

To: PLANNING AND ENVIRONMENT COMMITTEE	Subject: SMOKING, HEALTH AND SOCIAL CARE (SCOTLAND) BILL	
From: DIRECTOR OF PLANNING AND ENVIRONMENT		
Date: 2 March 2005.	Ref: GC/N/EH/1/1	

1. Purpose of Report

- 1.1 To advise Members of progress regarding the Smoking, Health and Social Care (Scotland) Bill and to seek homologation of responses made to COSLA regarding the Bill.

2. Background

- 2.1 The Smoking, Health and Social Care (Scotland) Bill was introduced on 16 December 2004 by Health Minister Andrew Kerr, MSP. This follows on from an extensive consultation exercise regarding smoking in public places which was conducted last year. Members will be aware that the Council participated in the consultation exercise. A report was previously submitted to Committee in September 2004 and Members approved a response to the consultation exercise which supported in principle a ban on smoking in public places. The consultation attracted a total of 53,474 responses which is the highest number ever received and is a clear reflection of the public interest in this issue in Scotland. The importance of the Bill has been further highlighted by the Deputy Health Minister who has stated that the Scottish Executive consider this to be the most important piece of legislation for a generation.
- 2.2 The Bill covers several important health related issues. However Part 1 relates to the ban on smoking in wholly enclosed spaces in Scotland and the focus of this report is on this specific issue. So far as statutory measures are concerned Part 1 of the Bill makes provision for :-
- creating an offence of permitting others to smoke in and on no-smoking premises
 - creating an offence of smoking in no-smoking premises
 - creating an offence of failing to display warning notices in no-smoking premises
 - setting out the powers of enforcement officers to enter no-smoking premises
 - creating an offence of failing without reasonable excuse to give one's name and address on request by an authorised officer
- 2.3 The proposed ban is controversial because of the ongoing debate about the dangers of passive smoking. Medical opinion is generally in favour of a ban on health grounds. There are others however who challenge the medical evidence. Concerns have also been expressed about the impact on the licensed trade and hospitality sector. Some consider a ban to be "nanny state" politics and an infringement of civil and personal rights. Others believe that the public good and the right to individuals not to be subjected to what they consider to be dangerous and unpleasant substances overrides the right to smoke in enclosed public places.

3 Proposals/Considerations

- 3.1 As part of the normal parliamentary process a review of the Bill has been ongoing since it's introduction at the end of last year. COSLA has had a key role in this process and, so far, has sought comments from Local Authorities on two separate occasions on financial and health issues. Responses have been made by North Lanarkshire Council to these requests from COSLA

for comments and these are included in Appendix 1 and 2 of this report. Due to deadline difficulties it has not been possible to seek prior approval from Committee regarding the contents of the submissions and Members are now requested to homologate the responses.

