FINANCE COMMITTEE

AGENDA

17th Meeting, 2004 (Session 2)

Tuesday 1 June 2004

The Committee will meet at 10.00 am in Committee Room 2 to consider the following agenda items:

1. **Prohibition of Smoking in Regulated Areas (Scotland) Bill:** The Committee will take evidence on the Bill’s Financial Memorandum from—

   Stuart Ross, Chairman of the Year and Colin Wilkinson, Secretary, Scottish Licensed Trade Association; then

   Colin Cook, Head, Substance Misuse Division; Mary Cuthbert, Alcohol and Smoking Team Leader, and Calum Scott, Economic Adviser, Analytical Services Division, Health Department, Scottish Executive; then

   Stewart Maxwell, MSP, Member in Charge; and David Cullum, Clerk, Non-Executive Bills Unit.

2. **Committee Away Day:** The Committee will consider whether it wishes to hold an away day to discuss its forward work programme.

3. **Items in private:** The Committee will decide whether to consider the draft reports on its relocation inquiry and Stage 1 of the 2005-06 Budget Process in private at future meetings.

Susan Duffy
Clerk to the Committee
The papers for this meeting are:

**Agenda Items 1 and 2**

Prohibition of Smoking in Regulated Areas etc. (Scotland) Bill, Policy Memorandum and Explanatory Notes—
[http://www.scottish.parliament.uk/bills/index.htm#20](http://www.scottish.parliament.uk/bills/index.htm#20)

Written Submissions  
PRIVATE PAPER

**Agenda Item 3**

Paper by the Clerk  
PRIVATE PAPER
Finance Committee

17th Meeting 2004 – Tuesday 1 June 2004

Prohibition of Smoking in Regulated Areas (Scotland) Bill Financial Memorandum - Written Submissions

1. In order to assist the Committee in its consideration of the above Financial Memorandum, written submissions have been received from the following organisations:

   Scottish Court Service
   Federation of Small Businesses in Scotland
   Substance Misuse Division, Scottish Executive Health Department

2. The Committee is invited to consider these submissions.

   Emma Berry
   May 2004

SUBMISSION FROM SCOTTISH COURT SERVICE

The Bill seeks to introduce new categories of offence which would result in additional cases coming before the courts. However, the Financial Memorandum indicates, on the basis of experience of similar legislation in other jurisdictions, that the number of cases reaching the sheriff courts is likely to be small. Hence the impact upon the Scottish Court Service should be negligible and capable of being absorbed within the existing resources.

   Alan Swift
   Acting Chief Executive

SUBMISSION FROM THE FEDERATION OF SMALL BUSINESSES IN SCOTLAND

The Federation of Small Businesses is Scotland’s largest direct-member business organisation, representing 18,000 members. The FSB campaigns for an economic and social environment which allows small businesses to prosper. Representing a large number of hospitality and catering business across Scotland, the Federation welcomes this opportunity to comment on the detail of the proposals contained within the Financial Memorandum. The FSB intends carrying out more detailed consultation of its members on smoking restrictions following the publication of the Scottish Executive’s anticipated consultation document on passive smoking.

Whilst we support the public health objectives of the present Bill, we believe that the Financial Memorandum underestimates the real costs that these proposals would
have to businesses. It will have an impact on many licensed premises’ turnover and the current wording would require almost all small establishments serving food to invest in significant alterations or ban smoking throughout their premises, even in areas where food is not served.

**Costs on Individuals, Companies and Other Bodies**

**Loss of Trade**

We disagree with the assertion that, “There is also clear evidence from other jurisdictions that there will be no loss of trade costs to businesses.” Evidence from other countries on the impact of a smoking ban on customer levels in pubs is contradictory. The introduction of the ban on smoking in public places in Ireland is so recent that any analysis of its impact must be regarded as at best provisional, and the relevance to Scotland of the impact of bans in other countries is questionable.

The Financial Memorandum makes no mention of the differential impact of the Bill on different types of establishment. For example, many pubs rely on a small number of customers for a significant proportion of their regular turnover, and there is a perception that this group of clients is most likely to stop visiting premises where smoking is banned.

