RESEARCH PAPER 05/22
14 MARCH 2005

The *Smoking in Public Places (Wales)* Bill

Bill 23 2004-05

The *Smoking in Public Places (Wales) Bill* (Bill 23 of 2004-05) is sponsored by Julie Morgan, who came fourth in the ballot for Private Members' Bills. It is due for second reading on 18 March 2005

The Bill seeks to give the National Assembly for Wales powers to make regulations, which would allow it to prohibit or restrict the smoking of tobacco products in public places in Wales.

The provisions would only extend to Wales, which would include the sea adjacent to Wales out as far as the seaward boundary of the territorial sea.

Brenda Brevitt and Dr Kate Haire

SCIENCE AND ENVIRONMENT SECTION

Julien Anseau

SOCIAL AND GENERAL STATISTICS SECTION

Isobel White

PARLIAMENT AND CONSTITUTION CENTRE

HOUSE OF COMMONS LIBRARY

Recent Library Research Papers include:

05/07	The *Drugs Bill* [Bill 17 of 2004-05]	13.01.05
05/08	Unemployment by Constituency: Revised Rates	19.01.05
05/09	Unemployment by Constituency, December 2004	19.02.05
05/10	*Criminal Law (Amendment) (Householder Protection) Bill* [Bill 20 of 2004-05]	31.01.05
05/11	Economic Indicators [includes article: The rise of the Chinese economy]	01.02.05
05/12	The *European Union Bill* [Bill 45 of 2004-05]	03.02.05
05/13	Unemployment by Constituency, January 2005	16.02.05
05/14	The *Prevention of Terrorism Bill* [Bill 61 of 2004-05]	22.02.05
05/15	The *Electoral Registration (Northern Ireland) Bill [HL]* [Bill 64 of 2004-05]	23.02.05
05/16	The *Drugs (Sentencing and Commission of Inquiry) Bill* [Bill 21 of 2004-05]	23.02.05
05/17	Economic Indicators [includes article: Debt relief for developing countries]	01.03.05
05/18	*Health and Safety (Directors' duties) Bill* [Bill 22 of 2004-05]	01.03.05
05/19	The *Sexual Offences Act 2003 (Amendment) Bill* [Bill 26 of 2004-05]	02.03.05
05/20	The *Education Bill* [HL] [Bill 77 of 2004-05]	09.03.05
05/21	The *Inquiries Bill [HL]* [Bill 70 of 2004-05]	10.03.05

Research Papers are available as PDF files:

- *to members of the general public on the Parliamentary web site, URL:* ***http://www.parliament.uk***
- *within Parliament to users of the Parliamentary Intranet, URL:* ***http://hcl1.hclibrary.parliament.u****k*

ISSN 1368-8456

Summary of main points

There are no laws that ban smoking outright in workplaces and public places in England and Wales. Efforts to bring in a voluntary ban in public workplaces, including bars and restaurants, through the hospitality industry's Public Places Charter, and the Health and Safety Commission's proposed Approved Code of Practice (ACOP) have been unsuccessful. Public opinion and scientific evidence of the negative health effects of smoking on individuals and those passively exposed to second-hand smoke have increased pressure on the Government to act.

Following the publication of the Public Health White Paper, *Choosing Health* in November 2004 the Government announced its intention to introduce a partial ban on smoking in public places in England, with smoking to be banned in all places serving food from 2008. Announcing publication of the White Paper, Health Secretary John Reid said he hoped that many of the measures in the White Paper, including perhaps those on smoking, would commend themselves to Wales. In the preface to the White Paper he said the Government would work with devolved administrations to identify which measures would have implications for other parts of the UK, so that joint action can be taken where appropriate and legislative opportunities provided for them where new powers are created for England.

The National Assembly for Wales approved a motion for a complete ban on smoking in public places in January 2003, but it does not have the necessary powers to make primary legislation or raise taxes, or make regulations on reserved matters. A formal request for powers must be made to Westminster; agreement requires Cabinet approval followed by primary legislation. This Bill seeks to give greater devolved powers to the Assembly at the earliest opportunity in order that regulations could be made to implement a ban on smoking in enclosed public spaces in Wales. If enacted, those who commit an offence may be fined or given the opportunity to discharge their offence through payment of a fixed penalty notice.

In Wales, it is estimated that there are 6,000 smoking-attributable deaths each year. The impact of any legislation is most likely to be felt in the hospitality industry.

The National Assembly has convened a Committee on Smoking in Public Places to weigh up the evidence and opinions submitted on the issue. It is due to report in May 2005.

A copy of the Bill is accessible on the Internet.[1]

---

[1] http://www.publications.parliament.uk/pa/cm200405/cmbills/023/2005023.htm

CONTENTS

I Smoking in public places and workplaces

> "A custom loathsome to the eye, hateful to the nose, harmful to the brain, dangerous to the lungs and in the black, stinking fume thereof, nearest resembling the horrible Stygian smoke of the pit that is bottomless." [2]

> "Is the noble Lord aware that, at the age of 80, there are very few pleasures left to me, but one of them is passive smoking?" [3]

A. Overview in UK

Currently, there is no law that bans smoking outright in public places or workplaces in England, Wales, Scotland or Northern Ireland. In England and Wales, efforts to date have centred on pursuing voluntary action by working closely with industries and businesses most affected, particularly the hospitality trade, to develop a Public Places Charter based on the Health and Safety Commission's Approved Code of Practice (ACOP). However, efforts to introduce an acceptable charter or ACOP have failed. Pressure for an outright ban has been growing in the light of public opinion and scientific evidence on the adverse effects of smoking and passive smoking.

Action in other countries to control tobacco use, including bans on smoking, has also lent weight to the campaign for a statutory ban in the UK. For example, an outright ban on all tobacco sales in Bhutan came into force in December 2004; in New York, smoking has been banned in restaurants for over ten years and in bars since 2003.

Closer to home, campaigners have been inspired by the success of implementing a ban on smoking in workplaces in the Republic of Ireland, including pubs and bars, brought in since May 2004 by the *Public Health (Tobacco) (Amendment) Act 2004*.

The Public Health White Paper, *Choosing Health*, published in November 2004 announced the Government's intention to ban smoking in enclosed public places in England from 2007. Announcing publication of the White Paper, Health Secretary John Reid said he hoped that many of the measures in the White Paper, including perhaps those on smoking, would commend themselves to Wales.[4] In the preface to the White Paper he said the Government would work with devolved administrations to identify which measures would have implications for other parts of the UK, so that joint action can be taken where appropriate and legislative opportunities provided for them where new powers are created for England"[5]

---

2 *Counterblaste to Tobacco*, King James 1604
3 HL Deb 1 July 2003 c719
4 HC Deb 16 November 2004 c1176
5 Preface to *Choosing Health: making health choices easier White Paper*, Cm 6374 November 2004

The National Assembly for Wales does not have powers to bring forward legislation. This Bill seeks to gain powers to bring forward legislation through regulations. The Scottish Parliament has the power to introduce a legislative ban on smoking in public places. On 10 November 2004 it announced that legislation would be brought forward to ban smoking in all enclosed public places to be in force by the spring of 2006. Options for strengthening controls on tobacco use in Northern Ireland under a regional strategy are currently under consultation.

1. The law on smoking in the workplace

The main piece of legislation controlling workplace conditions, including bars, club and restaurants, is the *Health and Safety at Work etc. Act 1974* (HSWA). This places general duties on employers to ensure the health, safety and welfare of their employees. Secondary legislation in the form of regulations made under the Act includes Regulation 25(3) of the *Workplace (Health, Safety and Welfare) Regulations* SI 1992/3004, [6] which affords protection to non-smokers from tobacco smoke in rest areas. It requires that: "Rest rooms and rest areas shall include suitable arrangements to protect non-smokers from discomfort caused by tobacco smoke". The Regulations came into force for new workplaces on 1 January 1993 and for existing workplaces on 1 January 1996. Aimed primarily at protecting the health of workers, it covers places, such as restaurants and pubs, where workers and customers are often in close proximity.

Fire precautions in workplaces also require that smoking is prohibited within and around confined spaces where flammable materials are stored, where there is risk of explosion or where high levels of property or personal loss may be incurred. Smoking may also be prohibited in less frequently accessed areas, where fires may go undetected. Notices prohibiting smoking must comply with British Standard 5499 and the *Health and Safety (Safety Signs and Signals) Regulations* SI 1996/341.[7]

2. Pressure for change

Despite the lack of statutory control, cases have been taken to court and compensation awarded to employees who have claimed that passive smoking at work - tobacco smoke breathed in second hand - has affected their health.

Pressure for a ban on smoking in workplaces and public places in order to reduce the risks from passive smoking has been growing since the White Paper on Tobacco, *Smoking Kills*, was published in December 1998. It set out the Government's strategy for reducing tobacco smoking across the UK, including the aim to cut the number of people smoking in the UK by 1.5 million by 2010. More information on the Smoking Kills Strategy is given in Library Note SNSC-1576 *White Paper on Tobacco*.[8]

---

6 http://www.legislation.hmso.gov.uk/si/si1992/Uksi_19923004_en_1.htm
7 http://www.legislation.hmso.gov.uk/si/si1996/Uksi_19960341_en_1.htm
8 http://hcl1.hclibrary.parliament.uk/notes/ses/snsc-01576.pdf

The White Paper announced that the Health and Safety Commission (HSC) would carry out a consultation exercise to find out whether people would support increased control of passive smoking at work. The consultation document, *Proposal for an Approved Code of Practice on passive smoking at work*, was issued on 29 July 1999.[9] The document set out a range of options for action including a proposal to introduce an Approved Code of Practice (ACOP) designed to safeguard the health and safety of employees at work while recognising their rights and responsibilities.

Efforts to draw up and implement an effective ACOP have stalled in the intervening years, mainly due to representations from the hospitality industry, including bars and restaurants, and tobacco manufacturers, fearing the impact it would have on jobs and revenue across these trades. Although some leading pub chains have latterly agreed to introduce voluntary bans on smoking in their outlets,[10] campaign groups have persistently called for more stringent measures to satisfy the swell of public opinion and scientific evidence against smoking in public. The background to the campaign is outlined in Library Note SNSC-01642 *Smoking in Public Places.*[11]

B. Public Health White Paper

The failure to find an acceptable ACOP on smoking in public places, or for the Public Places Charter to bring about voluntary change across the hospitality industry has made the Government reconsider its position to pursue a voluntary route to smoking cessation in public spaces and workplaces. A groundswell of public opinion in favour of a ban on smoking in public places, coupled with action already taken in the Republic of Ireland, and latterly by Scotland has added impetus to the case for a statutory ban.

In November 2004 the Government issued its Public Health White Paper, *Choosing Health*.[12] This signalled that legislation would be brought forward to ban smoking in all workplaces by 2007 and in restaurants and public houses that serve food from 2008. Some exemptions would be permissible; in private clubs where the members make the rules and in bars where food is not served (an estimated 20 per cent of pubs or three per cent of all workplaces),[13] although employees would be protected by an exclusion zone around the bar area. The Government says that the legislation is designed to protect the majority who do not smoke rather than legislate against those that legally choose to.[14]

---

9 http://www.hse.gov.uk/consult/condocs/cd151.htm

10 JD Wetherspoon News Release, *National pub operator J D Wetherspoon is to ban smoking in all of its 650 pubs by May 2006* http://www.jdwetherspoon.co.uk/nosmoking/ ; Laurel Pub Company

11 SNSC-01642 *Smoking in Public Places* http://hcl1.hclibrary.parliament.uk/notes/ses/snsc-01642.pdf

12 Cm 6374

13 Uncorrected evidence to Health Select Committee 23 February 2005 Q47 http://pubs1.tso.parliament.uk/pa/cm200405/cmselect/cmhealth/uc358-i/uc35802.htm

14 ibid Q54

The Government decided that, unlike in Ireland and potentially in Scotland, the ban would not extend to all public bars and restaurants, on the basis that smoking behaviour might be transferred to the home, where more children might be affected. [15] National anti-smoking campaigns would continue to alert parents to the dangers of smoking to non-smoking family members, particularly children. The secretary of State for Health has asserted that, in Ireland it is estimated that approximately 15 per cent of social smoking has been displaced to the home.[16] There is, however, little evidence in this area and the Under-Secretary of State, Melanie Johnson has said that:

> We have made an assessment of the impact that smoking in public places would have in a reduction in smoking prevalence, which would thereby have a beneficial impact of reducing smoke at home. We will continue to act on the issue of second hand smoke in the home and have already taken action through the hard hitting campaign launched last year depicting the dangers of smoking around babies and children. [17]

Overall, there is insufficient evidence to say categorically that social smokers would transfer their habit to the home, were such a ban to be imposed. Nor is it clear that a total ban alone would affect the prevalence of smoking. In other countries where a ban is enforced, this has been backed up by other measures such as punitive fines or a rise in tobacco taxation.

