order to avoid non-existent losses in business of going smoke-free. Once the investment is made, hospitality businesses are even more

likely to oppose creation of smoke-free environments.¹⁰⁹

Hospitality industries in other countries are often used as a vehicle by the tobacco industry. A 1994 Philip Morris internal presentation describes the company's plans to use hospitality allies to fight regulations on SHS:

“Build upon existing relationships with the International Hotel Association, European Restaurant Association and European Chefs Association to target advocacy on EU policymakers...”¹¹⁰

In addition, a 1993 PM strategic plan describes another strategy:

“Develop allies in academic fields and public policy associations to help promote a variety of messages including sound science, tolerance, U.S extremism, economic impact of government regulation, etc.”¹¹¹

The SLTA proposed in their consultation response that their newly proposed 'Charter 2' solution be supported by improved ventilation, and they argued that they had evidence showing that ventilation could actually produce cleaner air than that in smoke-free premises. They challenged the Executive to carry out independent research on ventilation “and not just rely on dubious tactics by anti-tobacco/anti-pub activists.”¹⁰⁸ In addition, they questioned the health grounds for going smoke-free, spoke of inevitable economic decline, and argued that

The recently released report entitled “Tobacco Industry Involvement in Colorado”¹¹² contains the findings of extensive research of internal tobacco industry documents. The research reveals a surreptitious industry campaign to fight restrictions on public smoking, most notable in the emerging resort and celebrity hub of Telluride. The Tobacco Institute recognised that Telluride had “significance far beyond its relatively small number of registered voters”, and strongly recommended that “industry put up a strong defense in Telluride and battle this challenge” (to restrict smoking in public places). With extensive and expensive targeted lobbying, none of which was identified as originating directly with the tobacco industry, their efforts were successful, and the ballot measure subsequently failed.

smoke-free legislation would mean smokers would stay at home to drink and smoke, increasing children’s exposure to SHS. The SLTA also warned that the high proportion of ‘landlocked’ pubs’ in Scotland would force smokers on to the pavements of city centres leading to higher levels of aggression and street violence.¹⁰⁸

The opposition were stepping up their campaign again. Another indicator of this was the formation of AOB (Against an Outright Ban)¹¹³, which is run by Media House, a high profile PR company specialising in crisis management. AOB was formed in Autumn 2004 to represent independent licensees, pub groups and brewers in Scotland opposed to a complete ban on smoking in public places.¹¹⁴ Members of AOB include the SLTA, Scottish Beer and Pub Association (SBPA), the Scottish Wholesalers Association and several multiple pub groups based in central Scotland. AOB claim they represent more than 3,500 licensed trade retailers and the bulk of the brewing industry in Scotland. AOB’s website has only one news item, a press release outlining AIR Director Oliver Griffiths’ view that going smoke-free in Scotland would be a potential disaster.¹¹⁵

Another new opposition tactic came with the launch of the ‘Freedom2Choose’ campaign¹¹⁶, which took place just a few weeks before the end of the consultation process. The launch took place at the Doublet Bar in Glasgow (the proprietor - the SLTA’s President, Alistair Don). The founder of Freedom2Choose was Rod Bullough, managing director of Blackpool-based

tobacco vending machine supplier Duckworth. Freedom2Choose had a Scottish spokesman Liam Stratton, general manager of a wholesale tobacconist and vending machine operator in Glasgow.

Scotland CAN! and SCCOT held a strategy meeting on the 3rd November, as the work of Scotland CAN! would be foremost over the subsequent 18 months in order to progress the campaign for smoke-free legislation in Scotland. A new structure was proposed for the group and a short-life communications working group was established, consisting of existing member organisations, and including members with a press/PR remit. The aim of this group was to take forward the communications work of Scotland CAN!, which was steadily expanding as the public places momentum grew. One of the early tasks for the Communications group was to identify specifically the range of predominantly Scottish opponents to smoke-free public places in Scotland, the main spokespersons, their vested interests, and their connections to other hospitality allies and the tobacco industry.

On 10th November 2004, Freedom2Choose handed a petition with 14,000 signatures to Downing Street asking the government not to ban smoking in public places. FOREST threw its weight behind Freedom2Choose,¹¹⁷ who argued against smoke-free legislation on three platforms – inevitable economic decline, lack of public support and the effectiveness of ventilation and separate smoking areas. Little more was heard of Freedom2Choose after the launch, although

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the online petition to pledge opposition to the ban on smoking in public houses is still available on their website today.¹¹⁸

NHS Health Scotland commissioned research from Aberdeen University (as part of the consultation process) was published on 10th November 2004. The research estimated that ending smoking in public places in Scotland would not harm the economy. The BMA had issued their 'Human Cost of Tobacco Report' the previous week. Cancer Research UK had launched a media campaign urging the Scottish Executive to 'lead the way' on November 10th, with a list of over 20 health charities and voluntary organisations joined up to Scotland CAN! endorsing the 'it's about health – it's about time' slogan. The media was rife with speculation in the weeks running up to the decision – "will it be 'Scotland the brave – or Scotland the grave?'"¹¹⁹

On 10th November 2004, First Minister Jack McConnell announced that there would be, with the Parliaments' support, a comprehensive end to smoking in enclosed public places in Scotland.

