3rd December 2018

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Dear Mr Alves

Response to St Helier Roads Committee consultation on non-smoking al fresco dining areas

Declaration of interest
I am writing on behalf of FOREST (Freedom Organisation for the Right to Enjoy Smoking Tobacco), a consumer group founded in 1979.

FOREST represents adults who choose to smoke tobacco in full knowledge of the health risks associated with tobacco products. We also represent non-smoking adults who are tolerant of those who smoke tobacco.

One of our aims is to highlight the increasingly intrusive nature of government in the lives of private individuals.

FOREST receives donations from British American Tobacco, Imperial Tobacco Limited and Gallaher Limited (part of the Japan Tobacco Group of Companies). However the views expressed in this submission and any FOREST-associated website or publication are those of FOREST alone.

Public smoking bans – public opinion in the UK

When smoking was banned in enclosed 'public' places, including privately-run businesses such as pubs, clubs and restaurants, we argued that proprietors, including publicans and restaurateurs, should be allowed to choose a policy on smoking that best suited their business and the wishes of their customers and staff.

Prior to the ban many restaurateurs had voluntarily chosen to prohibit smoking inside their restaurants. There was however relatively little demand for a complete ban on smoking. In 2006, according to the Office for National Statistics, only 30 per cent of people supported a comprehensive ban. The majority (70 per cent) were opposed to such a policy. The largest single group (45 per cent) supported separate smoking rooms for those who wished to smoke.

Polls in the UK suggest there is still widespread support for smoking rooms in pubs and clubs. According to a poll by ComRes for the Institute of Economic Affairs (December 2014), 51 per cent would like the current legislation to be amended to allow separate smoking rooms in pubs.[1] Another poll, by Populus for FOREST (June 2015), found that 57 per cent of adults supported dedicated smoking rooms in pubs and clubs.[2]

Similar polls have been conducted by Populus for FOREST in Scotland (2016) and Wales (2017). In March 2016 a survey of more than 1,000 adults in Scotland found that 54 per cent of the public would allow smoking rooms, with two fifths (40 per cent) opposed to the idea. Almost half (49 per cent) of non-smokers said there should be an option for indoor smoking rooms. Women (54 per cent) were equally as likely as men (55 per cent) to think pubs and clubs should be allowed to accommodate smokers in a designated smoking room.[3]

A poll by Populus for FOREST in Wales in March 2017 that found that 58 per cent of adults in Wales thought pubs and private members' clubs, including working men's clubs, should be allowed to provide a well-ventilated designated smoking room to accommodate smokers.[4]

Yet another poll conducted by Populus for FOREST ahead of the tenth anniversary of the smoking ban in England in 2017 found that 48 per cent of adults would allow smoking rooms in pubs and clubs, with 42 per cent opposed to the idea. (Nine per cent said 'Don't know'.) A majority of men were in favour of allowing smoking rooms (54 per cent versus 38 per cent). Among women the figures were 43 per cent in favour and 46 per cent against.[5]

The most recent poll, in Scotland in June 2018, found that nearly three in five adults (57 per cent) think pubs and private members' clubs, including working men's clubs, should be allowed to provide a well-ventilated designated smoking room, with only one in six (16 per cent) opposed to the idea and a quarter (27 per cent) undecided.[6]

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[1] Sin taxes, public health and public opinion (IEA, January 2015)

[2] Poll: Public believe tackling obesity and alcohol abuse more important than further anti-smoking measures (June 2015)
[3] Poll: Majority of adults in Scotland would allow smoking rooms in pubs and clubs (March 2006)
[4] Almost 60% of adults in Wales would allow smoking rooms in pubs and clubs March 2017)
[5] Public split on allowing separate smoking rooms in pubs and clubs (June 2017)
[6] Poll: Most Scots think government policies to reduce smoking rates have gone too far or far enough (June 2018)

Impact of smoking bans on cafes, pubs and restaurants

Why are these polls relevant to this consultation? One, they demonstrate that the comprehensive ban on smoking in all enclosed 'public' places is not as universally popular as we are generally led to believe. Two, although we have not conducted similar polls in Jersey, it is not unreasonable to think that the citizens of St Helier might be similarly minded on the issue of smoking in 'public' places.