- 3.2 Appendix 1 relates to comments on operational and financial issues. The Executive have indicated that they expect the ban to be monitored and enforced by Environmental Health Officers. These Officers already routinely visit many premises most likely to be affected by the ban and it is not envisaged that these additional duties would present any greater problems from an enforcement perspective than Environmental Health Officers routinely experience at present. It is envisaged however that it would be more appropriate and cost effective for the majority of the monitoring and enforcement work in this Authority to be undertaken by Technical staff supervised by Environmental Health Officers. It is essential however that adequate funding is provided and assurances have been given by the Executive that all necessary additional resources are to be fully funded. Members will note that it has been estimated that a specialist team of 6 staff managed by an Environmental Health Officer will be required for enforcement purposes in this Authority. It is thought likely that staff numbers can be reviewed after a year or so dependent on compliance levels. Following a further enquiry from COSLA the written submission has been supplemented by a verbal estimate of around £180,000 for staffing costs.
- 3.3 The submission highlights the possibility of additional street cleansing being necessary as a result of more people congregating outside public buildings and leaving cigarette butts on the ground. Concern is also beginning to increase regarding noise and public order issues resulting particularly from groups of people outside licensed premises at night. Reference is also made to the need for national publicity prior to implementation of the scheme and the setting up of a free, confidential Smoke Compliance phone line similar to the initiative operating in Ireland.
- 3.4 Appendix 2 includes comments principally on health related issues. Reference is made to the Council's partnership with Lanarkshire Health Board in order to bring about an improvement in health issues. This work is part of a framework of measures and initiatives which form part of North Lanarkshire Joint Health Improvement Plan. Members may recall that the Plan states that smoking is the largest single preventable cause of ill health and early death in North Lanarkshire. Clearly therefore, based on expert medical opinion, there are considerable potential health benefits for North Lanarkshire associated with a smoking ban not only for residents but others including the Council's own workforce.
- 3.5 Reference is made to the possibility of certain types of premises being exempt. This is an important issue for the Council as many Council premises could be affected such as residential homes. These types of premises are residents homes and this could be considered as a reasonable basis for an exemption whilst others may argue that staff and non smoking residents will continue to be placed at risk. The issue of home helps is also under review.
- 3.6 The issue of smoking cessation work for Council staff has been included in the response to COSLA. This will be an important initiative to help support the smoking ban. However, there will be a cost element involved and it is hoped that the Executive will provide funding for this purpose. The submission also points out that the Council is the largest employer in North Lanarkshire and therefore by supporting staff to give up smoking the Council may indirectly be influencing others in the wider community to stop. Staff may pass onto friends and family members what they have learned through smoking cessation initiatives in the workplace.
- 3.7 Phasing arrangements for the implementation of a ban was another issue on which COSLA sought comments. The view given on this was that phasing would not be helpful as immediate and full implementation would help raise awareness, remove doubt and avoid confusion. However, it is essential all issues such as funding, training and publicity are resolved before the implementation date and therefore it has been proposed that the introduction of any ban should not be rushed and should be set within a realistic timescale.

4. Corporate Considerations

- 4.1 The recommendations are consistent with policy and there are no legal or property implications in the report. So far as personnel and financial matters are concerned it is proposed that Local Authorities and, in particular, Environmental Health Officers will be given responsibility for monitoring and enforcing the ban. The Scottish Executive have consistently given assurances that additional costs will be fully funded and COLSA have been asked to provide information on likely

costs. As part of this exercise a submission has been made by this Authority to COSLA providing comments on costs and other related issues. Following a request from COSLA this has been supplemented by a verbal submission which estimated costs for this Authority for enforcement purposes to be around £180,000.

5. Sustainability Implications

There are no issues relevant to this report which have any sustainability implications.

6. Recommendations

6.1 That Members note the terms of the report and homologate the responses sent to COSLA.

C. Morgan

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For further information please contact Gordon Cunningham on 01236 616511.

APPENDIX 1

Notes on COSLA Consultation Document - Smoking, Health and Social Care (Scotland) Bill

The above document seeks views on the possible financial implications to Councils for the first and three following years of implementation of the proposed legislation. COSLA specifically seeks responses to the following issues and I have therefore made some comments for consideration.

Staffing

Recruitment

The Bill makes reference to Environmental Health Officers being responsible for enforcement of the proposed statutory powers. It is likely that recruitment of additional EHOs will be very difficult given the current national shortage of staff and demands from other new Environmental Health responsibilities. It is envisaged that it would however be possible to recruit sufficient Technical Officers for monitoring and enforcement purposes with EHOs taking a managerial/supervisory role.

Costs are difficult to estimate but some useful information is available from Ireland. A total of 26,627 inspections/visits have been undertaken during March - Sept 2004 in Ireland. It could be considered that a similar number of inspections would be required in Scotland and in fact, given that Ireland has currently 80% of the population of Scotland, it is reasonable to assume that more inspections may be required, perhaps a 20% increase to around 33,000. North Lanarkshire's has 6.6% of Scotland's population and therefore on a population basis this equates to around 2100 inspections/6 months using the Irish population model.

The number of public buildings might also be a useful model. There are currently around 8,600 non-domestic rates properties in North Lanarkshire. Clearly some form of risk assessment process could be used to determine the priority for visits to specific types of premises. The level of compliance will also have a significant impact on the resources required. The latest compliance figures from the Office of Tobacco Control in Ireland are slightly concerning having dipped from 97% overall to 94% with pubs being around 91%. Some believe that these figures will further decline during the winter months when smokers will feel less inclined to go outside pubs and other premises to light up.