On Friday 17th December the Scottish Executive introduced the draft Bill to Parliament. This marked the beginning of a schedule that would lead to clean air legislation being implemented in Scotland on March 26th 2006. The newly appointed Minister for Health and Community Care (following a cabinet reshuffle) Andy Kerr MSP described the Bill as "**the most important piece of public health legislation for a generation.**"¹²⁰ Policy makers had been persuaded by the need for smoke-free enclosed public places. They had made their decision on the basis of a wide ranging consultation process that enabled them to take account of medical and scientific evidence, on international experience, and on true Scottish public opinion. They had prioritised Scotland's health and committed to make enclosed public places in Scotland smoke-free.

The TMA described the decision as "**an extraordinary slap in the face.**"¹²⁰ Alistair Don (SLTA President) argued that the whole consultation had been "**a sham**", adding that "**as far as we are concerned, there is little evidence that proves passive smoking is in fact bad for you**".¹²¹ Oliver Griffith, director of the AIR initiative described the Bill as "**political dogma overriding common sense.**"¹²²

Maureen Moore (ASH Scotland) said:

"I am delighted that the Scottish Executive has acted decisively... Tobacco has done so much damage to Scottish society...ASH Scotland strongly endorses this move from the Scottish Executive, it is a bold and radical proposal to find a Scottish solution to a Scottish problem."¹²³

Two weeks later, Brian Monteith MSP issued an ultimatum to Jack McConnell to "**produce the death certificates of victims of passive smoking...or admit it does not kill.**" Opposition politicians condemned the Conservatives as "**pariahs**" of the Scottish Parliament.¹²⁴ The Cabinet had been presented with the findings of David Hole's research on deaths associated with exposure to SHS in Scotland, which estimated that between 1500 - 2000 deaths in Scotland each year are associated with exposure to SHS.¹²⁵ Jack McConnell cited the figures as evidence that smoke-free legislation could turn around Scotland's reputation as the 'sick man of Europe'. Brian Monteith MSP concluded saying "**there is absolutely no conclusive scientific evidence that passive smoking has ever killed anyone in Scotland.**" A spokesman for Scottish Labour replied:

"Brian Monteith is now one of the few people who still believes there is a safe level of tobacco smoke ... next week he'll be trying to convince us the world is flat."¹²⁴

The same newspaper article reported that

AOB had approached high-profile lawyer Peter Watson (who in the past represented families of the Lockerbie victims), to mount a case against the smoke-free legislation. The tobacco industry frequently uses the threat of litigation to challenge smoke-free laws. Usually, the industry seeks an injunction to prevent implementation of the law during the course of a lawsuit, as this can take months or even years. These legal challenges almost always fail.¹²⁶

The SLTA Pub Smoking Seminar

The SLTA held a Pub Smoking Seminar on 13th January 2005 in Edinburgh. A similar event has since been held in Cardiff, Wales. No doubt England and Northern Ireland will be future hosts, if this is not already in the pipeline.

The Scottish seminar was intended to explore the issues that would face licensees when the smoke-free legislation is introduced in March 2006. Steve Stotesbury, Industry Affairs Manager (EU) and senior scientist from Imperial Tobacco, presented on the 'science of SHS'. Stotesbury focussed his discussion on issues such as difficulties of statistical interpretation, understanding relative risk values and putting the risk in context. Stotesbury also critiqued a number of key publications including the David Hole and SCOTH reports.¹²⁷

Tadg O'Sullivan (LVA) commented on the effects of Ireland's smoke-free legislation.¹²⁸ His predictions were dire and in sharp contrast to the 1-year outcomes that would be reported a few months later by the Office of Tobacco Control.⁵ O'Sullivan's predictions were in line, however, with the 30% decline in sales that was predicted and claimed by tobacco industry affiliates in the United

States and in Canada, both before and after legislations were introduced there.

Dr Andrew Geens (University of Glamorgan) claimed to have investigated "the real effect of ventilation in pubs." Geens' research was sponsored by the SLTA, and commissioned by Corporate Responsibility Consulting, who also managed the TMA funded AIR initiative.¹²⁹ The study, which remains unpublished in a peer-reviewed journal, concluded that simple low cost ventilation systems could reduce SHS dramatically, and in some areas air quality could be made as good as in a non-smoking pub. The study also concluded that particles and gases were kept well within occupational limits even at peak times in busy pubs with no smoking restrictions.

Dr Geens' presentation of research¹³⁰ suggested that there was no significant difference in particulate matter (PM 2.5) averages between a smoke-free pub (The Phoenix in Glasgow), and a pub where smoking is permitted, when the ventilation is switched on (this latter pub was the Doublet Bar in Glasgow, of which the SLTA's Alistair Don is proprietor). Graphs representing both sets of PM 2.5 averages were used to demonstrate that ventilation was therefore an effective solution. The graphs used different axis scales to plot the same points, and in doing so, particulate matter averages in the two pubs appeared to be similar. **When the graphs were reworked, the data showed that particulate matter averages were between 3 and 10 times higher for the ventilated Doublet pub, when compared to the smoke-free pub.**⁶

The SLTA seminar highlighted the close links between sectors of the hospitality industry and the tobacco industry. The only MSP attending the SLTA event was Brian Monteith MSP.

⁵ The Office of Tobacco Control's 'One Year On' report (http://www.otc.ie/Uploads/1_Year_Report_FA.pdf) noted that bar sales had been declining in volume since 2001, due to a number of factors including high prices, changing lifestyles and shifting demographic patterns. The report also outlined an increase in numbers employed in the hospitality sector at the end of 2004, exceeding those employed in 2002 by 0.6%. In addition, Central Statistics Office data on tourism and travel showed a 3.2% increase in visitors to Ireland in 2004 when compared to 2003.