**Provisions of Bill**

The Bill would ban smoking in small, single roomed premises where any kind of food is served. The only alternatives for proprietors would be to stop serving food, which makes up the majority of many establishments’ profits, or to carry out expensive alterations to set up areas with a so-called ‘buffer zone’. The consultation suggests that proprietors have to make a straightforward choice between serving food or allowing clients to smoke, but as argued above, either of these actions will have a significant impact on turnover, and could potentially make small, marginally profitable businesses unviable.

Many establishments currently allow smoking in the Public Bar but prohibit it in areas where food is being served, but under the Bill this will no longer be permissible where there is a connecting door between the rooms. The current wording of Section 1, sub-section 2 extends the proposed prohibition to any enclosed space adjoining a controlled area, which will effectively ban smoking in any part of premises which serves food, even if no food is served in that particular area. Obviously, blocking off doors and connecting corridors to establish buffer zones as required by the Bill would be expensive and often impractical due to emergency exits, access to toilets and so on.

We therefore suggest deleting Section 1 subsection 2 so the ban only applies to controlled areas and not adjoining areas, as this subsection would have the unintended consequence of banning smoking in all parts of any establishment that serves food, even in areas where food is not served.

**Signage and Training**
The costs to business of extra signage are acknowledged in the Financial Memorandum, and we agree that these would not be significant. As with all changes in regulations, additional training of staff would be required which would also have a cost to business.

**Savings**

The Memorandum suggests that non-smoking premises are likely to enjoy reduced insurance premiums but there is no detail on the scale of these savings and it is extremely improbable that these will be proportionate to the costs and lost revenue outlined above.

FSB Scotland

**SUBMISSION FROM SUBSTANCE MISUSE DIVISION, SCOTTISH EXECUTIVE HEALTH DEPARTMENT**

**Introduction**

1. The Finance Committee has invited officials for views on the assumptions in the Financial Memorandum regarding the costs that will fall as a consequence of the Bill to the Scottish Executive and for any views on the overall figures and assumptions contained in the Financial Memorandum. A full Regulatory Impact Assessment has not been prepared on the Bill but this paper outlines officials’ preliminary views on the assumptions made within the Financial Memorandum.

2. It should be noted that, to inform future policy on smoking in public places, the Scottish Executive is shortly to undertake a wide-ranging consultation and evidence gathering process. While legislative action is clearly an option, the Scottish Executive is currently adopting a neutral position in relation to the Bill on the basis that it is premature to reach a decision on legislation until we have time to review and consider all the evidence from the consultation in its entirety.

**COSTS ON THE SCOTTISH ADMINISTRATION.**

**Compliance, prosecution and smoking prevention**

3. The Financial Memorandum assumes compliance rates based on evidence from New York and prosecution rates from prosecutions in respect of seat belt offences. It also refers to current expenditure devoted to smoking prevention activity which includes passive smoking although makes no assumptions about future expenditure.

4. Financial assumptions made in the memorandum are based on a 98% compliance rate, a 1.52% annual prosecution rate and prosecution costs of £260 per hearing. On this basis it estimates that 640 licensed premises may not comply initially and, with the applied prosecution rate assumption, 10 prosecutions of proprietors/owners each year at a cost of £2600. It concludes that these costs are low and, therefore, could reasonably be absorbed within existing budgets.
5. More recent evidence from New York\(^1\) suggests that the compliance rate may be slightly lower at 97%. The more complex nature of the measures contained in the Bill would also suggest a higher rate of non-compliance initially. Moreover, it could be argued that prosecution rates could also be higher than assumed because it may be easier to catch non-compliance with a smoking ban than non-compliance with the seatbelt law.

6. With this in mind and for illustrative purposes only if we assume a compliance rate of between 90 and 98% and an assumed prosecution rate of between 1 and 5% per annum this would produce prosecution costs ranging from £1560 to £41,600. Again this range of costs is comparatively small and could reasonably be absorbed within existing budgets.

**COSTS TO LOCAL AUTHORITIES**

7. The Financial Memorandum assumes no additional enforcement officers would be required to enforce the Bill. However, in Ireland, primarily as a result of the newly introduced blanket ban on smoking in the workplace with only few exemptions, an additional 41 people have been hired with a specific remit to deal with tobacco control. It could be argued, therefore, that the more complex nature of the proposals contained in the Bill would present much more of an enforcement challenge than is the case in Ireland. It would seem not unreasonable to assume, therefore, 1 fulltime environmental health officer in Scotland per local authority would be necessary, this would add an additional burden of £1.156m pa. Additional costs could also be incurred to “police” the ban outwith core working hours.