So far as North Lanarkshire is concerned I think a specialist unit should be set up and that this should be managed by an EHO and initially staffed by at least 6 Technical Officers on short term temporary contracts. I think it is likely that enforcement/monitoring work will be very considerable for the first year or so and then is likely to decline thereafter once the smoking ban has become part of "normal life". This will mean that staff numbers can be gradually reduced. Consideration would also have to be given to flexible working patterns as a significant amount of visits would be required in the evening and also at week-ends.

Training

Training will be required for Technical staff and to a lesser extent for EHOs. However, this is not considered to be a significant issue.

Availability of trained staff (need for a fast track training scheme for EHOs?)

See comments above.

Possible links with other licensing officers - eg. liquor license standards officers

This is an option which is worth further consideration. However, my understanding is that these proposed new staff would be expected to work together with the licence holder to ensure that licence conditions are met. It may be that this additional duty may put pressure on this working relationship. Some members of the public may not consider them to be sufficiently independent. Also what about the rest of the premises which are not licensed - who would do the enforcement work - it needs to be the same staff for all premises.

Street cleaning - need for an increase?

Quite likely - smokers will congregate outside buildings and the vast majority of cigarette ends are likely to be discarded on the ground adjacent to the building although containers provided specifically for this purpose would help although some find the odours unpleasant.

Elected member training

Unnecessary. However it is essential that members are kept fully informed of progress/issues and this can be done by Committee reports.

Implementation in Council premises (possible exemptions to the legislation have yet to be discussed)

Some Council premises should be exempt - broadly based on what is considered to be a person's home ie. Residential Accommodation, Care Homes etc.

Income generated from fines - your views on how this should be used

Income could be used to assist local Council/Health Board partnership initiatives to encourage smokers to stop. Local campaigns could particularly focus on teenage girls where numbers of smokers continue to increase. Consideration could also be given to income being used for funding of staff perhaps on a longer term basis.

Practical experience of implementation Health & Safety/dog fouling legislation - lessons to be learned

It appears that the fixed penalty notice has been working reasonably well. However it is important to note that there is the possibility of more difficulties in licensed premises.

Publicity and communication materials

It is essential to have national publicity prior to the implementation of the scheme.

Other expected costs

Operating a free, confidential Smoke Compliance Phone Line.

APPENDIX 2

NORTH LANARKSHIRE COUNCIL

RESPONSE TO SCOTTISH PARLIAMENT HEALTH COMMITTEE REQUEST FOR EVIDENCE - SMOKING, HEALTH AND SOCIAL CARE (SCOTLAND) BILL

The following comments reflect the views of North Lanarkshire Council in regard to the questions on issues which were included as part of the Health Committee request for evidence relating to the Smoking, Health and Social Care (Scotland) Bill.

1. Do you agree with the main objective of this part of the Bill (Smoking ban) and, if so, what do you consider would be the potential health improvement that would follow from a ban.

Yes.

North Lanarkshire Council previously participated in the consultation process in 2004 regarding the proposal to ban smoking in enclosed public places. The Council supported the proposal at that time and this support continues for the provisions of the Bill.

So far as potential health improvement is concerned it is perhaps appropriate to consider expert medical opinion on this issue. Generally medical views are united that the ban will lead to an overall improvement in the health of the Scottish nation. Scotland's health record is amongst the worst in Western Europe and North Lanarkshire's record is very poor indeed. Smoking plays a significant role in these health problems which result in hardship to individuals and families and significant additional costs to the Health Service. Many people believe that there are very strong social, moral and economic arguments for now pressing on with a ban on smoking in public places

The Council is working in partnership with Lanarkshire Health Board to bring about an improvement in health issues and this work is part of a framework of measures and initiatives which form part of North Lanarkshire Joint Health Improvement Plan. It is significant that the Plan states that smoking is the largest single preventable cause of ill health and early death in North Lanarkshire. Clearly, given the medical evidence from a national and local perspective, the potential health improvement for North Lanarkshire will be very significant indeed.