⁶ The re-worked graph is shown on page 17 of ASH Scotland's written evidence submission to the Health Committee, which is available online at: <http://www.ashscotland.org.uk/ash/files/ASH%20Scotland%20Smoking%20Health%20and%20Social%20Care%20Bill%20Written%20Evidence.doc> [Accessed 05 Sep 2005]

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Whilst the evidence from countries such as the Republic of Ireland shows that smoke-free laws work, are popular and do not damage national economies, no amount of evidence seems to convince the intransigent elements of the pub trade. Nevertheless, the evidence base, properly communicated, does impact on government, on industry and on public opinion. The sectors of the licensed trade that openly cooperate with the tobacco industry continue to be vociferous in their opposition to smoke-free public places in Scotland. But this is a double-edged sword. **The more that the licensed trade relies on the tobacco industry for assistance in their campaign, the slicker their campaigning becomes. However, this association between the two industries only serves to undermine the legitimacy of the licensed trade's opposition.**

2005 onwards

Early 2005 and the lobbying continued on both sides. Members of the CPG continued to champion the Public Places Bill to members of their own parties. ASH Scotland worked with the CPG to provide briefings for MSPs targeting certain opposition arguments as and when they arose. Scotland CAN! communications group invited Consolidated Communications onto the group – they had been appointed by the Scottish Executive to assist the Executive Press Office in targeting a wider public audience with messages to support the legislation. Scotland CAN! communications campaign grids were drawn up so that member organisations could feed effectively into each other's events to assist in improving public awareness of the Bill.

Media reports suggested that AOB had drawn up a battle plan to fight the Executive's aim of outlawing smoking in public places. Beer mats with 'freedom to choose' and the right to choose' were being distributed to pubs.¹³¹ AOB and other opposition groups were also stepping up their use of adverts in the local and national press, and their use of local 'champions'; letters opposing the ban from individuals who were made to look like

everyday members of the public. This tactic can be effective in influencing public opinion. Around this time, FOREST appointed a Scottish spokesperson, Neil Rafferty, 'to help combat the threat of a total ban on smoking north of the border.'¹³² In addition, the Publican Party was formed, fielding Don Lawson (an Inverness Publican) as candidate for the Inverness East and Lochaber seat.¹³³

The Scottish Parliament Health Committee's Call for Evidence

ASH Scotland and Scotland CAN! prepared submissions¹³⁴ for the Health Committee's call for evidence on the Smoking, Health and Social Care (Scotland) Bill which were sent on 11th Feb 2005. The call for written evidence gave an opportunity to showcase the scientific evidence that had been published since the end of the Scottish Executive's consultation process (Sept 2004), including the new SCOTH report and the WHO's IARC Monograph. There was also increasing evidence on the benefits of going smoke free, and further examples of countries that had taken the decision to go smoke-free (New Zealand and Italy). ASH Scotland used best practice evidence to outline its position on enforcement and compliance issues, and described the problems encountered in other countries that had taken a stepped approach to going smoke-free (the SLTAs stepped approach was still being touted at this stage). The submission also recommended minimal exemptions, highlighted the success of this approach in the Republic of Ireland, and drew on the evidence-base to argue against proposed exemptions such as private clubs.

The IARC Monograph Working Group on Tobacco Smoke and Involuntary Smoking was a scientific working group of 29 experts from 12 countries convened by the World Health Organization. This working group published a 1,500 page review of all published evidence related to SHS and cancer in 2004, concluding that SHS is carcinogenic to humans.¹³⁵

In November 2004, SCOTH published an report summarising SHS research that has been published since their 1998 publication. The Committee concluded that SHS exposure increases the risk of lung cancer by 24%; and that it increases the risk of ischaemic heart disease by 25%. The Committee also concluded that smoking in the presence of children is a cause of serious respiratory illness and asthma attacks in children. They concluded that sudden infant death syndrome is also associated with exposure to SHS. In addition, the Committee stated that SHS is a controllable and preventable form of indoor air pollution that no infant, adult or child should be exposed to.¹³⁶

Presentations from the SLTA hosted pub smoking seminar (January 2005) formed the basis for the speaker-organisations responses to the Health Committee's call for written evidence. On this basis, ASH Scotland obtained independent statistical advice from one of Scotland's leading and most respected statisticians, in order to effectively counter the multiple layers of Steve Stotesbury's (Imperial Tobacco) argument that **"science and statistics have been exaggerated to fit the anti-smoking case"**.¹²⁷ ASH Scotland researched the background to work conducted at the Oakridge National Laboratory of Tennessee, which suggested that exposure to SHS may be lower than previously indicated for bartenders, waiters and waitresses.¹³⁴ Tadj O' Sullivan (LVA) had used this research to back up his argument of there being "a vast array of evidence to prove that the issue (of the association between passive smoking and ill health) is grossly exaggerated".¹²⁸

ASH Scotland discovered that Oakridge researchers, although part of the U.S Department of Energy's research establishment, are also commercially available to private companies. Roger Jenkins, the lead author of the study O'Sullivan cited, has conducted several other pieces of research commissioned by the

tobacco industry, that typically attempt to show that exposure to SHS is not a significant health hazard. Jenkin's findings, and Jenkins himself, frequently appear in hearings to oppose local smoke-free measures. As an expert witness for the defence in a lawsuit bought by flight attendants against the tobacco industry over the lung cancer and other diseases they contracted at work, Jenkin's evidence was excluded by the judge because of his pro-tobacco industry bias.¹³⁷

Without exception, the 'evidence' presented by hospitality groups and the tobacco industry to the Health Committee was flawed, weak, and lacking in scientific credibility. ASH Scotland reiterated that **the issue of whether exposure to SHS causes ill-health had already been resolved scientifically**. It was, and still is today, only hospitality groups and the tobacco industry that continue the 'debate'.¹³⁴