The full recommendations in the White Paper are as follows:

> Subject to parliamentary timetables, we propose to regulate, with legislation where necessary, in order to ensure that:
>
> all enclosed public places and workplaces (other than licensed premises which are dealt with below) will be smoke-free;
>
> licensed premises will be treated as follows:
>
> – all restaurants will be smoke-free;
>
> – all pubs and bars preparing and serving food will be smoke-free;
>
> – other pubs and bars will be free to choose whether to allow smoking or to be smoke-free;
>
> – in membership clubs the members will be free to choose whether to allow smoking or to be smoke-free; and

---

15 Uncorrected evidence to Health Select Committee 23 February 2005 Q7 http://pubs1.tso.parliament.uk/pa/cm200405/cmselect/cmhealth/uc358-i/uc35802.htm

16 ibid Q8

17 HC Deb 24 January 2004 c191W

> – smoking in the bar area will be prohibited everywhere.
>
> 77. We intend to introduce smoke-free places through a staged approach:
>
> by the end of 2006, all government departments and the NHS will be smoke-free;
>
> by the end of 2007, all enclosed public places and workplaces, other than licensed premises (and those specifically exempted), will, subject to legislation, be smoke-free;
>
> by the end of 2008 arrangements for licensed premises will be in place. [18]

Campaigners, such as ASH (Action on Smoking and Health) feel that any ground given to exemptions, which may apply to between 5,000 and 16,000 pub outlets and over 19,000 private clubs,[19] threatens to undermine the key objectives of the White Paper, namely to reduce smoking prevalence rates and tackle health inequalities.[20] There are 19,913 registered clubs - clubs owned by the members - in England and Wales (Source: Department for Culture, Media and Sport Statistical Bulletin Liquor Licensing, England and Wales, July 2003-June 2004).

Recent speculative press comments state that if the Labour Party is re-elected to power a Bill will be brought forward within weeks of the election to bring in the ban on smoking in workplaces and food selling outlets.[21] However, comments, attributed to Peter Hain at a press Westminster briefing, suggest that a U-turn will also be made with respect to food-selling public houses, with licensees able to apply to local authorities for an exemption to the ban in food-selling rooms in certain circumstances.[22] This would be contrary to the policy put forward by Health Secretary John Reid at the launch of the White Paper.

1. Health Select Committee evidence

The Health Select Committee took evidence from the Health Secretary, Dr John Reid and Melanie Johnson on 23 February 2005 on the Public Health White Paper. A report has not

---

18 Choosing Health White Paper Cm 6374 Department of Health November 2004 http://www.dh.gov.uk/PublicationsAndStatistics/Publications/PublicationsPolicyAndGuidance/PublicationsPAmpGBrowsableDocument/fs/en?CONTENT_ID=4097491&MULTIPAGE_ID=4988869&chk=EPpIxs

19 There are 19,913 registered clubs - clubs owned by the members - in England and Wales. Source: Department for Culture, Media and Sport Statistical Bulletin Liquor Licensing, England and Wales, July 2003-June 2004 http://www.culture.gov.uk/NR/rdonlyres/F96FD9EF-C817-4E07-B1A4-6F4D4EA9F2A3/0/7138BLiquorReport.pdf

20 Evidence to the House of Commons Health Select Committee from Action on Smoking and Health (ASH) http://www.ash.org.uk/html/policy/choosinghealthevidence05.html

21 "Cabinet Minister reveals smoking ban turmoil", *Sunday Telegraph* 27 February 2005 p1,2

22 "PM Faces split over smoking", *Northern Echo*, 26 February 2005

yet been published. Selected comments from the uncorrected evidence session have been used to inform sections of this paper.

C. Tobacco control strategies

Introducing an outright ban on smoking in public and workplace is just one of a range of actions that could be taken to control the use of tobacco products. Action can be taken at an individual, local, regional, national and international level.

a. Individual

Individuals have the choice to stop smoking. To help them a range of techniques and products can be used, including; nicotine aversion therapy, nicotine patches and nicotine gum; or acupuncture. The Government may lend its support through Stop Smoking campaigns, advice and support lines.

b. Local

At the local authority level, local, private Acts may be petitioned and local by-laws introduced.

c. National

At the national level, voluntary agreements or Approved Codes of Practices may be drawn up. Ultimately, legislation may be an option. When drawing up legislation there is a need to consider fundamental values and rights in society, balanced against the greater good of society.

D. International comparisons

Other countries have variously introduced a range of measures as part of their own tobacco control strategy. The World Health Organisation (WHO) has reviewed a number of these, including Canada, Brazil, Poland, Norway, the Philippines, Thailand and South Africa. It suggests the following as key elements of a comprehensive tobacco control strategy.

> Institutions and mechanisms. Legislation should create, empower and fund an authority to implement and direct legislation
>
> Public education. Large public education campaigns are important parts of changing public attitudes and beliefs
>
> Advertising, promotion and sponsorship. A comprehensive ban on tobacco advertising, promotion and sponsorship is a centrepiece of an effective tobacco control programme.

> Taxes. Tax increases have been proven to be one of the most effective means of reducing tobacco consumption, especially among young people.
>
> Second-hand smoke. Eliminating smoking in workplaces and public places protects non-smokers from the hazards of exposure to smoke; discouraged smoking initiation and promotes cessation.
>
> Labelling and packaging. Large, clear health warnings and informational messages, using rotating messages developed by national authorities, should be required on tobacco packaging, and tobacco products should not be promoted using misleading terms.
>
> Product regulation. Regulatory authority should be given to a specialised agency, to address such issues as ingredient disclosure, permissibility of harmful constituents, additive safety, and tar and nicotine yields.
>
> Tobacco sales. Legislation should prohibit the sales of tobacco to minors.
>
> Smuggling. To combat illicit trade, comprehensive legislation should include measures such as requirements for package markings or creation of a regime for tracing and tracing products through the distribution chain.
>
> Other issues. Comprehensive legislation may also include provisions to address smoking cessation, create school-based programmes, modify agricultural policies or address issues of legal liability. [23]

The right of victims to sue tobacco companies for damage caused by inhaling tobacco related smoke is also becoming a lever for change.

Background information on some of the measures adopted in the UK can be found in recent Research Papers hosted on the *Smoking* subject pages of the Library Intranet.

The WHO Framework Convention on Tobacco Control entered into force on 28 February 2005.[24] Forty contracting parties are legally bound by the provisions of the Treaty. These provisions set international standards on tobacco price and tax increases, tobacco advertising and sponsorship, labelling, illicit trade and second-hand smoke. The UK is a signatory and ratified the treaty on 16 December 2004.[25]

Pressure to ban smoking in public spaces has met with varying measures of success, regionally, across Europe, and in other countries.

---

[23] D. D. Blanke and V, de Costa e Silva (Eds) Tobacco control legislation: an introductory guide. Second edition. World Health Organisation. 2004

[24] http://www.who.int/mediacentre/news/releases/2004/pr89/en/

[25] Updated status of the WHO Framework Convention on Tobacco Control http://www.who.int/tobacco/framework/countrylist/en/

a. United States

Smoke-free workplace prohibitions are in place in over three hundred cities, and seven states, including California, which banned smoking in bars and restaurants in 1998.

Smoking has been banned in New York restaurants for over ten years. A ban on smoking in the bars of New York City, including cigar bars if they serve alcohol, came into effect at the beginning of April 2003.[26] This affects 13,000 establishments and extends the Smoke Free Air Act 1995, introduced by former Mayor of the City, Rudolph Guiliani to include restaurants with fewer than 35 seats. Seven US states have banned smoking in the workplace, California (1998); Delaware (2002); New York (2003); Connecticut (2003); Maine (2004); Massachusetts (2004) and Rhode Island (comes into force on March 1, 2005).

Other states are considering introducing smoke-free workplace legislation in 2005, including Georgia, Minnesota, Maryland, Utah, Colorado, Washington, Oregon, New Jersey, Vermont, and possibly Pennsylvania.[27]

b. Europe and Asia

In 2004, smoking in all bars, restaurants, cafes, pubs and discos was banned in Norway to protect employees and guests from the effects of passive smoking. Measures to ban smoking in public places, such as railway stations, trains, toilets and offices were introduced in The Netherlands from 2004. Similar measures to ban smoking in restaurants and bars will be brought in if action by voluntary agreement fails.

An EDM[28] welcomed the moves in other countries, such as the Norway and the Republic of Ireland, and urged the Government to follow the example of countries such as Finland, South Africa and Thailand, where there are already laws to ban smoking in public places. The Himalayan kingdom of Bhutan has banned smoking altogether. The use of tobacco in Government buildings has been banned there since the 17th century. Smoking has also been banned in indoor places in Pakistan and on the streets of Tokyo since October 2002; in many public places in South Korea since March 2003; in Government buildings in the United Arab Emirates since November 2002, and in public places in Romania, Italy and Greece.[29]

---

26 Only one more day to light up in New York, *Financial Times*, 29 March 2003 p11

27 Scottish Executive Healthier Scotland: *What other countries are doing* http://www.smokefreescotland.com/smokefreescotland/beyond-scotland-t-z.html

28 EDM 866 2002-03 '*Smoking in the Workplace'*.

29 Other examples can be found on the BBC News website: http://news.bbc.co.uk/1/hi/world/4016447.stm#australia

In January 1991, Belgium became the first country in Europe to require all restaurants, bars and cafes to set aside non smoking areas. On January 1, 1993, the amount of space that must be reserved to non smokers increased from the current 33 to 50 percent.

In November 1992 France followed Belgium's example and imposed non-smoking areas in restaurants. The decree, an amendment to the Evin Law (Loi Evin N° 91-32) passed in 1991 that banned cigarette advertising in all media, and outlawed smoking in many public places, required non-smoking sections in restaurants.

On 29 March 2004, Ireland implemented the provisions of the *Public Health (Tobacco) (Amendment) Act 2004*, becoming the first European country to create smoke free enclosed workplaces, including bars, restaurants and hotels.

Ireland has had regulations in place since 1995 that prohibit smoking in many public places, including where food is served. Tobacco control legislation was updated in the *Public Health (Tobacco) Act 2002*, which contained a number of key provisions, including the establishment of an independent statutory body, the Office of Tobacco Control, set up to advise the Government on the implementation of policies concerning the control and regulation of the manufacturing, sale, marketing and smoking of tobacco products.

II Devolution aspects

A. Current powers of National Assembly for Wales

The Welsh Assembly has no powers to ban smoking in public places. However, it has signalled that it is "committed in principle" to seeking powers to ban smoking in public places in Wales.[30] Such powers would need to be provided for by Westminster in the form of primary legislation. All primary legislation affecting Wales is made by the UK Parliament.

The *Government of Wales Act 1998* granted devolution in Wales in the form of executive devolution; the prerogative powers of the Secretary of State for Wales were transferred to ministers of the National Assembly. Westminster retains the exclusive powers to pass primary legislation for Wales and the Assembly derives its powers either from functions transferred to it under *Transfer of Functions Orders* made under Section 22 of the 1998 Act or from powers conferred on the Assembly by individual Acts. The Assembly may only make secondary legislation where it is given specific power to do so in an Act; these powers are given to the Assembly as a whole.

---

[30] Committee on Smoking in Public Places Agenda Paper 3, Current work by the Welsh Assembly Government, 15 July 2004 http://www.wales.gov.uk/keypubassemsmoking/content/0104-paper3-e.htm

1. What has been devolved

The subject areas in which functions have been devolved to the National Assembly for Wales are listed in Schedule 2 of the *Government of Wales Act 1998*. These areas include agriculture, the environment, health and health services, housing, local government, culture, tourism, transport and planning. Areas that remain reserved to Westminster include constitutional matters, foreign policy, defence, macro-economic policy and taxation, overseas trade, employment legislation; social security and broadcasting. For further details see Library Research Paper 03/84, *An introduction to devolution in the UK*.[31]

Section 22(1) of the *Government of Wales Act 1998* provided for the transfer of any functions exercisable by a UK minister in relation to Wales, or for the function to be exercisable concurrently with the Assembly, or with the agreement of the Assembly. The transfer of functions orders are made under section 22. The first of these, the *National Assembly for Wales (Transfer of Functions) Order 1999*,[32] lists in Schedule 1 a series of enactments which confer functions on the Assembly. In many of the Acts only certain functions are transferred. Schedule 2 of the Order lists enactments where UK ministers are constrained in the exercise of their functions by the requirement to reach agreement with the Assembly or to consult with it. There has been criticism of the devolution settlement because of the lack of clarity over which functions have been transferred to the Assembly.