8. Another potential cost (highlighted in a number of the local authority submissions on the Bill) is the resource requirement for information provision in support of novel legislation of this type. In Ireland, for example, a compliance help-line has been set up which allows customers to phone and report alleged breaches of the ban. A very rough estimate might suggest a cost of £50-100K for the first year based on the Irish experience.

**COSTS ON INDIVIDUALS, COMPANIES AND OTHER BODIES**

9. The Financial Memorandum suggests that compliance costs for businesses would be minimal -£25-50 each. However, this only takes into account the estimated cost of new signage. Account is not taken of the cost of structural alterations which would be necessary if an operator wishes to allow smoking to continue in some parts of the premises while food is served elsewhere. To avoid this burden, some venue operators might opt either to ban smoking completely or to stop serving food altogether.

10. In terms of impact on income, the Financial Memorandum assumes there will be no loss of trade/income to businesses and points to evidence (in the policy memorandum) that laws banning smoking in restaurants and bars in other countries had no negative impact either on revenue or jobs. While, there is evidence from New York –where a complete ban is in place- of an increase in business for bars and

\(^1\) The state of a smoke-free New York City: A one year review.
restaurants, with tax revenues up by 8.7% (April 2003-January 2004), it is impossible to tell from the available information to date the extent to which this is due to the smoking ban as opposed to other relevant factors.

SUBSTANCE MISUSE DIVISION
SCOTTISH EXECUTIVE HEALTH DEPARTMENT
25 MAY 2004
Convener and Committee Members

We are here representing the Scottish Licensed Trade Association which has a membership of approximately 2,200 licensees. Most of our members are self-employed business people engaged in trading in pubs and hotels but we also represent some restaurateurs, entertainment club owners and take home operators.

My name is Stuart Ross and I hold the position of Chairman of the Year of the SLTA which is akin to a non-executive role on the board of directors of a company. I am also Chief Executive of the Belhaven Group Plc which is Scotland’s largest regional brewery with turnover in excess of £100m per annum, an estate of 240 pubs and in excess of 1,400 members of staff. I have been able to use information obtained within Belhaven to help the SLTA prepare this submission as we are endeavouring to address the financial implications of the Bill not just on the membership of the SLTA but on the wider field of the entire Scottish licensed trade including sports and social clubs.

I am joined today by Colin Wilkinson who is the Secretary of the SLTA and the pivot of the organisation in terms of member services and administration. The SLTA offices are based in the west end of Edinburgh.

We have approached our submission in the following manner, addressing three questions:

1. How will the licensed trade react to the Bill?
2. What will be the capital cost of providing non-regulated areas?
3. What will be the ongoing annual revenue cost to the trade in terms of compliance with the Bill through operating both regulated and non-regulated areas?
**Question 1 – How will the licensed trade react to the Bill?**

We see four options.

(a) Licensed outlets will cease to supply food in regulated areas which will therefore become non-regulated.

or (b) licensed outlets will continue to supply food and impose a ban on smoking in regulated areas.

or (c) where licensed outlets already have segregated areas, food will be served in one regulated area with another area being a non-regulated area where smoking is permitted.

or (d) licensed premises will create segregated areas in order to enable food to be supplied in the regulated area and to allow smokers to continue to drink (but not eat) in the non-regulated area.

It is our submission that options (c) and (d) will be heavily favoured by most members in the trade as licensees will not want to concede food turnover (which we estimate at 20% of total take) but neither will licensees wish to put wet sales at risk by disallowing smoking completely. Many public houses serve food until mid-evening hours and thereafter prioritise wet sales.

Table 1 attached shows that there is a total of approximately 11,500 on-premise licences in Scotland, including registered clubs. Based on a survey of Belhaven pubs and other information available to us, including much estimation and guesstimation at this stage, we contend that almost 50% of Scottish licensed premises would opt to provide segregation – 5,000 in total.