The Parliamentary Debates

The Stage One parliamentary debate on the Smoking, Health and Social Care (Scotland) Bill was held on the 28th April (2005). At this debate MSPs voted on the general principles of the Bill. Three weeks before the Stage One debate, AOB published a poster in the Sun newspaper, with the slogan 'Jack you're not listening' and 'Freedom to Choose' printed on it. They urged readers to contact their local MSP and provided the Scottish Parliament's public information phone number. On the same date, a letter appeared in the press signed by fourteen leading health organisations reiterating the case for smoke-free public places in Scotland. Despite another attempt by the opposition to subvert the public places campaign, MSPs voted 83-15 in favour of the Bill. Only the Conservatives directly opposed the measure.

The pro-health lobby was already looking ahead to the Stage 2 debate, where the finer detail of the Bill would be discussed. The next few months that followed were crucial.

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The proposals for regulations under powers contained within the Bill were open for consultation until 26th May 2005, and the evidence base was crucial to informing the Scottish Executive's decision making on the finer details of the smoke-free legislation. This was an ongoing opportunity to influence. The draft Bill in itself was commendable, but there were a number of finer issues to be addressed.

To assist in moving this next stage forward, a number of high profile meetings were organised. Firstly, SCOT and Scotland CAN! invited Stewart Maxwell MSP to attend a meeting of the group in March 2005. Maxwell highlighted that in his own Bill, smoking had been carefully defined to include the use of any lit product, or any product capable of being lit. In the Executive's draft Bill, smoking was more narrowly defined to refer only to tobacco use. ASH Scotland reviewed the evidence-base and supported Stewart Maxwell's view that the definition should encompass the use of non-tobacco products. Scotland CAN! supported this stance. The threat from SHS comes from levels of tar, carbon monoxide and respirable particulate matter. These substances are also present in non-nicotine cigarettes with at least similar levels to tobacco cigarettes.¹³⁸ Greater clarity in the wording of the bill to cover non-tobacco products would also ensure ease of implementation. ASH Scotland produced an evidence-based briefing to support widening the draft definition to include non-tobacco products. This briefing was distributed to CPG members and MSPs, and it was sent to Andy Kerr MSP, with an accompanying letter voicing ASH Scotland's concerns.

Members of Scotland CAN! were also concerned that the term 'enclosed' public places' would render many partially enclosed premises used by the public (i.e. sports stadia, railway platforms, and a number of Scottish tourist attractions) exempt from legislation. Scotland CAN! and ASH Scotland decided to take this issue on in responses to the proposals for regulations contained in the Bill.¹³⁹ In discussion with colleagues in the

Republic of Ireland, we agreed to recommend adopting the Republic of Ireland's 50% or more enclosed approach, which was proving to be a resounding success there.

On the 27th April, Andy Kerr MSP, Minister for Health and Community Care accepted an invitation to a meeting of the SCOT/Scotland CAN! coalition. This marked a real achievement for the coalition, not least because Andy Kerr committed to working in consultation with the coalition, and commended its achievements to date. He raised the issue of herbal cigarettes at this meeting, stating that this was a difficult issue, and **“one I have yet to make up my mind on.”**¹⁴⁰

At this meeting, the coalition raised its view that there should be a general presumption within the Bill in favour of smoke-free environments. The wording of the proposed exemptions presumed that types of premises covered would be mainly smoking premises, with designated non-smoking areas. The coalition wanted this changed so that the exempt premises would be mainly smoke-free, with designated smoking areas. Kerr responded that he was **“certainly open to listening to arguments”**.¹⁴⁰ The coalition also raised the issue of partially enclosed public places, which the Minister acknowledged as a **“difficult question”**.¹⁴⁰ He continued:

“I am disappointed that you could sit in a large sporting venue and have people smoking on all sides...but we have struggled in terms of definitions of enclosed spaces. I'd suggest we need to focus on getting this legislation through and then revisit these issues at a later date.”¹⁴⁰

Before the close of the meeting, Andy Kerr encouraged the coalition to increase the local level campaigning it had been discussing in previous months. Following discussions in the Scotland CAN! Communications Group, the Scotland CAN! 'Support smoke-free

public places' postcard campaign was born. The aim of the campaign was to give people the opportunity to let their MSPs know that they supported the smoke-free legislation, so in this respect it was also in direct response to AOBs 'Jack you're not listening' campaign of the previous month. Scotland CANs campaign was launched on 31st May 2005, at the Scottish Parliament. Scottish rugby stars Gavin Hastings and Scott Hastings attended the launch along with a number of school children and members of the coalition, who presented a giant version of the postcard to Andy Kerr. Twenty five thousand postcards were produced and distributed within Scotland CAN! networks, designed to show a measure of public support for smoke-free legislation in the run up to the Stage 2 debate.

On the same day as the postcard launch, Lord Nimmo Smith issued his long-awaited judgment on the McTear vs Imperial Tobacco case, ruling that Imperial Tobacco was not responsible for the death of Alfred McTear. Margaret McTear, his widow, had sought for justice against Imperial Tobacco for the past 12 years, and the judgment was a blow for everyone that wanted to see the tobacco industry held accountable for their failure to adequately warn customers about the dangers of their products. The ruling also served as a reminder that in Scotland, it is through building up legislation and regulations that we can effectively tackle the tobacco industry and their products.