The list in the *Transfer of Functions Order* is not by subject but regnal year for each Act. The Welsh Affairs Committee examined the legislative arrangements for Wales in its fourth report of 2002-03, *The primary legislative process as it affects Wales*.[33] The Committee commented that 'it is evident that the *Government of Wales Act 1998* and the subsequent *Transfer of Functions Orders* no longer give a clear picture of the breadth and depth of the powers of the National Assembly.'[34]

2. How further powers can be conferred on the Assembly

The different ways of conferring further powers on the National Assembly for Wales are as follows:

- Powers can be directly conferred by new Acts;
- Amendments can be made to Acts listed in the *Transfer of Functions Orders*;
- Amendments can be made to the original *Transfer of Functions Orders* i.e. by making further *Transfer of Functions Orders*;

---

31 Available at http://www.parliament.uk/commons/lib/research/rp2003/rp03-084.pdf

32 SI 1999 no 672

33 HC 79, 2002-03

34 Ibid, para 9

- By amending the *Government of Wales Act 1998*

The Assembly Government can formally submit its own proposals for new primary legislation in devolved areas. These have to be approved by the Assembly in plenary session. These proposals are then sent to the Secretary of State for Wales who makes a decision as to which he will support in Cabinet negotiations on the legislative programme.

In January 2003 the Welsh Assembly voted four to one[35] in favour of a motion calling upon the UK Government to give the Assembly powers to ban smoking in public places.

> Alun Pugh: I propose the following motion in my name and the names of Kirsty Williams, David Lloyd and David Melding. I propose that the National Assembly for Wales, pursuant to Standing Order No. 31.9, calls upon the UK Government to bring forward a public Bill relating to Wales which would provide that the Assembly could, by statutory instrument, prohibit all smoking with tobacco in such public buildings as may be specified in that instrument. The purpose and effect of any such Bill and any statutory instrument made under it would be to reduce the exposure of employees and members of the public to the well-documented and proven life-threatening dangers caused by environmental tobacco smoke. (NDM1270)[36]

Approval of the motion did not constitute a formal request to Westminster for powers, nor has a formal request for powers been made in the current session.

Section 31 of the *Government of Wales Act 1998* places a duty on the Secretary of State for Wales to consult the Assembly about the legislative programme at the beginning of each Session and this includes a duty of personal attendance by the Secretary of State at a plenary session of the Assembly. Peter Hain made a statement about the forthcoming legislative programme to the Assembly on 1 December 2004 and made the following comments on a ban on smoking in public places:

> On the question of a smoking ban, the Assembly has set up its own committee to look into the practical implications of this issue. Its considerations will be important in taking the proposals forward in the future. Only a few weeks ago we introduced a public health White Paper, from which legislation will follow in the future, possibly in the next parliamentary session. This legislation will give the National Assembly for Wales the opportunity to implement bans on smoking in closed public places, according to the detailed considerations which may be determined by the Assembly and the Welsh Assembly Government. [37]

---

35 39 for, 10 against, no abstentions

36 NAW Plenary session 22 January 2003 http://www.wales.gov.uk/servlet/ChamberSession?area_code=380313AC00046B17000028C300000000&document_code=N00000000000000000000000000006182&p_arch=pre&module=dynamicpages&month_year=1|2003#Gwahardd%20Ysmygu%20mewn%20Mannau%20Cyhoeddus

37 Available at http://www.wales.gov.uk/servlet/ChamberSession?area_code=380313AC00046B17000028C300000000

The Government have indicated that legislation to ban smoking in public places will be introduced following the White Paper on public health, *Choosing Health*, and that this legislation will transfer powers to the National Assembly to implement a ban in Wales. Peter Hain's statement to the Assembly gives a clear signal that the Government will not support the measures proposed in this Bill at this time. Instead it will await the deliberations of the NAW consultative committee, and introduce primary legislation as promised in the Public Health White Paper.

In addition, there are wider issues relating to the devolution of powers to the Assembly still under consideration by the Richards Commission [See: Section B below] which preclude an early introduction of such powers.

The primary legislative options for Bills dealing with devolved policy issues are either a Wales-only Bill or a combined Bill i.e. with Wales only or England and Wales clauses. Guidance was drawn up for UK Government departments on consulting the Assembly government on new legislation affecting the Assembly's responsibilities. Devolution Guidance Note no 9, *Post-devolution primary legislation affecting Wales*, states that the Welsh Assembly Government should always be consulted on Bills which:

- Confer new functions on the Assembly;
- Alter the Assembly's existing functions (including legislation on, for instance, freedom of information, which would affect the overall discharge of its duties and those of public bodies for which it is responsible); or
- Otherwise affect areas which are the responsibility of the Assembly, including where it will be responsible for implementation in Wales, though policy control remains with the UK Government.[38]

Although the Assembly has supported the spirit of the Private Member's Bills introduced by Baroness Finlay of Llandaff, which sought to place powers on the Assembly directly, and Lord Faulkner of Worcester, which sought to place powers on local authorities, it is a moot point that a Private Members' Bill is the best instrument to endow such powers on the Assembly, particularly when no formal request for such powers has been received.

This point was made by Lord Henley during the debate on Baroness Finlay of Llandaff's Bill in 2004, which remains the official Opposition's line on this Bill:[39]

> Speaking personally I have very strong doubts whether a Bill such as this—whether it was or was not requested by the National Assembly for Wales—should

---

&document_code=N00000000000000000000000026589&p_arch=post&module=dynamicpages&month_year=12|2004#_Toc89749080

38 *Post-devolution primary legislation affecting Wales: Devolution Guidance Note 9*. Available at http://www.dca.gov.uk/constitution/devolution/guidance/dgn09.pdf

39 Personal communication with official opposition front bench spokesperson's office 9 March 2005

> be introduced by means of a Private Member's Bill. Those doubts are based on a number of grounds.
>
> First, in the main, I suspect that it is desirable that when we delegate powers to the National Assembly for Wales, government Bills are quite simply more appropriate…….Secondly, I understand that there is a commission in Wales under the very eminent chairmanship of the noble Lord, Lord Richard, looking at the balance of powers between the Assembly and Westminster. That will report in due course to the Welsh Assembly. The Welsh Assembly will then, no doubt, feed it through to us. At that moment it might be right for a proper debate to take place on what powers should be further delegated to Wales, if that is considered appropriate. It would be better to wait for the report of the noble Lord, Lord Richard, rather than to pre-empt it.
>
> Thirdly, I believe it really is offering the opportunity to the National Assembly for Wales to bring in what are really very draconian powers—powers that need to receive very detailed scrutiny indeed, whatever our views on the merits of the Bill. That scrutiny will be very difficult to achieve if, as I think my noble friend Lord Campbell of Alloway put it, the Bill is virtually impossible to amend.
>
> That brings me to my fourth point concerning the wideness of the powers that are being sought. To take just one example, the Bill seeks to allow the National Assembly for Wales to make provision to prohibit smoking in "a public place"……
>
> For those reasons, I hope that the noble Baroness will understand if I have to say that, although I have no intention of opposing the Second Reading, I do not think that it is either necessary or desirable that she pursues the Bill. I hope very much that she will withdraw it at some stage, and certainly that Her Majesty's Government will not give it any encouragement.[40]

Such a move might be also construed as failing to respect the spirit of devolution by imposing powers that have not formally been requested. This point was made by Baroness Gale in the same debate.[41]

In a Cabinet Statement to the Assembly[42] following publication of the Public Health White Paper, NAW Minister for Health and Social Services, Jane Hutt, welcomed the prospect of legislation promised in the White Paper, based on the work being done in the consultative committee.[43]

---

40 HL Deb 16 January 2004 c789-91

41 HL Deb 16 January 2004 c779

42 NAW Official record 16 November 2004 http://www.wales.gov.uk/assemblydata/N000000000000000000000000025955.html#_Toc88981060

43 Banning smoking in public places – Public Health White Paper, Cabinet Statement Welsh Assembly Government 16 November 2004 http://www.wales.gov.uk/organicabinet/content/statements/2004/161104-smoking-e.doc

Although the Assembly does not presently have powers to implement a ban on smoking in public places, it is responsible for health promotion in Wales and has powers to promote smoke free environments in a variety of ways, including: raising awareness of the dangers of second hand smoke; commissioning research relevant to implementation of smoke-free policies; and developing guidance and initiatives to encourage such developments by voluntary means. [44]

B. The Richard Commission and proposals for the Assembly to have primary legislative powers

The Labour/Liberal Democrat coalition in the first term of the National Assembly for Wales agreed that there should be an independent commission to examine the powers and electoral arrangements of the Assembly. The *Partnership Agreement* of October 2000 made the following commitment:

> We will, before the end of the Assembly's first term, establish an independent Commission into the powers and electoral arrangements of the National Assembly in order to ensure that it is able to operate in the best interests of the people of Wales. This review should investigate *inter alia* the extension of proportionality in the composition of the Assembly, and of the relevant competencies devolved. The review shall publish its recommendations in the first year of the second term of the National Assembly in order to enable adequate reflection on the Assembly's first complete term. Whilst recognising that this Partnership Agreement will have expired on completion of this review, we will ensure that arrangements are put in place in advance to ensure that the Assembly *as a whole* has the opportunity to press the UK Government to bring forward any appropriate primary legislation, necessary to ensure that its recommendations can be fully implemented. [45]

On 18 April 2002, the First Minister, Rhodri Morgan, announced that the Commission would be chaired by the Rt Hon Lord Richard of Ammanford PC QC. The Richard Commission published its report on 31 March 2004 and said that the status quo was not an option; there had been considerable changes to the Assembly's powers since 1999 but this had happened on an ad hoc basis instead of being based on an agreed policy on an extension of powers.

The Commission proposed a new legislative framework which would allow legislation extending to England and Wales to continue with the opportunity for Wales only legislation originating in the Assembly i.e. primary law making powers. The Commission noted how in practice there had continued to be legislation for Scotland at Westminster

---

44 HL Deb 8 December 2003 c50WA

45 *Putting Wales First: A Partnership Agreement for the People of Wales*, 6 October 2000 http://www.wales.gov.uk/organicabinet/content/putting.html#9.%20Better%20Government:%20Putting%20Wales%20First

through the Sewel Convention. The report considered and rejected the Northern Ireland model of three categories of legislative powers: excepted, transferred and reserved, in favour of a more Scottish based model, whereby all matters are devolved to the Assembly unless specifically reserved to Westminster.

The Richard Commission's main proposals were as follows:

- Wales Bill needed to amend Government of Wales Act and confer primary law-making powers on the Assembly;
- Bill specifies reserved matters (Westminster legislates); everything is devolved to the Assembly unless specifically reserved;
- Corporate body structure replaced with executive and legislature;
- Assembly can construct its own rules of procedure and Standing Orders, adopted by a majority of two thirds;
- Executive powers in a particular field can be devolved even if the Assembly has no corresponding primary legislative powers;
- Cardiff legislative programme might contain around four to six government Bills a year;
- Change in Membership and electoral system;
- Option of tax-varying power.

The Government has indicated that there will be further consultation on the proposals to give the Assembly primary legislative powers following the publication of a White Paper after the next general election.

C. Consultation Committee on Smoking in Public Places (Wales)

The *Government of Wales Act 1998* requires the Assembly to establish subject committees, regional committees, a subordinate legislation scrutiny committee and an audit committee. Section 54 of the Act also allows the Assembly to establish any other committees that it considers appropriate.

In June 2004 the National Assembly for Wales established an additional committee, the Committee on Smoking in Public Places, using its powers under Standing Order 8.1. The Committee's remit is to make recommendations about how a ban on smoking in public places might be made to operate in Wales. The Chairwoman of the Committee is Val Lloyd AM and its terms of reference are as follows:

- To consider current evidence on relevant issues, including the health risks of environmental tobacco smoke and the economic impact of restrictions on smoking in public places;
- To review developments in the UK and Ireland relating to the introduction of restrictions on smoking in public places (including the debates on Baroness Finlay's and Lord Faulkner's Private Member's Bills, the response to the UK Government consultation on devolving powers to local authorities to introduce smoking bans at work and in public places, the outcome of the Scottish Executive consultation on

smoking in public places, and the experience of implementing the workplace smoking ban in Ireland).
- To consider the experiences in other countries where a ban has been introduced; and
- To report to the Assembly by 25 May 2005 on its conclusions.