Of that 5,000, we estimate that 50% would choose to create a new bar in the segregated area in order to comply with the level of supervision which is necessary to properly control and manage the sale of alcohol in accordance with the 1976 Act.
Question 2 - What will be the capital cost of providing non-regulated areas?

Can I now refer you to Table 1, attached to this paper. We estimate that the capital cost of compliance with the Bill will be in the region of £85m. However, costs may be well in excess of that, depending on the views of local regulatory authorities on matters such as the provision of fire escapes and facilities for the disabled.

Segregation may prove to be more difficult for many outlets than has been suggested in this memorandum. Businesses not able to provide regulated and non-regulated areas will suffer competitive disadvantage which will result in financial failure due to loss of turnover. It is impossible to put a figure against this, particularly in the short time span available to us since we received your invitation to address the Finance Committee.

The figures used in Table 1 have been derived from a survey completed within Belhaven where we assessed 38 pubs individually and calculated the costs involved in providing segregated areas in each of them (in 7 of the pubs it was not practical to segregate). We then averaged the costs over the 31 pubs where segregation is thought to be feasible.

The capital costs can be split into three main areas:

- Creating a segregated area through the building of walls, partitions, etc with a vestibule space in order to ensure that the non-regulated areas do not come within the definition of “connecting spaces”. This averages £8,000 per pub.

- Providing additional ventilation in non-regulated areas where smoking will become more prevalent as smokers eschew regulated areas, particularly later in the evening trading period. This averages £4,000 cost per pub.

- Providing a bar and gantry facility in the non-regulated area. The cost to do so has been estimated at £2,000 per square metre x 5 metres, averaging £10,000 cost per pub.

Can I now talk you through the table in a bit more detail.
Question 3 – What will be the ongoing annual revenue cost to the trade in terms of compliance with the Bill through operating both regulated and non-regulated areas?

Can I now refer you to Table 2, attached to this paper and, again, I would like to communicate to the Committee the assumptions made in preparing it.

It is our contention that the total cost of compliance to the licensed trade will be £110m per annum and we believe this to be a conservative estimate.

Can we now comment on paragraph 63 of the Explanatory Notes to the Bill. It would appear that the sponsor of the Bill is clearly of the view that no adjustment would be made to licensed premises in the manner which we have suggested. We believe it is hugely simplistic, and wholly unrealistic, to suggest that the licensed trade would react to the Bill by maintaining the status quo in terms of operational modus operandi, thus implementing a total ban on smoking in premises where food is served. To do so would simply create a divide in the licensed trade between wet driven/smoking pubs and food driven/non-smoking pubs. Whilst this may be the sponsor’s objective, the commercial implications for individual licensees are so material that dramatic changes would be made in the physical structure and operational modus operandi of the majority of licensed premises.

We have not had time to challenge the statement made in paragraph 66 of the Explanatory Notes to the Bill where it is stated that “there is clear evidence from other jurisdictions that there will be no loss of trade costs to businesses”. We would ask the Committee, through the Convener, if he would allow us further time to study the policy memorandum at paragraphs 29 to 37 and respond with our views on it at a later date. Our members are extremely fearful of the financial and economic impact of a ban on smoking in public places and it is very important from our point of view to understand any fact-based information provided from countries where smoking has either been totally banned or partially banned along the lines of this Bill. Can the Convener advise us how we can gain access to the aforesaid policy memorandum.

Thank you for having invited the SLTA to make this submission which we hope you have found both helpful and informative.