In the run up to the Stage 2 debate (14th June 2005), a number of amendments were proposed to the Smoking, Health and Social Care (Scotland) Bill. ASH Scotland produced a briefing for MSPs that outlined all the proposed amendments, and evidence-base supporting or refuting them. Some of the proposed amendments were positive in that they would allow for better operation of the legislation, permit smoother enforcement, and close potential loopholes that the opposition could seek to exploit. Stewart Maxwell MSP had proposed an amendment to widen the definition of smoking products

developed under the Bill so as to include non-nicotine cigarettes. A majority on the Health Committee were supportive of this proposal. Brian Monteith MSP and other Conservative Party members proposed a large number of amendments, the effects of which would be to undermine the legislation. This included proposing exemptions for liquor-licensed premises, for specialist cigar bars and other tobacco retailers, and for theatres and performance venues. Conservative Party members also proposed amendments that would permit only tobacco-related products to be captured by legislation, and that would serve to restrict the definition of 'enclosed' public places only to premises that are wholly enclosed.⁷ The Conservative Party's amendments were withdrawn at the Stage 2 debate, and a number of them resurfaced at the Stage 3 debate on 30th June 2005.

The Stage 3 Parliamentary Debate

In preparation for the Stage 3 debate, the Cross Party Group on Tobacco Control arranged to meet with Andy Kerr. This provided a useful opportunity to readdress concerns about any amendments that might resurface at Stage 3, and to re-inforce the CPGs position on them. ASH Scotland sent an updated evidence-based briefing to all MSPs outlining the possible amendments to come.

On 30th June 2005, the Scottish Executive voted 97 to 17 (with 1 abstention) in favour of smoke-free legislation in Scotland. It was agreed to extend the definition of smoking to encapsulate herbal and non-tobacco smoking products. The Scottish Executive also extended the 'enclosed' definition of public places to include 'substantially enclosed public places. It has since been suggested that the Republic of Ireland's 50% or more model will be adopted in Scotland. Where exemptions apply, the emphasis will be on smoke-free premises with designated smoking areas, rather than the other way around.¹⁴¹

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At the Stage 3 vote, a majority on the Health Committee agreed to give ministers new powers to change the law on tobacco sales. In effect, this means that the minimum legal age for buying tobacco in Scotland could be set to change, although inherent in these powers is the clause that the minimum legal age can only ever be increased. The Ministerial Working Group will discuss this possible change in policy over the coming months. International experience and the existing evidence-base will form a central role in their decision-making.

The Smoking, Health and Social Care (Scotland) Act¹⁴² comes into force on March 26th 2006. From this date, all enclosed and substantially enclosed public places in Scotland will be required to be smoke-free by law.

Scotland has shown world-class leadership in acting decisively to remove SHS from our public places and workplaces. The MSPs who supported this legislation, the Scottish

Executive, member organisations of Scotland CAN!, ASH Scotland and others are rightly proud of the legislation. We have defeated the expensive lobbying strategies of the tobacco companies and their allies, and won a victory for Scotland's health, so that future generations are protected from the class A carcinogen that is SHS.

We are proud, but we are under no illusions as we move into the pre-implementation phase of going smoke-free. The journey doesn't stop here. In many ways this is just the beginning. There is already talk of legal action from sectors of the hospitality industry, and we know from experiences in other countries that we will face further opposition in various shapes, forms and guises. There are many tobacco industry battles to come, in Scotland, in the UK and internationally. Our tale of victory isn't sufficient in itself to force the tobacco industry to concede. But as Stanton Glantz once said, **"this is a war of attrition"**.¹⁴³ The tobacco industry knows that it is slowly losing this war.

⁷ A full list of proposed Stage 2 amendments is available online at: <http://www.scottish.parliament.uk/business/businessBulletin/bb-05/bb-06-10g.htm> [Accessed 05 Sep 05].

Chronology

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- 1986** The US Surgeon General publishes *'The Health Consequences of Involuntary Smoking'*. The report concludes that involuntary smoking is a cause of disease, including lung cancer, in nonsmokers.
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- March 1988** The report of the Scientific Committee on Tobacco and Health is published. The Committee concludes that exposure to environmental tobacco smoke (ETS) increases the risk of lung cancer and ischemic heart disease. In infants exposure to ETS increases the risk of sudden infant death and respiratory disease. One of the recommendations is for restrictions on smoking in public places, to be varied according to different categories of public places.
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- December 1991** The Department of Environment, working in conjunction with other government departments, publishes a Code of Practice on smoking in public places, marking the beginning of voluntary regulation. Research carried out in 1995 revealed that the government was failing to reach its targets in all categories of public buildings.
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- January 1993** Alfred McTear of Beith, North Ayrshire, a 60-a-day smoker who was dying from lung cancer, started legal action against Imperial Tobacco for failing to put warnings on its cigarette packets in the 1960s. The claim for £500,000 damages from Imperial is the first action of its kind in Scotland. The Court of Session heard the case between November 2003 and March 2004 and the judgment was issued in May 2005.
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- Summer 1998** ASH Scotland convenes an expert working group to look at smoking policies in public places. Members of this group were ASH Scotland, COSLA, BMA, UNISON, the Scottish Office and HEBS were observers.
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- November 1998** The Scotland Act achieved Royal Assent in November 1998 leading 1st July 1999 to the establishment of the Scottish Parliament. The Scottish Parliament held its first meeting in May 1999 and assumed its full powers upon inauguration on 1 July 1999.
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- 10th December 1998** The Department of Health publishes *'Smoking Kills: A White Paper On Tobacco'*. This White Paper describes a range of tobacco control measures for the United Kingdom including details of a Charter agreed by the licensed hospitality trade for increasing the provision of facilities for non-smokers. The measures contained in the White Paper were subsequently endorsed by the Scottish Executive who agreed it should be implemented in a Scottish context. To guide that process the Scottish Executive sets up the Scottish Tobacco Control Strategy Group in 1999.