The Committee held its first meeting on 15 July 2004. Six meetings have been held to date. Agendas, submissions, policy papers, minutes and records of proceedings are all available on the Welsh Assembly website.[46]

The Committee held its final evidence session in February 2005 and is currently preparing its recommendations which it intends to present to the Assembly in May 2005. The Committee visited the Republic of Ireland from 15 – 17 February as the final part of its evidence gathering. Members met the Irish government minister responsible for tobacco control, representatives from the health service, and people working in industries affected by the ban. Val Lloyd AM, Chair of the Committee, said:

> "The Committee's terms of reference require us to review the experience of implementing the workplace smoking ban in Ireland. This has been in place for nearly a year and people should now be able to start assessing its impact. We will be meeting representatives of the licensed trade and the people who work in it, and we hope also to meet representatives of workers in the tobacco industry. We want to hear how they feel the ban is affecting their livelihood, health and way of life.
>
> In order to make informed evidence based recommendations it is vital we understand the practicalities of a ban on smoking in public places. In Ireland, the ban is approaching its first full year of implementation and will provide us with a valuable source of evidence. Listening and learning from the Irish is key, and our visit takes in meetings with a diversity of people affected by the ban in terms of health and economic aspects."[47]

Submissions have been requested and received from a wide range of lobby and interest groups on the following themes:

> The health risks of environmental tobacco smoke.
> The economic impact of restrictions on smoking in public places.
> The impact of a ban in reducing the prevalence of smoking, i.e. whether a ban would encourage people to give up smoking or not to take it up.
> The effectiveness of extractor fans and other ventilation equipment to remove tobacco fumes from the atmosphere.
> Human rights arguments in respect of smokers and non-smokers.
> Enforcement.

---

46 http://www.wales.gov.uk/keypubassemsmoking/content/agendas-e.htm
47 http://www.publicinformation.wales.gov.uk/scripts/viewnews.asp?NewsID=397

III Attempts to legislate for a smoking ban

The current Bill is not the first Bill to seek to introduce a ban on smoking. In recent years a number of Private Members' and Ten Minute Rule Bills have been introduced; none has come into force.

A. Private Members Bills

1. Protection from Smoking (Employees and Young Persons) Bill 2001-02

On 24 April 2001, David Taylor introduced a Private Members' Bill under the Ten Minute Rule to require employers to reduce or eliminate the exposure of their employees to passive smoking in the workplace; to protect children and young persons from such exposure in public places; and for connected purposes.[48]

Part I of the *Protection from Smoking (Employees and Young Persons) Bill* (Bill 86 2000-01) required the Government to adopt the recommended Code of Practice without further delay. Part II of the Bill envisaged tougher targets and tighter time scales, requiring those who provide services in public places to recognise non-smoking as the general norm where children and young people are important parts of their clientele. The Bill did not progress beyond first reading and fell at the end of the session.

2. Smoking (Restaurants) Bill 2002-03

Gareth Thomas MP (Harrow West) introduced a Bill under the Ten Minute Rule on 14 April 2003,[49] to prohibit smoking in cafes and restaurants.[50] This followed a series of campaign parliamentary questions during 2003 on initiatives on quitting smoking, smoking in Government departments and health effects of passive smoking.[51]

The motion to give the Bill its first reading was opposed by Andrew Hunter MP, who declared his interest as a member of the Lords and Commons pipe and cigar smokers club. He argued that scientific evidence did not justify the Bill and that voluntary self-regulation was adequate.

The motion was agreed to on division, but the Bill was withdrawn before its Second Reading.

---

48 HC Deb 24 April 2001 67 c168-70

49 HC Deb 14 April 2003 c647-51

50 Smoking (Restaurants) Bill [Bill 93 2002-03]

51 See for example HC Deb 14 March 2003 c466-8W, 496-8W, HL Deb 12 March 2003 c1306-8; 3 April 2003 c843-4W, c857W, c860-1W

3. Tobacco Smoking (Public Places and Workplaces) Bill [HL] 2003-04]

Lord Faulkner of Worcester introduced a Private Members' Bill in the Lords on 10 March 2004 to limit tobacco smoking in public places, including workplaces.[52] The relevant powers would be given to local authorities to bring in a ban. The *Tobacco Smoking (Public Places and Workplaces) Bill* [HL] [Bill 42 2003-04][53] received its second reading on 23 April 2004[54]

Lord Faulkner explained that his Bill was not an attempt to ban smoking outright. Rather, he had brought forward the Bill to address the issue that, on the basis of research and medical evidence, smoking has been demonstrated to be damaging to third parties.

Lord Warner for the Government noted that the Bill was a useful contribution to the debate; however the Government had reservations about the Bill and decided that, until the conclusions of the wider consultations were known it would be premature to commit to one course of action. The Bill was read for a second time but although it was passed to a Committee of the Whole House, the Bill was not considered in Committee and fell.

4. Tobacco (Protection of Children) Bill

The British Medical Association wrote to all successful members in the Private Members' Ballot in 2003, urging them to consider introducing a bill to ban smoking in any enclosed public space where children have access, in order to protect them from the harmful, and potentially fatal, effects of passive smoking.

The BMA said that:

> Whilst the Government has sought to highlight the dangers for children of passive smoking with an advertising campaign, this has, rightly, targeted passive smoking in the home. The Government's approach to passive smoking in public places has sought a voluntary approach and has been targeted at adults, largely in hospitality settings. This Bill seeks to protect children in enclosed public places from the dangers of passive smoking.
>
> The health risks associated with passive smoking are accepted by all but the tobacco industry and are sufficiently serious to warrant legislation. In the Smoking Related Attitudes and Behaviour Survey 2002 by the Office for National Statistics, there was 86 percent support for smoking restrictions at work, 88 percent support for restrictions in restaurants and 87 percent in other places. This would suggest that no Government should fear losing votes as a consequence of introducing such restrictions.[55]

---

52 HL Deb 10 March 2004 c1244
53 http://www.parliament.the-stationery-office.co.uk/pa/ld200304/ldbills/042/2004042.htm
54 HL Deb 23 April 2004 c513-548
55 BMA correspondence to MPs 5 December 2003

A draft Tobacco (Protection of Children) Bill was not taken forward.

5. Smoking in Public Places (Wales) Bill [HL] 2003-04

The current Bill is virtually identical to the *Smoking in Public Places (Wales) Bill [HL]* (Bill 12 2003-04) [56] introduced by Baroness Finlay of Llandaff on 11 December 2003. The Bill would have given powers to the National Assembly for Wales to make provision for a ban in enclosed public spaces. The Bill had its second reading in the House of Lords on 16 January 2004.[57] The Government welcomed the Bill, although there were some reservations about its drafting, particularly on the definition of a public place, which were clarified in amendments during Committee stage. The Bill was reported with amendments on 23 April 2004 having completed its passage through the House of Lords. The Bill was passed from the Lords and presented for first reading in the House of Commons on 13 May 2004,[58] but subsequently dropped.

B. Private Bills

Private Bills are promoted by organisations that want specific, usually local powers. This type of bill is introduced following a petition to Parliament.

1. Liverpool City Council (Prohibition of Smoking in Places of Work) Bill

The *Liverpool City Council (Prohibition of Smoking in Places of Work) Bill*[59] is promoted by Liverpool City Council. It provides for a prohibition on smoking in enclosed places of work in the City of Liverpool. This would include offices, factories, pubs, restaurants, taxis, vehicles, vessels, aircraft or hovercraft, installations, tents and movable structures.

Anyone who contravenes the provisions relating to the prohibition of smoking or the display of signs will receive a fine not exceeding level five on the standard scale, £5,000. This includes the occupier, manager and any other person for the time being in charge of the place where the offence takes place. The Bill also makes provision for the issuing of fixed penalty notices where an authorised council official or accredited person believes an offence has taken place.

More information about the campaign can be found on the Smoke Free Liverpool website.[60]

---

56 http://www.parliament.the-stationery-office.co.uk/pa/ld200304/ldbills/012/2004012.htm
57 HL Deb 16 January 2004 c769-97
58 Bill 109 2003-04 http://www.publications.parliament.uk/pa/cm200304/cmbills/109/2004109.htm
59 http://www.publications.parliament.uk/pa/ld200405/ldprbill/002/05002x--.htm
60 http://www.smokefreeliverpool.com/

2. London Local Authorities (Prohibition of Smoking in Places of Work) Bill

The *London Local Authorities (Prohibition of Smoking in Places of Work) Bill*[61] is promoted by Westminster City Council on behalf of all the other London Borough Councils. It provides for a prohibition on smoking in enclosed places of work in Greater London.

The provisions of the London Bill are almost identical to the Liverpool City Council Bill.

Formal objections to the Bills have been lodged by resurateurs, smoking clubs and the Society of London Theatres.[62] At the time of writing a new date for second reading, re-scheduled from 11 March 2005 due to other parliamentary business taking place, has yet to be set. If they proceed through all their parliamentary stages the Liverpool Bill will require a confirmatory decision by Liverpool City Council to go ahead with the ban. In London, the measures would need separate decisions to be made in all 32 London boroughs.[63]

Other cities and towns [64] have indicated that they are considering local bans on smoking in public places, either by a private petition to Westminster, or changing local by-laws, licensing laws or health and safety legislation.

IV The Bill

A. Overview of clauses

The purpose of this Private Members' Bill, introduced by Julie Morgan MP is to enable the National Assembly of Wales to take powers to ban smoking in public places in Wales. The Welsh Assembly voted in favour of taking such measures in January 2003. A consultation in Wales is currently taking place through a cross-party committee set up by the Assembly.

The Bill is available on the Internet.[65]

Clause 1 allows the Welsh Assembly to prohibit or restrict smoking in enclosed public places in Wales.

Clause 2 requires signs to be posted in areas where smoking is restricted or banned.

---

61 http://www.publications.parliament.uk/pa/ld200405/ldprbill/005/005.htm
62 "Backdoor ban for smoking at work", *Times*, 8 February 2005 p14
63 "plans for local smoking bans spread to more than 30 towns" *Guardian* 3 March 2005 p3
64 Bradford, Canterbury, Milton Keynes, Poole, Brighton, Knowsley, Wirral, St Helens and Sheffield.
65 http://www.publications.parliament.uk/pa/cm200405/cmbills/023/2005023.htm

Clause 3 discusses offences committed by persons smoking in restricted areas and the levy of penalties.

Clause 4 provides for the power needed to exercise the Act to be transferred to the Welsh Assembly.

Clause 5 deals with statutory instruments that may be necessary under the Act.

Clause 6 provides definitions for key terms within the Act.

Clause 7 gives the short title of the Act.

In terms of offences and penalties under the Bill, the provisions are very similar to those set out in the Liverpool City Council and London Local Authorities Private Bills. Clauses in each Bill specify to whom the legislation applies and make requirements regarding the display of signs where smoking is prohibited or restricted in public places. Each Bill makes provision for the imposition of fixed penalty notices, expressed in similar terms. However, there are some slight differences between the Private Bills and the current Bill.

a. Application

The Private Bills apply to places of work – "any place to which a person has access while at work." This includes ways in and out of the place of work, places used in connection with the work, and vehicles, vessels, aircraft or hovercraft, installations, tents and movable structures.

The current Bill relates to 'enclosed public places', in Wales. Wales includes "the sea adjacent to Wales as far out as the seaward boundary of the territorial sea."

An 'enclosed public place' is defined as; "any premises to which at the material time the public or any section of the public has access on payment or otherwise as of right or by virtue of express or implied permission."

The NAW Assembly Committee has considered definitions of "public place" and "enclosed public place". It cites detailed examples from the Republic of Ireland, the City of New York; Scotland; the London Assembly, the Council of Europe, and the House of Lords discussion on Lord Faulkner's Bill. [66] The latter contained Schedules defining six types of public places, and a further five types of places where the ban would be exempt.