Stuart Ross
May 2004
## THE PROHIBITION OF SMOKING IN REGULATED AREAS (SCOTLAND) BILL

### LICENSED TRADE COMPLIANCE COSTS – CAPITAL

<table>
<thead>
<tr>
<th>Licence Type</th>
<th>Number of Licensed Outlets</th>
<th>Estimated Number Providing Non Regulated Areas</th>
<th>Capital Cost of Creating Non Regulated Areas (£8,000 per unit)</th>
<th>Capital Cost of Ventilation in Non Regulated Areas (£4,000 per unit)</th>
<th>Capital Cost of Provision of Bar in Non Regulated Areas (£10,000 per unit) 50% of Outlets Only</th>
<th>TOTAL CAPITAL COST</th>
</tr>
</thead>
<tbody>
<tr>
<td>Leased Tenanted Pubs</td>
<td>900</td>
<td>600</td>
<td>£4,800,000</td>
<td>£2,400,000</td>
<td>£3,000,000</td>
<td>£10,200,000</td>
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<tr>
<td>Managed Pubs</td>
<td>500</td>
<td>400</td>
<td>3,200,000</td>
<td>1,600,000</td>
<td>2,000,000</td>
<td>6,800,000</td>
</tr>
<tr>
<td>Independent Pubs</td>
<td>4,600</td>
<td>2,500</td>
<td>20,000,000</td>
<td>10,000,000</td>
<td>12,500,000</td>
<td>42,500,000</td>
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<tr>
<td>Clubs</td>
<td>2,200</td>
<td>1,000</td>
<td>8,000,000</td>
<td>4,000,000</td>
<td>5,000,000</td>
<td>17,000,000</td>
</tr>
<tr>
<td>Hotels, Restaurants, Others</td>
<td>3,300</td>
<td>500</td>
<td>4,000,000</td>
<td>2,000,000</td>
<td>2,500,000</td>
<td>8,500,000</td>
</tr>
<tr>
<td><strong>TOTAL</strong></td>
<td><strong>11,500</strong></td>
<td><strong>5,000</strong></td>
<td><strong>£40,000,000</strong></td>
<td><strong>£20,000,000</strong></td>
<td><strong>£25,000,000</strong></td>
<td><strong>£85,000,000</strong></td>
</tr>
</tbody>
</table>

Notes:
1. Cost of creating segregated area based on a survey of 38 Belhaven pubs and “averaged”.
2. Cost of ventilation is average expense of two new units.
3. Cost of provision of bar, with gantry, based on £2,000 per sq. metre x 5 metres.
4. This schedule ignores cost of additional fire escape provision which may well be necessary.
5. This schedule ignores cost of providing satisfactory access/egress for disabled customers.
THE PROHIBITION OF SMOKING IN REGULATED AREAS (SCOTLAND) BILL

LICENSED TRADE COMPLIANCE COSTS – REVENUE

1. Additional cost of labour to staff bars created in non-regulated areas:

- 1 member of staff for 98 hours per week per pub = 98 hours
- 1 additional member of staff for 47 hours per week per pub = 49 hours
- Total number of additional hours per week per pub = 147 hours
- Rate per hour (average) = £5
- Additional labour cost per pub per week = £735
- Employer’s cost at 12% = £88
- Total additional labour cost per pub per week = £823
- Total additional labour cost per pub per annum = £42,796

Number of pubs creating bars in non-regulated areas = 2,500

Annual cost to the trade in terms of increased labour = £107,000,000

2. Additional annual energy cost in respect of power supply to the bar area for dispense equipment, hot water, downlighting, etc £500 per pub

Number of pubs as above 2,500

Annual cost to the trade in terms of increased energy £1,250,000

3. Additional annual cleaning and consumable charges in order to maintain required standard of hygiene in the bar area and to provide sufficient glassware, etc £600 per pub

Number of pubs as above 2,500

Annual cost to the trade in terms of increased cleaning and consumable expenses £1,500,000

Total additional annual cost £109,750,000
Finance Committee

17th meeting 2004 - Tuesday 1 June 2004

Committee Away Day

1. The Committee held an away day in August last year. While this was predominantly an opportunity for members to be briefed on aspects of the Committee’s work, it also provided an opportunity for the Committee to discuss its priorities and future work programme.

2. As it is now nearing the end of the first parliamentary year of the new session, it is suggested that members may wish to consider holding another away day. The purpose of this would be to discuss the Committee’s priorities for the forthcoming parliamentary year, the balance between its role in scrutinising the Executive’s budget, its scrutiny of legislation and initiation of inquiries, and any associated timetabling issues.

3. The Committee had also expressed its desire to hold a seminar on the Budget process but to defer the seminar until the Committee had been able to assess the impact of the revised Annual Evaluation Report and any other changes to the process which the Executive may propose. It is suggested that a discussion on a Budget seminar could also take place at a Committee away day.

4. It is suggested that such an away day be held either in the last week of August or first week of September and that it is held outwith Edinburgh.

5. If the Committee agrees in principle to hold an away day then finalisation of dates, venue and agenda could take place by correspondence.

Susan Duffy
Clerk to the Committee