2. Possible exemptions to the ban.

This is a very difficult issue. Clearly from a health viewpoint it is important to ensure that the ban is as widespread as possible in order to maximise the health benefits which medical experts expect which take place. In addition, if there is not a complete ban, then there are likely to be greater resource and management issues to be resolved. So far as the Council is concerned residential homes and other care establishments are residents homes and there is a very strong case to consider an exemption for these types of premises. Clarification is also required in relation to the status of rooms made available exclusively for Council staff for the purposes of smoking and which are not accessible to the public. Do organisations no longer require to provide such rooms? It could be argued that the availability of such rooms could be justified since they are not public spaces and are used by smokers at their own discretion. However, there should be no exemptions for our public facilities and venues where non-smokers can be adversely affected by smoking.

3. Possible implementation difficulties from the perspective of the Council as an employer.

The Council operates numerous venues which are open to the public and staff working in such areas will require training on the requirements of the legislation, its enforcement and their responsibilities. This training may need to include conflict management as, especially in the early stages of implementation, there could be an unwillingness amongst some customers/public to comply. The Council already restricts smoking where food and drink are served and experience has shown us that implementing a ban can be difficult at social events and with particular groups. This problem would be eased if the ban was comprehensive.

It is intended that Council's Environmental Health Officers are to enforce the ban. These officers already visit many public buildings as part of routine inspections. They are also very familiar with enforcement of statutory requirements and the implementation of this additional responsibility should not present significant difficulties provided adequate funding is made available. If not then this will reflect on the degree to which enforcement and monitoring can be done which is likely to have a corresponding effect on compliance levels. Implementation of the ban is likely to result in more people smoking outside public buildings and consequently more cigarette butts will be deposited. Many of these areas will be classed as category zone 1 in terms of the cleanliness index and a tight response time is required to tackle the problem. This could have

implications for street cleaning and, since the Council has to maintain certain standards, this may mean additional street cleaning has to be carried out and this could result in significant extra costs.

4. Any phasing arrangements for the implementation of the ban

The Council doesn't support phasing arrangements. Immediate and full implementation will help raise awareness, remove doubt and avoid confusion. However, in view of the fact that the Scottish Executive consider that the Smoking, Health and Social Care (Scotland) Bill is "the most important piece of legislation for a generation" then it is essential that key issues are all properly resolved before the implementation date. This includes funding arrangements, training and the provision of a publicity campaign. The Council therefore believes that the implementation date must not be rushed and should be set within a realistic time scale.

5. Smoking cessation work with Council staff

Smoking cessation work with staff is essential and could make a major contribution to the improving the health of Council staff and the community throughout North Lanarkshire. The Council is the largest employer in North Lanarkshire and therefore by supporting staff to give up smoking the Council may indirectly be influencing others in the wider community to stop. Staff may pass onto friends and family members what they have learned through smoking cessation initiatives in the workplace. It is assumed that the importance of this issue will be reflected in the provision of additional funding specifically for this purpose.

6. Part 5 (Miscellaneous - specifically sections 25 - 31 - Amendment of the Regulation of Care Act 2001; Child Care Agencies and housing support services; and Joint Ventures).

Section 25 Independent Health Care Services

No comments.

Section 26 Implementation of certain decisions under the 2001 Act

No comments.

Section 27 Provision of Information to the Scottish Social Services Council

The insertion would appear to "flag up" individuals who were dismissed (or resigned before being dismissed) and thereby offer greater protection of those under the care of such people. As long as confidentiality issues and individuals rights were safeguarded (someone may resign before facing dismissal but may have been found innocent) then this added protection is to be welcomed.

Section 28 Registration of Child Care Agencies and Housing Support Services

No comments.

Section 29 Grants in respect of Housing Support Services

No comments.

Section 30 Amendment of adults with Incapacity (Scotland) Act 2000: authorisation of medical equipment

No comments

Section 31 Joint Ventures

Care needs to be taken that joint ventures and the raising of funds for health service provision by the formation of companies, participation in companies and the provision of loans and guarantees and other kinds of financial provision to or in respect of companies doesn't result in a loss of funding to health care provision (either short or medium term). Will the provision of resources by ministers result in a net loss to publicly provided health care or will it result in a net increase. How will this be scrutinised and regulated?