---

[66] Committee on Smoking in Public Places Agenda Paper 2, *Definition of a Public Place* 23 September 2004 http://www.wales.gov.uk/keypubassemsmoking/content/0204-paper2-e.htm

b. Scope

The term 'smoking' in the current Bill is interpreted to mean 'holding' a lighted cigarette, cigar, pipe or any other lighted tobacco product. In the Private Bills, smoking is defined as 'having' any of the lighted items mentioned above. It does not specify that the item must actually be held by a person. The difference is subtle but could be interpreted as a wider definition. It may prove more difficult to identify who in a group is guilty of an offence if individuals are not observed holding a lighted item.

c. Penalties

The penalty for infringement proposed under the current Bill following summary conviction will result in fines not exceeding Level 3 on the standard scale[67] (currently £1000). Fines proposed under the Private Bills will not exceed Level 5 on the standard scale (currently £5000).

In terms of fixed penalty notices the current Bill proposes a penalty which may not exceed the amount of a fine of Level 1 on the standard scale (currently £200). In the Private Bills the local authority is given powers to decide on the level of the fixed penalty. No recommended Level on the standard scale is specified. The Secretary of State is given reserve powers to object to the level of fixed penalty proposed by the Council if he thinks it excessive.

B. Comment on the Bill

1. Political parties

a. Conservative Party

The Conservative Party line on smoking in public places is set out in the Action on Health Manifesto document, which states that a voluntary approach is preferred to a statutory ban on smoking in public places.

> We do not believe that food producers are to blame if people eat unhealthily, or that pubs are to blame if people drink or smoke. Therefore we will seek voluntary, not statutory solutions to public health problems.
>
> A Conservative Government will agree a code with the pub industry which will remove smoking from around 80 per cent of pub space. We will ensure the industry achieves a smoke-free environment wherever children are present, and protect staff who wish to work in a smoke-free environment.[68]

---

67 See SNHA-00560 *The Standard Scale*

68 *Action On Health* Conservative Manifesto 2005 Chapter 3, Feb 2005 http://www.conservatives.com/tile.do?def=policy.topic.page&tabID=4

b. Liberal Democrats

In comments supplied for this paper, the Liberal Democrats state:

> Liberal Democrats believe that everyone has the right to be protected from the harmful effects of second hand smoke in their working and social lives. That is why we support the introduction of national legislation to make all workplaces and enclosed public places smoke free.
>
> There is now conclusive evidence that passive smoking causes lung cancer. Standing in the path of a smoker or being in a room where there are smokers brings people into contact with at least 50 agents known to cause cancer. The British Medical Association has estimated that as many as 1,000 people each year die as a result of passive smoking.
>
> We are committed to tackling the causes of ill health, not just treating the symptoms. This aim is frustrated by passive smoking since the presence of smoke in workplaces undermines the efforts of smokers trying to give up. The Royal College of Physicians has estimated that if workplaces became smoke free as many as 300,000 people would stop smoking.

Kirsty Williams AM, who speaks on health matters for the Liberal Democrats in the Welsh Assembly, called on Welsh Secretary Peter Hain to ensure enough parliamentary time was given to the bill.[69]

c. Plaid Cymru

No direct comments have been supplied for this paper.

For some this Bill represents the keen divisions felt at the lack of direct powers afforded the Welsh Assembly since devolution in 1997. The Assembly has no powers to make primary legislation or raise taxes and has limited powers of influence with respect to areas reserved to the Westminster parliament.

Plaid Cymru's parliamentary health spokesperson Hywel Williams MP attacked the Government's failure to include any reference to Wales in its Public Health White Paper

> "A proper Welsh Parliament with the power to put forward its own legislative programme would have enabled Wales to lead the way on the issue of a smoking ban; instead we have been forced to lag behind Scotland where the Executive has

---

[69] "MP puts forward smoking ban bill", *BBC News Online* 12 January 2005 http://news.bbc.co.uk/1/hi/wales/4166089.stm

> been able pursue this matter independently of England. This is an unacceptable situation and one which relegates the people of Wales to second class status." [70]

During the debate announcing publication of the Public Health White Paper, Hywel Williams asked the Secretary of State for Health:

> Hywel Williams (Caernarfon) (PC): On 22 January 2003, the Welsh Assembly Government asked for legislation to ban smoking in public places in Wales. Will the Secretary of State tell the House his Government's intentions for Wales regarding that issue?
>
> Dr. Reid: Public health is devolved to Wales, so it was out of respect for Wales, not disrespect that I referred to England today. Matters such as advertising, however, apply consistently throughout the United Kingdom, so the House will legislate on them for Wales. I hope that discussions will continue between my right hon. Friend the Secretary of State for Wales and the Welsh Assembly on a range of such matters. I hope that many of the measures in the White Paper, including perhaps those on smoking, will commend themselves to Wales. If the Assembly wants us to assist it, as we pass legislation, to carry forward its public health programme—I know that the First Minister is deeply committed to that—I shall be happy to try to oblige. [71]

2. Pressure / Lobby groups

A number of pressure groups and organisations have expressed support for the Bill. A small selection of comment is included in the following section.

Representations from a wide range of interested parties have been submitted to the NAW Consultation Committee on Smoking in Public Places. Their evidence can be found on the NAW website. [72] It is also possible to read submissions to the Health Committee of the Scottish Executive on Part One of the Smoking, Health and Social Care Bill, which relates to the prohibition of smoking in certain wholly enclosed places in Scotland.[73]

a. Cancer Research UK Cymru

Cancer Research UK supports this Bill and the private Bills from Liverpool City Council and the London local authorities.[74]

A campaign notice on the CRUK Cymru website expresses support for the current Bill:

---

70 Plaid Cymru News Archive, *Assembly's Weakness Highlighted By Two Year Delay In Smoking Ban* 16 November 2004 http://www.hywelwilliams.org/english/news/archive/press_release/smoking_ban.htm

71 HC Deb 16 November 2004 c1176

72 http://www.wales.gov.uk/keypubassemsmoking/content/agendas-e.htm

73 http://www.scottish.parliament.uk/business/committees/health/inquiries/shsc/he-smoking-evid-00.htm

74 http://info.cancerresearchuk.org/publicpolicy/campaigning/smoking/

> Cancer Research UK Cymru supports moves towards making all workplaces and enclosed public places smoke-free. We believe that this should be implemented without delay to protect workers and the general public from the harmful effects of second-hand smoke.
> [….]
> Julie Morgan's Bill will receive its second reading in the Commons on Friday 18 March. We hope that there will be a good turnout of MPs to make sure that the Bill goes to the next stage of the parliamentary process. Also on that day Cancer Research UK Cymru and the British Lung Foundation will be organising a fringe meeting at the Welsh Labour Party Conference on the theme of smoke-free public places.[75]

b. Royal College of Nursing Wales

The Royal College of Nursing in Wales has also expressed support for the Bill. Its 2005 document, *RCN Wales: the Future,* pledges in coming years to ensure a ban on smoking in public places and continued efforts to reduce smoking rates.[76]

c. Asthma UK

Asthma UK marked its support for legislation by hosting a fringe meeting at the Labour Party spring meeting in February 2005. The organisation estimates that there are 260,000 people with asthma living in Wales and 77 died from asthma in 2002. [77]

> 'More than 80% of people with asthma say that breathing other people's smoke worsens their symptoms,' said Mikis Euripides, Asthma UK's Senior Campaigns & Parliamentary Officer. [78]

d. ASH Action on Smoking and Health

The Tobacco control pressure group ASH (Action on Smoking and Health) has launched an online letter campaign urging MPs to support *the Smoking in Public Places (Wales) Bill.*[79] The letter asks people to write to their MPs, encouraging them to help the Bill through to the committee stage.[80]

Naomi King, Director of Action on Smoking and Health Wales commented:

---

75 http://info.cancerresearchuk.org/publicpolicy/wales/campaigns/
76 *RCN Wales: the Future,* RCN Wales 2005 http://www.rcn.org.uk/downloads/wales/Vision_English.pdf
77 ASH Letter Campaign to Support Bid for Smokefree Wales 21 February 2005 http://www.ash.org.uk/html/press/050221.html
78 http://www.asthma.org.uk/news/news207.php
79 http://www.ash.org.uk/html/action/worddocs/exampleletterwelshbill.doc
80 ASH News Release, *Letter Campaign to Support Bid for Smokefree Wales* 21 February 2005 http://www.ash.org.uk/html/press/050221.html

> "The National Assembly has already voted for a ban on smoking in public places and should be given the chance to implement a more comprehensive ban than is being proposed in England. The various other initiatives that are in place to help reduce smoking in Wales need to be reinforced by a ban on smoking in order to make them more effective."

e. British Heart Foundation

The British Heart Foundation has welcomed the Bill. Director General, Peter Hollins said:

> "We believe it will provide the quickest route towards protecting the health of the Welsh public, and in particular those pub workers who will be regularly left to breathe damaging smoke under the UK Government's Public Health White Paper proposals."[81]

In its written submission to the NAW, the British Heart Foundation in Wales says:

> "We believe that the raft of evidence supporting a ban is compelling and that the National Assembly should prioritise moves to introducing legislation to protect non-smokers from this unnecessary risk.
>
> "There can be no doubt that exposure to environmental tobacco smoke (ETS) causes significant health risks."[82]

3. Hospitality trade and tobacco industries

There is a lack of consensus on the likely costs to industry of implementing a smoking ban in enclosed public spaces. It is also unclear to what extent the impact of a ban would have on tobacco manufacturers. Representatives of the industry and other groups have made comments on the economic impact of a ban, either in the context of this Bill, the Private Bills undergoing scrutiny in the Lords, or on the respective consultation exercises in Scotland and Wales.

Most comment centres on a heavy negative cost to the hospitality industry. In countries where a ban has been introduced, there is insufficient annual data to show any meaningful trends at this stage. The partial RIA on action on second hand smoke, issued with the Public Health White Paper notes:

> For example, there have been reports of falling bars sales in Ireland following the ban. However, Irish retail sales data from the Central Statistics Office shows bar sales falls after the ban in line with the year on year falls since 2000. In general

---

81 "MP puts forward smoking ban bill", *BBC News Online* 12 January 2005

82 Committee on Smoking in Public Places Agenda Paper 3 9 December 2004 Written response 61 BHF Wales http://www.wales.gov.uk/keypubassemsmoking/content/0404-paper3-e.pdf

> there is a lack of international evidence to support a prediction in a drop in sales in the hospitality industry.[83]

The Chartered Institute of Environmental Health (CIEH) represents local authority officers who are responsible for enforcing a ban. The existing powers and functions of local authorities are set out in Chapter 3 of CIEH's Toolkit '*Achieving Smoke Freedom*'.[84] CIEH's submission to NAW refers to evidence from a review by Scollos et al of 97 studies on the impact of the ban world wide. [85] The study concluded that all independent studies found no negative impact on revenue, and negative studies had tobacco industry backing and mostly subjective measures.[86]

In New York the City Finance Commissioner, Martha Stark, reported that the business tax revenue from the city's hospitality venues rose by 12% and 10,000 new jobs had been created in the first nine months since the tobacco ban took effect.[87] However, evidence to the NAW Consultative Committee from the New York Nightlife Association, the Empire State Restaurant and Tavern Association and the United Restaurant and Tavern Owners, USA, suggest that reports that the total ban in New York has been an unqualified success are wrong; that the latest statistics from an independent report are 'damning' in terms of the economic effect the ban has had on the hospitality industry in New York.[88] They note that economic statistics from bars and restaurants are not separated from other catering outlets. In addition, the ban was imposed post 9/11 during a recession; comparison with 2000 figures would present a different picture.

In a submission to the NAW consultative committee, Licensed Victuallers Wales (LVW) expresses its concern that many smaller pubs could be put out of business through a ban.[89] According to LVW, on 1 April 2000 there were 3,836 public houses in Wales.[90] Closures are matched by new outlets. LVW feel that larger pubs will more easily withstand a reduction in turnover caused by a ban. "For very small pubs, any reduction in turnover could prove catastrophic."

> The most important factors are turnover and the combination of wet and dry sales. High turnover pubs selling predominantly food will be least affected, while

---

83 Partial regulatory impact assessment: Choosing Health white paper - Action on secondhand smoke http://www.dh.gov.uk/assetRoot/04/09/48/41/04094841.pdf

84 Achieving smoke freedom Toolkit, CIEH/ASH http://www.cieh.org/research/smokefree/

85 Committee on Smoking in Public Places Agenda Paper 2 13 January 2005 Chartered Institute of Environmental Health http://www.wales.gov.uk/keypubassemsmoking/content/0105-paper2-e.htm

86 Review of the qualities of studies on the economic effects of smoke-free policies on the hospitality industry. Scollo M, Lay A, Hyland A and Glantz S. *Tobacco Control* 2002; 12: 13-20.