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March 1999	ASH Scotland publishes a policy paper on smoking in public places. The paper calls for legislation to be introduced to effectively restrict smoking in public places.
August 1999	Following the publication of research that found passive smoking increases the risk of stroke by 80%. Hugh Henry MSP calls for legislation to restrict smoking in public places.
July 1999	As an outcome of the 1998 White Paper ' <i>Smoking Kills</i> ' the Health and Safety Commission begin a consultation on an Approved Code of Practice to improve the protection of the welfare of all employees by defining the kind of smoking policies employers should have to comply with Health and Safety legislation. The consultation runs until October 1999.
14th September 1999	The Public Places Charter on Smoking launched in England by the Minister for Public Health, after being outlined in <i>Smoking Kills</i> . The Charter is a voluntary code agreed between the hospitality industry and the Department of Health. Signatories were the Association of Multiple Retailers, Brewers and Licensed Retailers Association, British Holiday and Home Parks Association, British Hospitality Association, British Institute of Innkeeping and the Restaurant Association.
October 1999	The Scottish Cancer Coalition on Tobacco (SCOTT) is launched during Europe Against Cancer Week. SCOTT is an alliance of ASH Scotland and the leading Scottish cancer charities. The coalition raises awareness of the links between cancer and tobacco use and provides a forum to advise and inform the Scottish Parliament.
October 1999	On behalf of the Scottish Tobacco Control Strategy Group, ASH Scotland and the Health Education Board for Scotland (HEBS) commission MVA to carry out a survey of smoking policies in the Scottish leisure industry. The aim of this survey, funded by the Executive, was to provide baseline data from which to monitor the forthcoming Scottish Voluntary Charter on Smoking in Public Places. A follow-up survey was conducted by MVA in January 2003.
December 1999	The Cross Party Group on Tobacco Control is founded by SCCOT. The purpose of the cross party group is to take forward an effective tobacco control agenda and monitor the implementation of the UK White Paper on tobacco in Scotland. Kenneth Gibson MSP is elected as the group's first Convenor in 2000 February, Irene Oldfather is elected Vice-Convenor, ASH Scotland provides the secretariat.

January 2000	Hugh Henry MSP is the guest speaker at ASH Scotland's AGM and calls for the 'silent majority' to speak out on the health risks of passive smoking and the need to protect public health through restrictions on smoking in public places.
February 2000	The first action of the Cross Party Group is to tackle underage sales of tobacco. The Lord Advocate was resistant to allow test purchasing of age-restricted goods. SCOTT successfully lobbies the Lord Advocate who announces a review of policy on underage sales of tobacco in October 2000.
11th May 2000	ASH Scotland and HEBS publish the findings of the smoking in public places survey by MVA. The survey found that 58% of businesses surveyed allowed the public to smoke.
23rd May 2000	The Scottish Voluntary Charter on Smoking in Public Places is launched by Health Minister Susan Deacon. The British Hospitality Association, the Scottish Beer and Pub Association, the Scottish Licensed Trade Association, the Scottish Tourism Forum and the Scottish Executive all agreed the charter. The launch took place at the Scottish Licensed Trade Association's annual conference in Dundee.
31st May 2000	Scotland CAN! (Cleaner Air Now) is launched. Scotland CAN! campaigns for legislation to restrict smoking in public places. Members are ASH Scotland, British Medical Association, National Asthma Campaign Scotland, Children in Scotland, British Lung Foundation and the Roy Castle Lung Cancer Foundation. The launch was supported by Hugh Henry MSP and TV actor Richard Wilson.
September 2000	A new consultation on an Approved Code of Practice (ACoP) is announced on smoking in the workplace.
31st May 2001	To mark the first anniversary of Scotland CAN! Hugh Henry MSP tables a motion calling for a national public information campaign on the health risks of passive smoking. In August Health Minister Susan Deacon announced plans to develop a passive smoking campaign by HEBS.

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6th July 2001

Kenneth Gibson MSP proposes to introduce a Bill to regulate smoking in enclosed public places where food is sold and consumed. A Member led consultation on The Regulation of Smoking Bill took place between November 2001 and February 2002 to assist in the formation of the Bill. The Bill was to be introduced to the Scottish Parliament after the Scottish Parliament election in May 2003 but Gibson was not re-elected. The Bill was picked up later in 2003 by Stewart Maxwell MSP.

Autumn 2002

ASH Scotland and Scotland CAN! make the case to Scotland's political parties for legislation to restrict smoking in public places by holding fringe events at the Liberal Democrat, Conservative and Scottish National Party conferences.

November 2002

The Tobacco Advertising and Promotion Act 2002 introducing a comprehensive ban on tobacco advertising and promotion receives Royal Assent.

January 2003

ASH Scotland and HEBS commission MVA to carry out a follow-up survey '*Smoking In Public Places: A Follow Up Survey Of The Scottish Leisure Industry*' for the Scottish Executive.

14th February 2003

Tobacco advertising on billboards and in print media is prohibited under the Tobacco Advertising and Promotion Act 2002.

30th March 2003

The Smoke-Free Air Act takes effect in New York City ending smoking in public places.