87 *New York Times* 1 April 2004

88 Committee on Smoking in Public Places Agenda Paper 3 9 December 2004 Written response 34 CIEH http://www.wales.gov.uk/keypubassemsmoking/content/0404-paper3-e.pdf

89 Committee on Smoking in Public Places Agenda Paper 5 Response from the Licensed Victuallers (Wales) Ltd 120 February 2005 http://www.wales.gov.uk/keypubassemsmoking/content/0205-paper6-e.htm

90 The Valuation Office Agency Analysis of 2000 Rating List

small, social drinking pubs will be the most affected. The following table extracted from the Rating List* covers categories of pubs most at risk. The information includes the number of pubs, their maximum turnover, their approximate gross profit, overheads, the net profit before any rent or mortgage payment and the net profit, assuming a 15% reduction in turnover.

	Pub category			
	A	B	C	D
Percentage of Total	5	5	15	25
Number of Pubs	191	191	578	960
Maximum Turnover (000s)	52	62	87	135
Gross Profit	22	26	37	58
Overheads	15	15	21	33
Net Profit	7	11	16	25
Net Profit after 15% Reduction	3.7	7	10.5	16.5

Source: Committee on Smoking in Public Places, Agenda Paper 5, Response from the Licensed Victuallers (Wales) Ltd. 10 February 2005

The 960 pubs represented in categories A, B and C will be nearly all owner-occupied and there would be insufficient profit to share between landlord and tenant. They would all be social drinking pubs and the hubs of their communities. They would open mainly in the evenings, with one partner working during the day to provide additional income. They would employ few, if any additional staff. The main activities would be pool, darts, cards and companionship. Over 65% are likely to be smokers. Pubs in A and B would certainly close if a ban was imposed, many in C would also close, or certainly not provide a return even in line with the Minimum Wage.

Category D would again be mainly owner-occupied, but some at the higher end of the range may also be tenanted. They would also be mainly drinking pubs, rural or community, but some food may be served. The percentage of smokers would depend on the ratio between food and drink. Whilst there would be fewer closures in this group, nevertheless their viability would be greatly reduced. Part time staff would usually be employed for a few hours at weekends and they would probably lose their jobs.

One of the reasons for the low turnovers in these pubs is that many people prefer to buy their drink more cheaply from supermarkets and abroad and drink and smoke at home. The people who frequent these pubs are prepared to pay the higher prices because they are social drinkers. Many of these people are also smokers and if smoking is banned they will join the ranks of those who smoke and drink at home.[91]

[91] Committee on Smoking in Public Places Agenda Paper 5 Response from the Licensed Victuallers (Wales) Ltd 10 February 2005

The Tobacco Manufacturers Association (TMA) represents the interests of UK tobacco manufacturers; its principal members are British American Tobacco, Gallagher and Imperial Tobacco. TMA is sceptical about the representative nature of opinion polls that show a substantial majority of the population in favour of a total ban on smoking. It also questions the scientific basis of a causal link between environmental tobacco smoke and ill health. Accepting the need for greater provision of non-smoking outlets, it supports individual freedom of choice, within a framework of voluntary self-regulation.[92]

In its submission to the NAW Consultative Committee TMA is in favour of "encouraging the development of such voluntary regimes, allowing businesses, their staff and customers to select the policy most appropriate for their particular venue."[93]

TMA also asserts that it is not a straightforward matter to measure the costs and benefits of a ban in economic terms. It questions in particular the validity of models and studies supporting a ban that fail to specify their underlying assumptions, use subjective data or are not set in the UK context.

4. Trade Unions

The Tobacco Workers' Alliance (TWA) is a coalition of Amicus, Transport and General Workers Union (T&G) and GMB trade union members who work in the UK tobacco manufacturing industry and its major suppliers, currently representing 7,500 workers across the UK, supported by the Tobacco Manufacturers' Association. It does not support a total ban on smoking in public places.

The submission to the NAW Committee by TWA "recognises that there are health risks associated with tobacco products and fully supports reasonable and responsible regulation of tobacco products…….However tobacco products are legally manufactured, sold and consumed in the UK and while this remains the position adults should not be marginalised or vilified because they smoke."[94]

The TWA acknowledges that smoking restrictions can have a positive effect on hospitality businesses, particularly restaurants. Nevertheless, it says, restrictions must be distinguished from bans, particularly in bars and pubs, where universal bans have had a detrimental effect on business, which impacts on employees.

The Trades Union Congress on the other hand has called for smoking to be banned in all public places to defend workers against the effects of passive smoking. However, it

---

http://www.wales.gov.uk/keypubassemsmoking/content/0205-paper6-e.htm

92 Misleading smoke signals. TMA *House Magazine* 11 October 2004

93 Committee on Smoking in Public Places Agenda Paper 5 Tobacco Manufacturers Association 10 February 2005
http://www.wales.gov.uk/keypubassemsmoking/content/0205-paper5-e.pdf

94 Committee on Smoking in Public Places Agenda Paper 4 Tobacco Workers Association 13 January 2005 http://www.wales.gov.uk/keypubassemsmoking/content/0105-paper4-e.htm

believes that there should not be a blanket ban without due consultation with trade unions, and that employers should strive to achieve balance through effective smoking policies.[95]

V Smoking and health

A. Overview

Cigarette smoking is the largest avoidable cause of morbidity and mortality in developed countries. Smoking not only causes direct harm to individuals who smoke but also produces detrimental effects on the health of individuals who are indirectly exposed to tobacco smoke. According to the National Institute for Clinical Excellence (NICE), although nicotine has marked effects on the arteries, it is the tar from smoking products that is the main disease causing element. Tar contains at least 4,000 different chemicals, including over 50 known carcinogens and metabolic poisons. Tobacco smoke also contains carbon monoxide, oxides of nitrogen and hydrogen cyanide, all harmful to health[96]

1. Smokers in Great Britain

In the UK there are around 13 million smokers. The following table shows the percentage of smokers over 16 across Great Britain.

---

95 TUC News Release, *Wales TUC calls for a ban on smoking in public places* 1 November 2004

96 National Institute For Clinical Excellence Technology Appraisal Guidance No. 38 Nicotine replacement therapy (NRT) and bupropion for smoking cessation Issue March 2002 http://www.nice.org.uk/page.aspx?o=30631

Self-reported prevalence of cigarette smoking by sex and country of Great Britain 1978 to 2003

Percentage smoking cigarettes (Persons aged 16 and over)

Country	Unweighted								Weighted				
	1978	1982	1986	1990	1992	1994	1996	1998	1998	2000	2001	2002	2003
Men													
Wales	**44**	**36**	**33**	**30**	**32**	**28**	**28**	**28**	**29**	**25**	**27**	**27**	**29**
England	44	37	34	31	29	28	28	28	29	29	28	27	27
Scotland	48	45	37	33	34	31	33	33	35	30	32	29	35
Great Britain	45	38	35	31	29	28	29	28	30	29	28	27	28
Women													
Wales	**37**	**34**	**30**	**31**	**33**	**27**	**27**	**26**	**27**	**24**	**26**	**27**	**26**
England	36	32	31	28	27	25	27	26	26	25	25	25	24
Scotland	42	39	35	35	34	29	31	29	29	30	30	28	28
Great Britain	37	33	31	29	28	26	28	26	26	25	26	25	24
All persons													
Wales	**40**	**35**	**31**	**31**	**32**	**27**	**27**	**27**	**28**	**25**	**27**	**27**	**27**
England	40	35	32	29	28	26	28	27	28	27	27	26	25
Scotland	45	42	36	34	34	30	32	30	31	30	31	28	31
Great Britain	40	35	33	30	28	27	28	27	28	27	27	26	26

Source: ONS, General Household Survey 2003

Note: Data prior to 1998 are unweighted. From 1998 data are weighted to compensate for under-representation of people in some groups. Trend tables show unweighted and weighted figures for 1998 to give an indication of the effect of the weighting.

2. Smokers in Wales

In 2003, 27 percent of adults aged 16 and over in Wales smoked cigarettes; 29 percent of men and 26 percent of women. Around 640,000 adults in Wales smoke.

The prevalence of cigarette smoking among adults aged 16 and over in Wales fell considerably from the late 1970s to the mid-1990s. The proportion of adults who smoke fell from 40 percent in 1978 to 27 percent in 1994. Prevalence has stabilised since 1994. The table below shows the prevalence of cigarette smoking by sex for Wales from 1978 to 2003. Data for England, Scotland and Great Britain are also included for comparative purposes.

The proportions of current smokers in Wales decreases with age. Smoking prevalence in Wales amongst men and women aged 16-44 is 32 and 33 percent respectively, compared to 26 percent for men and 23 percent for women aged 45-64. Only 16 percent of men and 13 percent of women aged 65 and over are current cigarette smokers.

Smoking rates in the UK tend to be lowest among socio-economic class A, and rise successively through to classes D and E. Smoking rates are also high among some ethnic

groups.[97] As in other parts of the UK, smoking prevalence in Wales has declined much more markedly among higher income groups than among low income groups. In 2003, 35 percent of adults in Wales in routine and manual occupations smoked, compared to 20 percent of adults in managerial and professional as well as intermediate occupations. Analysis of smoking prevalence by local authority area[98] also shows a correlation between the highest levels of smoking and areas of socio-economic deprivation such as the South Wales valleys.

Prevalence of cigarette smoking:
by sex and socio-economic classification
Wales, 2003

percentage

	Men	Women	All[1]
Managerial and professional	22	19	20
Intermediate	*22*	18	20
Routine and manual	36	35	35
Total	29	26	27

Source: ONS, General Household Survey 2003
Notes: Figures in italics are unreliable and any analysis using these figures may be invalid.
[1] Where the household reference person was a full-time student, had an inadequately described occupation, had never worked or was long term unemployed these are not shown as separate categories but are included in the figure for all persons.

The proportion of adults in Wales who have never smoked cigarettes has increased regularly since the early 1980s; the table below shows cigarette smoking status among adults in Wales in 2003.

[97] Enhancing the Value of Health Statistics: Part 2 Section 2 - Statistics Covered in the Review. Statistics Commission 2004
[98] Welsh Health Survey 1998

Cigarette smoking status among adults by sex
Wales 2003

percentage

	Males	Females	All
Daily smoker	23	21	22
Occasional smoker	4	4	4
Ex-smoker	31	24	27
Never smoked	42	51	47

Source: Welsh Health Survey 2003/04
Note: These figures are provisional and were extracted from a dataset relating to data collection between October 2003 and March 2004 for the Welsh Health Survey.

The average daily number of cigarettes smoked per adult smoker in Wales has decreased slightly since the early 1980s, mainly among younger smokers. Men (15 cigarettes a day) continue to smoke more, on average, than women (13 cigarettes a day).

a. Smokers' health

Recent research estimates that at least half of these smokers will die prematurely from diseases caused by their smoking.

The adverse health effects of smoking are related to:

- the number of cigarettes smoked
- the duration of smoking
- starting smoking at a younger age.

Smokers are at a greater risk of developing a number of diseases. The greatest associated adverse health effects are from lung cancer, chronic obstructive airways diseases and cardiovascular conditions. However, smoking also increases the risk of developing other conditions including, osteoporosis, periodontal disease, impotence, male infertility and cataracts. Women who smoke in pregnancy have an increased risk of having a baby of low birth weight.

The longest prospective epidemiological study of smokers conducted in the UK, "*Mortality in relation to smoking: 50 years' observations on male British doctors*", published its most recent results in 2004. The research project, which began in 1951, has monitored the effects of smoking on the mortality of a group of British doctors. Earlier results from the study, at 10, 20 and 40 years, demonstrated that smoking was associated with an increased mortality from a number of diseases. Although lung cancer accounted for about half of the excess deaths seen in smokers, the remaining deaths were from a

variety of conditions including cancers especially of the mouth, pharynx and oesophagus, ischaemic heart diseases and respiratory disorders.[99]

The paper, detailing the finding of the fifty year survey, showed that about half of all smokers would die as a direct consequence of smoking. However, the study also found that there were health benefits from stopping smoking at any age, and these were related to the age at which a person stopped smoking. Individuals who stopped smoking at 60 years could gain about 3 years of life expectancy, whilst at the other end of the range those who stopped at 30 years had a pattern of survival almost the same as that of non-smokers.