11th April 2003

ASH Scotland hosts a public meeting where guest speaker Professor Stanton Glantz presented 'Smoke-free public places: what Scotland can learn from America'. Over the coming months ASH Scotland makes legislation on smoking in public places ASH Scotland's campaign major goal.

May 2003

Under the Tobacco Advertising and Promotion Act 2002 direct mail and other promotions are prohibited.

15 May 2003

"A Partnership Agreement for a Better Scotland" is published. This agreement between Labour and Liberal Democrat MSPs sets out the policies for the Scottish Executive over the next 4 years. This includes a commitment to consult on how to achieve considerably more smoke-free bars and restaurants and to consult transport operators on further measures to improve enforcement of restrictions on smoking in public transport.

July 2003

Sir Liam Donaldson, England's Chief Medical Officer, calls for a ban on smoking in public places in his annual report.

23rd September 2003

MVA follow-up survey '*Smoking in Public Places: A Follow Up Survey of the Scottish Leisure Industry*' is published. The survey, funded by the Scottish Executive, found that after nearly 3 years more than 7 in 10 Scottish pubs and bars permit smoking throughout.

February 2003

The Scottish Executive publish '*Improving Health in Scotland: the Challenge*' aimed at bringing about a more rapid rate of health improvement in Scotland and to narrow the gap between the health of our poorer and better off communities. The Challenge describes a series of actions to tackle key risk factors. The Challenge contains a commitment to review tobacco policy in conjunction with key interests and to set out a new plan for action to build on the achievements made. To inform that process the Executive invites ASH Scotland and NHS Health Scotland to undertake a review of national tobacco control policy which would: examine current smoking trends; summarise the most up to date evidence; consider current prevention, control and treatment strategies in Scotland; and to make recommendations about what further action might be taken in Scotland.

13th January 2004

The report resulting from that review of tobacco policy '*Reducing Smoking and Tobacco-Related Harm a Key to Transforming Scotland's Health*' is jointly published by ASH Scotland and NHS Health Scotland. This document makes recommendations to the Scottish Executive for further action on tobacco control.

On the same day the Scottish Executive publish the first ever action plan designed specifically for Scotland '*A Breath of Fresh Air for Scotland*'. This action plan builds upon and responds to the recommendations made in the ASH Scotland and NHS Health Scotland's report '*Reducing Smoking and Tobacco Related Harm*' and offers a program of action covering prevention and education, protection and controls and the expansion of cessation services. It also addresses the issue of second-hand smoke including a commitment to consult on smoking in public places. As one of the action points the Scottish Tobacco Control Strategy Group is upgraded and becomes the Scottish Ministerial Working Group to guide the implementation of this action plan and shape the future direction of national tobacco control policy.

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- 3rd February 2004** Stewart Maxwell MSP introduces the Prohibition of Smoking in Regulated Areas (Scotland) Bill to the Scottish Parliament. The Bill proposes to prevent people from being exposed to passive smoking in certain public places by prohibiting smoking where food is supplied and consumed.
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- 28 March 2004** The new Scottish Ministerial Working Group on Tobacco Control meets for the first time. The broad based membership includes authoritative figures in the tobacco control and related areas in Scotland including the Chief Executive of ASH Scotland, health professionals, academics, young peoples' representatives, and retailing interests.
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- 7th April 2004** Scotland's Chief Medical Officer Dr Mac Armstrong publishes his annual report '*Health in Scotland 2003*'. Dr Armstrong described smoking as the biggest cause of preventable death and ill-health in Scotland.
-
- 29th April 2004** Pioneering legislation to prohibit smoking in all workplaces comes in to force in the Republic of Ireland under the Public Health (Tobacco) (Amendment) Act 2004.
-
- 1st June 2004** Legislation ending smoking in places where food and/or drink is served is implemented in Norway. Prior to this hospitality industry workers were the only group of workers not covered by legislation.
-
- 7th June 2004** Scottish Executive public consultation on smoking in public places. 30th September 2004. The widespread and inclusive consultation process included a series of public forums and the Scottish Executive hosted conference in Edinburgh which looked at the ways other countries were reducing exposure to passive smoking and the health risks of secondhand smoke.
- First Minister Jack McConnell also visited Ireland to see how smoke-free legislation is working there.
- Health Scotland commissioned research on behalf of the Scottish Executive to support the consultation. This includes research into passive smoking and associated deaths in Scotland, workplace smoking polices and an international review of the health and economic impact of the regulating smoking in public places. Over 53,000 consultation responses are received, the most for any Scottish Executive consultation.

24th June 2004

Scotland's Chief Medical Officer Dr Mac Armstrong addresses ASH Scotland's AGM underlining the deadly nature of environmental tobacco smoke (ETS), and the particular risks to children and vulnerable people. He told the meeting we need to act to protect those who cannot choose, and to send a clear signal that smoking is no longer normal in Scotland. Jim Devine, UNISON, also a guest speaker, said that clear tobacco control policies backed up by law were demonstrably good for employers and employees. He pointed out that negative and vitriolic opposition in advance of the bans in New York and Ireland had proved to be groundless.

4th October 2004

Following a Cabinet reshuffle Andy Kerr MSP is appointed Minister for Health and Community Care and Rhona Brankin MSP is appointed Deputy Minister for Health and Community Care.

November 2004

SCCOT is reformed under the wider coalition Scottish Coalition on Tobacco (SCOT). Scotland CAN! now comes under this umbrella.

The Scientific Committee on Tobacco and Health publish *'Secondhand Smoke: Review of the Evidence since 1998. Update of Evidence on the Health Effects of Secondhand Smoke'*. The Committee concludes that no infant, adult or child should be exposed to secondhand smoke and that secondhand smoke represents a substantial public health hazard.