The paper concluded:

> *What is already known on this topic?*
>
> About half of all persistent cigarette smokers are killed by their habit—a quarter while still in middle age (35-69 years)
>
> After a large increase in cigarette smoking by young people, the full effects on national mortality rates can take more than 50 years to mature
>
> British men born in the first few decades of the 20th century could be the first population in the world in which the full long term hazards of cigarette smoking, and the corresponding benefits of stopping, can be assessed directly
>
> *What this study adds*
>
> Among the particular generation of men born around 1920, cigarette smoking tripled the age specific mortality rates
>
> Among British men born 1900-1909, cigarette smoking approximately doubled the age specific mortality rates in both middle and old age
>
> Longevity has been improving rapidly for non-smokers, but not for men who continued smoking cigarettes
>
> Cessation at age 50 halved the hazard; cessation at 30 avoided almost all of it
>
> On average, cigarette smokers die about 10 years younger than non-smokers
>
> Stopping at age 60, 50, 40, or 30 gains, respectively, about 3, 6, 9, or 10 years of life expectancy

---

[99] "The problem of tobacco smoking", *British Medical Journal*, 24 January 2004

B. Passive smoking

Awareness of the effects of passive smoking is widespread.[100] Over 80 percent of people in Great Britain agree that passive smoking increases a non-smoking adult's risk of lung cancer, bronchitis and asthma. 56 percent of non-smokers (51 percent of men and 60 percent of women) mind if other people smoke near them. Most smokers are willing to modify their smoking in the presence of adult non-smokers; 46 percent would not smoke and 36 percent would smoke fewer cigarettes. Such opinions lend weight to the belief that there is no safe level of environmental tobacco smoke.

ASH (Action on Smoking and Health) has calculated that:

> 2,182,000 people work in places with "no restrictions on smoking at all". This is 8% of those in work in Great Britain
>
> 10,366,000 people work in places where smoking takes place in "designated areas". This is 38% of those in work.[101]

In November 2004, the Scientific Committee on Tobacco and Health published a review of the evidence relating to the health effects of exposure to second hand smoke (SHS). The review found that exposure to SHS was responsible for:

- An estimated overall 24% increased risk of lung cancer in non-smokers.
- A 23% excess risk of heart diseases in non-smokers.
- Children and babies exposed to SHS at home have an increased risk of pneumonia, bronchitis, asthma attacks, middle ear infections and sudden infant death syndrome.[102]

An editorial on passive smoking in the *British Medical Journal* in February 2005 states:

> Existing evidence is already sufficient to implicate passive smoking as a cause of lung cancer and coronary heart disease. Moreover, smoke free workplace policies are effective in eliminating secondhand smoke and in encouraging active smokers to quit. Eliminating exposure to secondhand smoke is a public health priority not just for European countries but for the rest of the world as well.[103]

The scientific opinion that passive smoking is linked to ill health is challenged in some quarters. Forest, (Freedom Organisation for the Right to Enjoy Smoking Tobacco) a

---

[100] ONS, Smoking related behaviour and attitudes 2003

[101] Data is calculated using the Government's Labour Force Survey for 2003 and the National Statistics Omnibus Survey smoking-related behaviour and attitudes module carried out in October and November 2003

[102] "Secondhand Smoke: Review of Evidence since 1998", Scientific Committee on Tobacco and Health, Department of Health, 16 November 2004

[103] "More evidence on the risks of passive smoking", *British Medical Journal*, 5 February 2005

smokers' lobby group supported by the tobacco industry, contend that all the scientific evidence has failed to establish conclusively that passive smoking costs lives.

Lord Harris of High Cross, President of Forest, is reported to have said:

> "The attempt to ban smoking in all public places would be understandable if it was based on incontrovertible scientific evidence of harm to others.
>
> "But this is very far from the truth. The truth is that the dozens of studies conducted around the world over the past 25 years fail spectacularly to yield any reliably stable, uniform or statistically significant link between lifetime exposure to environmental tobacco smoke (ETS) and lung cancer in non-smokers." [104]

Forest asserts that adequate ventilation systems can cut the amount of harmful tobacco related gases by 90%.[105] The British Medical Association rejects the 'courtesy of choice' option advocated by the tobacco industry, where establishments are advised to continue to allow smoking in certain areas, relying in part on ventilation systems to provide non-smoking areas.[106]

1. In Families

Almost half of all children live in a household where at least one parent smokes. A considerable number of studies have all found that exposure to secondhand smoke is detrimental to child health.[107]

Children's exposure to passive smoking has approximately halved since the 1980's. However, this appears to be mainly due to a reduction of smoking in pubic places and a decrease in the number of smoking households. Children from a smoking household appear to have the same level of exposure as in earlier studies.[108]

2. In Wales

72 percent of non-smoking adults in Wales report being regularly exposed to passive smoking. The table below shows the proportion of non-smoking adults in Wales reporting passive smoking by location.

---

104 "Call for passive smoke harm proof", *BBC News online* 8 March 2005 http://news.bbc.co.uk/1/hi/health/4327117.stm

105 Don't let our culture of tolerance go up in smoke, Forest lobby campaign, *House Magazine* 11 October 2004

106 Smoke-free workplaces: the ventilation myth. British Medical Association 15 November 2004 http://www.bma.org.uk/ap.nsf/Content/Tobventmyth

107 "Secondhand Smoke: Review of Evidence since 1998", Scientific Committee on Tobacco and Health, Department of Health, 16 November 2004

108 "Children's exposure to passive smoking in England since the 1980's" *British Medical Journal*, 5 August 2000

Proportion of non-smoking adults reporting passive smoking
Wales, 2003/04

	percentage
Regularly exposed to passive smoking	72
Regularly exposed to other people's tobacco smoke	
In pubs	58
In other public places	53
In other people's homes	26
On public transport	14
In work	13
At home	12

Source: Welsh Health Survey 2003/04

Note: These figures are provisional and were extracted from a dataset relating to data collection between October 2003 and March 2004 for the Welsh Health Survey.

Adults in routine and manual occupations are more exposed to passive smoking than adults in intermediate and in managerial and professional occupations.

C. Smoking cessation

It is estimated that in the UK about 4 million smokers a year attempt to quit but that only 3% to 6% of these (1% to 2% of all smokers) succeed.[109]

Stopping smoking has both immediate and long term benefits on health in relation to both prevention of disease and life expectancy. Smokers who quit before the age of about 35 years have a life expectancy only slightly less than those who have never smoked.[110] The excess risk of death starts to fall soon after stopping smoking and continues to decrease. The greatest effect is seen in those who stop at the youngest age. There is also a reduction in the indirect harm produced by passive smoking in public places.

The Government has set a target:

> To reduce adult smoking rates to 21% or less by 2010, with a reduction in prevalence among routine and manual groups to 26% or less.[111]

The Government acknowledges that smoking prevalence is higher amongst manual and working class social groups and areas; also that many of the non-food pub outlets may be in these areas. Dr Reid signalled his determination to the Health Committee to do all in

[109] Enhancing the Value of Health Statistics: Part 2 Section 2 - Statistics Covered in the Review. Statistics Commission 2004

[110] ibid

[111] Spending Review 2004 Public Service Agreement Chapter Three Department of Health http://www.hm-treasury.gov.uk/media/70320/sr04_psa_ch3.pdf

his power to reduce the levels of smoking in these areas by democratic legislation supported by a range of cessation measures.[112]

This target is set out in the Department of Health's Spending Review 2004 Public Service Agreement as part of the wider strategy to tackle the underlying determinants of ill health and health inequalities. Dr John Reed explained to the Health Select Committee that he expected the target reduction to apply to all social classes, not just middle class smokers.[113]

Other public health goals relating to smoking include:

> "1. Substantially reduce mortality rates by 2010:
>
> • from heart disease and stroke and related diseases by at least 40% in people under 75,with at least a 40% reduction in the inequalities gap between the fifth of areas with the worst health and deprivation indicators and the population as a whole;
>
> • from cancer by at least 20% in people under 75,with a reduction in the inequalities gap of at least 6% between the fifth of areas with the worst health and deprivation indicators and the population as a whole
>
> 2. Reduce health inequalities by 10% by 2010 as measured by infant mortality and life expectancy at birth.[114]

The Government has promised to build health into all future legislation by including health as a component in Regulatory Impact Assessment (RIA). The partial RIA on action on second hand smoke, published with the *Choosing Health* White Paper, estimates that, for England, ending smoking in all workplaces and enclosed public places might reduce overall smoking prevalence rates by 1.7%, down from 26%. 0.7% of this estimated reduction may be delivered as a direct result of ending smoking in employees' own place of work. A further 1% may result from more places outside smokers' own place of work going smoke free. [115]

A decrease in smoking would result in corresponding savings to the health service. At present, it is estimated that the treatment of smoking related disease costs the NHS around

---

[112] Uncorrected evidence to Health Select Committee 23 February 2005 Q56 http://pubs1.tso.parliament.uk/pa/cm200405/cmselect/cmhealth/uc358-i/uc35802.htm

[113] ibid Q7

[114] Spending Review 2004 Public Service Agreement Chapter Three Department of Health http://www.hm-treasury.gov.uk/media/70320/sr04_psa_ch3.pdf

[115] Partial regulatory impact assessment: Choosing Health white paper - Action on secondhand smoke http://www.dh.gov.uk/assetRoot/04/09/48/41/04094841.pdf

£1.5 billion per annum.[116] It is estimated that a reduction in the smoking prevalence rate of 1.7% as suggested would save the NHS around £100 million a year.[117]

In 2004 240,000 people are thought to have given up smoking with the assistance of cessation initiatives.[118] A PQ sets out the latest estimate of those who are no longer smoking after using the NHS Stop Smoking Service:

> Smoking
>
> **Tim Loughton:** To ask the Secretary of State for Health (1) what his latest estimate is of the percentage of people who have used the NHS Stop Smoking Services programme and who are no longer smoking after 12 months; [210136]
>
> (2) how many people have used the NHS Stop Smoking Services in each of the last five years; and what the average cost to the NHS per person is of NHS recommended smoking cessation services. [210137]
>
> **Miss Melanie Johnson:** The Department funded an evaluation of the national heath service stop smoking services programme, which was led by a team at Glasgow university. The results will be published in due course.
>
> The information is shown in the table.

[116] "Economics of smoking cessation", *British Medical Journal*, 17 April 2004
[117] ibid
[118] ibid Q11

Information about NHS stop smoking services in England, 1999/00 to 2003/04

	1999/00 [1]	2000/01	2001/02	2002/03	2003/04
Number of people setting a quit date[2]	14,600	132,500	227,300	234,900	361,200
Number of successful four week quitters (self report)	5,700	64,500	119,800	124,100	204,900
Cost of NHS stop smoking services (£ million)[3]	5.0	21.5	24.7	24.5	36.2
Cost per person setting a quit date (£)[3]	344	162	109	104	100
Cost per successful four week quitter (£)[3]	872	334	206	197	177
Total net ingredient costs of prescriptions for NRT7 bupropion (£million)[4]	0.5 [5]	16	29	30	37

Source: HC Deb 21 Feb 2005 c174w

Notes:

[1] In 1999/00, NHS smoking cessation services were set up in the 26 health action zones (HAZ) in England and services were rolled out across the NHS to the rest of England in 2000/01.

[2] Total number of people who have used the NHS stop smoking services is not collected centrally. However, information is collected on the number of people setting a 'quit date'; some people may use the services but not go onto set a quit date.

[3] The cost of the NHS stop smoking services and the cost per successful quitter in 1999/00 and 2000/01 included the cost of giving clients free NRT (or vouchers); from 2001/02 onwards the cost of the service and the cost per quitter excluded the cost of NRT or Zyban on prescription. Only a few nicotine replacement therapy products were available on prescription until 17 April 2001, when all NRT products became available on NHS prescription. Bupropion (Zyban) became available on NHS prescription from June 2000. Therefore, the costs from 2001/02 onwards are not directly comparable with the costs in previous years.

[4] Net ingredient cost is the basic cost of a drug and does not take account of discounts, dispensing fees or prescription charge income. Note that some prescriptions for NRT/Bupropion are dispensed to people not using the NHS stop smoking services.

[5] This figure only includes the cost of NRT, as bupropion (Zyban) was not available until June 2000.