5th November 2004

The High Court rules in favour of the Department of Health over the tobacco industry challenge of the point of sale regulations.

10th November 2004

First Minister Jack McConnell announces to the Scottish Parliament that the Scottish Executive will propose legislation for a comprehensive ban on smoking in public places.

December 2004

The Scotland CAN! Press and Communications Subcommittee is formed as a short-life working group to make recommendations and take forward the communications work of Scotland CAN!

10th December 2004

Licensed premises and other indoor workplaces become smoke-free in New Zealand following an amendment to the Smoke-Free Environments Act 1990.

13th December 2004

The Scottish Executive publishes the full research and findings from the smoking in public places consultation used to inform their decision on smoking in public places.

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16th December 2004	UK government ratifies the World Health Organization Framework Convention on Tobacco Control. The Convention contains a host of measures designed to reduce the devastating health and economic impact of tobacco on a global level.
17th December 2004	The Smoking, Health and Social Care (Scotland) Bill is introduced to the Scottish Parliament. Health Minister Andy Kerr describes it as the “most important piece of public health legislation for a generation”.
21st December 2004	Point of Sale (Scotland) Regulations come into force under the Tobacco Advertising and Promotion Act 2002. The regulations govern tobacco advertising in shops and on vending machines.
10th January 2005	Legislation prohibiting smoking in offices, bars, restaurants, hotels, theatres, discos and cafés comes into force in Italy.
11th January 2005	The Scottish Parliament’s Health Committee publishes its Stage 1 report on the Prohibition of Smoking in Regulated Areas (Scotland) Bill.
8th February 2005	Scotland’s Chief Medical Officer says that legislation to end smoking in enclosed public places will bring a “priceless benefit”.
25th February 2005	The Lord Advocate announces his decision to revise his prosecution policy to allow test purchasing of age-restricted goods by children and young people younger than 18, in circumstances where the purchaser is not committing a separate offence. In practice, this will allow the test purchasing of tobacco, fireworks and other age-restricted goods but not alcohol.
27th February 2005	The World Health Organization Framework Convention on Tobacco Control enters into force and becomes part of international law.
2nd March 2005	A study published in the British Medical Journal finds that passive smoking kills more than 11,000 in the UK each year and that 600 people die each year from passive smoking in the workplace.
9th March 2005	Cancer Research UK and ASH Scotland host a drop-in smoking cessation clinic and No Smoking Day exhibit at the Scottish Parliament.
27th April 2005	Andy Kerr, Minister for Health and Community Care attends a SCOT/Scotland CAN! Meeting.

28th April 2005	The Smoking, Health and Social Care (Scotland) Bill is approved at stage 1 after MSPs vote in favour of the general principles of the Bill.
31st May 2005	<p>Scotland CAN! launches the 'Support smoke-free public places' postcard campaign at the Scottish Parliament. Scotland rugby stars Gavin Hastings and Scott Hastings and school children attend the event. The aim of the campaign is to give people the opportunity to let their MSPs know they support smoke-free enclosed public places.</p> <p>On the same day, Lord Nimmo Smith issues his judgment on the McTear vs Imperial Tobacco case and rules that Imperial Tobacco was not responsible for the death of Alfred McTear.</p>
1st June 2005	All restaurants, cafes, bars and nightclubs in Sweden become smoke-free under an amendment to the Tobacco Act.
8th June 2005	A seminar, organized by Health Scotland and the Scottish Executive, on the health and economic impacts of the proposed smoke-free legislation for Scotland is held.
27th June 2005	Lewis Macdonald MSP is appointed Deputy Minister for Health and Community Care.
30th June 2005	The Scottish Parliament votes 97 to 17 (1 abstention) in favour of the Smoking, Health and Social Care (Scotland) Bill.
21st July 2005	The Prohibition of Smoking in Regulated Areas (Scotland) Bill is withdrawn.
31st July 2005	Tobacco industry sponsorship of sport is prohibited under the Tobacco Advertising and Promotion Act 2002. Brandsharing regulations also come into force.
5th August 2005	The Smoking, Health and Social Care (Scotland) Act receives Royal Assent.
26th March 2006	Expected implementation date of the Smoking, Health and Social Care (Scotland) Act 2005.

Appendix 1: Scotland CAN! Member Organisations

ASH Scotland

Asthma UK Scotland

British Heart Foundation

British Lung Foundation

British Medical Association

Cancer Research UK Scotland

Children in Scotland

Chest, Heart and Stroke Scotland

Convention of Scottish Local Authorities (COSLA)

Scotland's Health at Work (now part of the Scottish Centre for Healthy Working Lives)

Centre for Tobacco Control Research, Institute for Social Marketing, Stirling University

Macmillan Cancer Relief

Marie Curie Cancer Care

NHS Health Scotland

Professor Alan Rodger, Medical Director of the Beatson Oncology Centre

Royal College of Nursing (RCN)

The Royal Environmental Health Institute of Scotland (REHIS)

Roy Castle Lung Cancer Foundation

Royal College of Physicians Edinburgh

Royal College of Surgeons, Edinburgh

Smoking Concerns, NHS Greater Glasgow

Scottish Tobacco Control Alliance (STCA)

Scotland's Trade Union Centre (STUC)

UNISON

West Lothian Drug and Alcohol Service (WLDAS)

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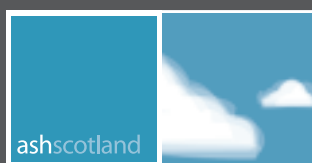
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