Sources:

1. Statistics on Smoking Cessation in the Health Action Zones in England, April 1999 to March 2000 http://www.dh.gov.uk/assetRoot/04/02/24/22/04022422.pdf.
2. Statistics on Smoking Cessation in England, April 2000 to March 2001—http://www.dh.gov.uk/assetRoot/04/07/64/58/04076458.pdf.
3. Statistics on NHS stop smoking services in England, April 2001 to March 2002—http://www.publications.doh.gov.uk/public/sb0225.pdf.
4. Statistics on NHS stop smoking services in England, April 2002 to March 2003—http://www.dh.gov.uk/assetRoot/04/07/62/33/04076233.pdf.
5. Statistics on NHS stop smoking services in England, April 2003 to March 2004—http://www.dh.gov.uk/assetRoot/04/09/76/51/04097651.pdf.

Smoking cessation has wider economic benefits on society. These include; reduced costs from sickness absence; safety benefits and reduced fire risks; and greater inclusiveness in the workplace for asthma sufferers. Although productivity gains are said to result through smokers taking less smoking breaks, there is some evidence that smokers' efficiency can drop significantly, especially during the smoking withdrawal phase as they experience physical symptoms such as hunger, coughing, bowel upsets, sleep disturbance and dizziness.

Smoking cessation programmes are effective and appear to provide value for money, especially when compared to the cost of other healthcare interventions. Less resource-intensive interventions such as brief advice or self help were more cost-effective than the more resource-intensive specialist intervention services or the use of nicotine replacement

therapy. As the intensity of smoking cessation interventions increases, both cost and effectiveness increase, but cost increases more rapidly. However, even the more intensive smoking cessation interventions are relatively cost-effective in terms of cost per life-year saved. [119]

The National Institute for Clinical Excellence (NICE) recently estimated the cost effectiveness of smoking cessation interventions. The study found that:

> Costs to the NHS may be separated into short-term costs related to the smoking cessation interventions and long-term costs of health care for smokers who stop smoking. It is relatively straightforward to measure the direct costs of a programme but very complicated to measure its impact on long-term health care spending.
> […]
> Results of studies of economic evaluations have consistently shown that smoking cessation interventions are cost-effective in saving lives, compared with many other accepted therapeutic and preventive health care interventions.
>
> The estimated cost of the smoking cessation programme to the NHS in England and Wales would be about £67-202 million per year. Consequently, about 45,000-135,000 smokers will quit, and about 90,000-270,000 life-years may be saved. The average cost per life-year saved is about £750 (range £500 to £1,500).[120]

Whilst the overall prevalence of smoking has declined in the UK, this is not true for all sections of the population. The incidence of smoking in the socio-economically disadvantaged groups has remained fairly constant and this has produced a disproportionately high burden of ill health in this section of society. Young adults also show a relatively slow decline in the prevalence of smoking. Whilst smoking cessation initiatives should be targeted at all sections of the population these two social groups have particular needs that must be addressed if there is to be any real progress in achieving a significant reduction in the incidence of smoking.

1. In Wales

The Welsh Assembly's tobacco control programme focuses on motivating and supporting smokers to give up through smoking cessation initiatives. Smoking cessation initiatives include the provision of local smoking cessation services through the National Public Health Service, a media campaign featuring testimonials from smokers and information about the Smokers' Helpline, the Smokers Helpline Wales, support for No Smoking Day, and the production and dissemination of information and self-help materials.

---

[119] "Economics of smoking cessation", *British Medical Journ*al, 17 April 2004

[120] A rapid and systematic review of the clinical and cost effectiveness of bupropion SR and nicotine replacement therapy (NRT) for smoking cessation, NICE Review, April 2002

Over two thirds of current smokers in Wales would like to give up smoking.

77 percent of clients of the smoking cessation services setting a quit date during the period 1 April – 30 September 2004 reported that they had successfully quit at 4 weeks. Data on 12-month quit rates will be available in June 2005.

D. Deaths from smoking in Wales[121]

Smoking is the greatest preventable cause of illness, disability and premature death in the United Kingdom. The Health Development Agency estimates that, in total, 106,100 persons die each year from smoking-attributable causes across the United Kingdom. It is estimated that 23 percent of male deaths from all causes are attributable to smoking. For women the equivalent figure is lower, at 12 percent.[122]

In Wales, it is estimated that there are 6,000 smoking-attributable deaths each year (3,800 male deaths and 2,200 female deaths). 18 percent of all deaths are smoking-attributable. For males 24 percent of deaths are smoking-attributable, and for women the estimated percentage is 12 percent.

Smoking-attributable mortality across the United Kingdom, annual averages 1998-2002

	Smoking-attributable mortality[1]			Percentage of all deaths attributable to smoking		
	Males	Females	Persons	Males	Females	Persons
Wales	**3,800**	**2,200**	**6,000**	**24**	**12**	**18**
England	53,800	32,700	86,500	22	12	17
Scotland	7,100	4,200	11,300	26	14	19
Northern Ireland	1,500	800	2,300	21	10	15
United Kingdom	66,200	39,900	106,100	23	12	17

Source: Health Development Agency (2004) *The smoking epidemic in England*

Notes: [1] These figures do not include an adjustment for deaths that may have been prevented by smoking (i.e. endometrial cancer and Parkinson's disease)

1. Deaths from passive smoking in Wales

Although overall exposure to second hand smoke in the population has fallen slightly as the prevalence of smoking has declined there are still particular groups, such as hospitality workers, that are exposed to high levels.

[121] Smoking is not recorded on the death certificate as a cause of death. As a result, smoking-attributable mortality for Wales is estimated by applying a risk formula attributable to national estimates of age- and sex-specific rates of current and ex-smoking. The derived attributable proportions are then applied to national counts of cause-, sex- and age-specific mortality for Wales.

[122] Health Development Agency (2004), The smoking epidemic in England

A study published in the British Medical Journal states that passive exposure to tobacco smoke at work may cause more than 600 deaths each year in the United Kingdom, including over 50 in people employed in the hospitality industry. Exposure at home may account for 2,700 deaths in those aged 20-64 and 8,000 in those aged 65 and over.[123] Assuming that the proportion of deaths from passive smoking in the United Kingdom is the same as in Wales, it is estimated that there are approximately 600 deaths attributable to passive smoking each year in Wales.[124]

The official number of deaths that are attributable to passive smoking in Wales is currently unknown. The Wales Assembly Government has commissioned research from the University of Glamorgan to estimate the number of deaths in Wales which can be attributed to passive smoking. The findings from this research will be released on 31 March 2005.

E. Restrictions on smoking in public places – Attitudes to

1. Great Britain

Support for smoking restrictions in public places has been increasing in Great Britain since 1996.[125] The vast majority of people in Great Britain agree that there should be restrictions on smoking in public places.

Attitudes towards smoking restrictions in public places
Great Britain, 1996 and 2003

percentage

	1996	2003
Agree that there should be smoking restrictions:		
In pubs	48	56
In restaurants	85	87
In work	81	86
In indoor shopping centres	.	85
In indoor sports and leisure centres	.	91
In indoor areas at railways and bus stations	.	78
In other public places	82	90

Source: ONS, Smoking related behaviour and attitudes 2003

Note: . Data not available

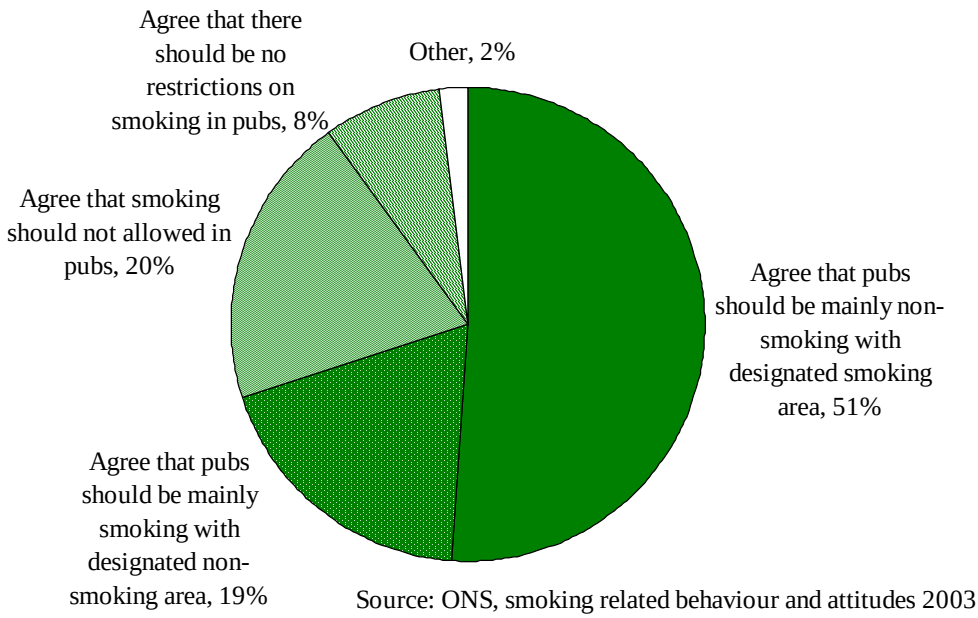
[123] Estimate of deaths attributable to passive smoking among UK adults: database analysis BMJ, doi:10.1136/bmj.38370.496632.8F (published 2 March 2005)

[124] It is estimated that there are 11,300 deaths attributable to passive smoking each year in the UK, that is 3.86% of all deaths (total deaths in UK: 293,061). Assuming that the proportion of deaths from passive smoking in the United Kingdom is the same as in Wales, it is estimated that there are 615 deaths attributable to passive smoking each year in Wales (total deaths in Wales: 15,962).

[125] ONS, Smoking related behaviour and attitudes 2003

The chart below shows people's attitudes towards smoking restrictions in pubs.

Attitudes towards smoking restrictions in pubs
Great Britain 2003



Source: ONS, smoking related behaviour and attitudes 2003

50 percent of working adults aged 16 and over report that there is no smoking at all in their work place (compared to 40 percent in 1996), and a further 36 percent report that smoking is permitted in designated areas only.

Overall, the vast majority (92 percent) agree that there should be smoking restrictions in public places where there are, or are likely to be, children under the age of 16.

2. In Wales

According to campaign material, the measures in the Bill have received popular support in Wales.

> "Opinion polls have suggested that most people in Wales, between two-thirds and three-quarters, support this plan to "clean up the air" as Morgan herself puts it."[126]

The poll referred to is the State of the Nation IV poll run by *ic Wales* newspapers.[127] The findings echo those of a survey conducted in March 2004, reported on the NAW Smoking Consultation website. The findings are summarised in the table below. [128]

---

[126] http://www.epolitix.com/EN/Legislation/200501/9177a654-4d28-4ad6-a492-c8d5847382ec.htm

[127] "Let's ban those fags" *South Wales Echo* 11 January 2005 http://icwales.icnetwork.co.uk/capitalcity/news/tm_objectid=15064872&method=full&siteid=50082&headline=let-s-ban-those-fags--name_page.html

Attitudes towards smoking restrictions in public places in Wales

percentage

	Strongly agree/ agree	Neither	Disagree/ strongly disagree
Support for restrictions on smoking in public places:			
At work	76	14	10
In restaurants	78	12	11
In pubs	50	22	28
In hospitals	92	4	4
In schools	91	4	5
In taxis	76	13	11
In shopping centres	65	19	15
In cafes	70	15	14
In leisure centres	78	13	9

Source: Welsh Omnibus Survey 2004

Notes: A total of 988 interviews were completed and analysed. 31 percent of the sample were current smokers (31 percent of male respondents and 30 percent of female respondents).

A small number of people also mentioned "everywhere" (3%), "transport" (7%), "public places" (5%), "cinemas and theatres" (3%) and "enclosed/confined spaces" (1%).

An overview of responses received by the Consultative Committee are summarised below:

1. A total of 90 responses were received, but one was duplicated.
2. 27 responses were from members of the public. Of these 24 support a ban, mostly on grounds of health and comfort. Several referred to the ineffectiveness of ventilation, or that equipment was switched off or out of order. One respondent enclosed a petition with 142 signatures.
3. The four who were against a ban primarily cited grounds of personal liberty.
4. Most of the responses from the general public focussed on smoking in pubs and restaurants. Two respondents referred to problems of environmental smoke in the common areas of sheltered accommodation.
5. 62 organisations responded, 43 of who provided supporting evidence.[129]

[128] Committee on Smoking in Public Places Agenda Paper 3, Summary of responses from written consultation, 9 December 2004 http://www.wales.gov.uk/keypubassemsmoking/content/0404-paper3-e.pdf

[129] Committee on Smoking in Public Places Agenda Paper 3, Current work by the Welsh Assembly Government, 15 July 2004 http://www.wales.gov.uk/keypubassemsmoking/content/0104-paper3-e.htm