The impact of extending the smoking ban to al fresco dining areas could be devastating for many cafes, pub and restaurants. We know, for example, that over 11,000 pubs in England closed in the ten years following the introduction of the smoking ban.[7] We accept there were other factors, including rising beer duty and a recession, but the recession didn't start until the second quarter of 2008 and in the year after the smoking ban was enforced in July 2007 over one thousand pubs closed in England, a sharp increase on the rate of closures before the smoking ban. This followed a similar pattern in the twelve months following the introduction of smoking bans in Ireland (2004) and Scotland (2006), suggesting a clear correlation between pub closures and smoking bans.

The pubs and bars hardest hit were those without a beer garden or outside space where smokers could light up. In general pubs and bars that had an outdoor area that could accommodate smokers in reasonable comfort benefitted enormously in relation to their landlocked rivals. Imagine the impact if cafes, bars and restaurants were now denied the opportunity to offer their customers a smoking area outside. At a time when many establishments are struggling to stay in business, this is exactly the type of unnecessary regulation that could put them out of business.

Customers vote with their feet. If a significant number of non-smoking customers don't like people smoking in beer gardens and outside pubs and restaurants word will quickly filter back to the proprietor. Alternatively they will go elsewhere and there will be a significant loss of business. If that happens the proprietor has every right to change his policy on smoking in al fresco dining areas but it should be a matter for the owner not government.

Another unintended consequence of an al fresco smoking ban includes the possibility that some establishments will simply stop selling food. In 2015 it was reported that some venues in New South Wales in Australia had banned food in outdoor areas in order to allow patrons to keep smoking:

> In July 2015 new laws came into effect banning smoking in commercial outdoor dining areas across NSW. This includes at restaurants, cafes and licensed venues such as bars and pubs … But some bars and pubs have opted to ban food in outdoor areas – and allow patrons to keep smoking.[8]

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[7] Road To Ruin: The Impact of the smoking ban on pubs and personal choice (FOREST, June 2017)
[8] Smokers win out over outside diners at some NSW pubs and bars: health groups (Guardian, 25 December 2015)

Impact on consumers

The older the person the greater the impact of smoking bans. Anecdotally we know that many older people stopped going to the pub when they were banned from smoking while drinking inside. Overnight a enjoyable ritual was taken away from a great many people and some preferred to stay at home where they could smoke and drink in the comfort of their own home.

In the same way that many smokers stopped going to the pub as often as they did before the introduction of the indoor smoking ban, it is likely that, denied the opportunity to smoke in outside dining areas, many smokers will respond by visiting those establishments less, if at all.

Ironically we are told that loneliness among older people in particular is a serious problem in society. Has it ever occurred to legislators that the impact of anti-smoking policies goes far beyond the honourable goal of harm reduction and can often be inhumane? Why should so many people's lives be made miserable by the introduction of unnecessarily restrictive measures that have no impact on public health but may force more and more people to stay at home because, if you're a smoker and increasingly ostracised from society, it's hardly worth going out?

Impact on public health

Although FOREST was (and still is) strongly opposed to the ban on smoking in all enclosed 'public' places, we accepted that a smoky, unventilated environment could be unpleasant for some people, hence our proposal that smoking should only be allowed in premises equipped with modern air filtration systems that could achieve a minimum, government approved, standard of air quality even while people were smoking. (The best systems, it was reported at the time, could remove up to 94 per cent of the particles created by environment tobacco smoke.)

Smoking outside is a completely different matter. There is very little evidence (if any) that smoking in the open air is a health risk to anyone other than the smoker. Smoke from a cigarette or cigar is immediately diluted in the open air. Within seconds the smoke rises, dissipates and disappears. Any threat to the health of non-smokers is, by common consent, very small or non-existent.

If there is incontrovertible evidence to suggest otherwise, we invite the Roads Committee to present it as part of the report on the consultation.

Despite this some tobacco control campaigners are determined to ban smoking in the open air. Why? What possible benefit will it have for non-smokers apart from encouraging a handful of zealous anti-smokers to feel even more smug and sanctimonious than they already do?

Impact on children

With little or no evidence that smoking in outdoor spaces is harmful to anyone else's health, including children, what other reasons are given for extending the smoking to al fresco dining areas?

It's been suggested that society needs to 'protect' children from the sight of an adult lighting up. Do children really need such protection? The argument that children smoke because they are influenced by the sight of a complete stranger lighting up in outdoor public places doesn't stand up to serious scrutiny. If there is genuine evidence to support this argument let's see it. Instead it's widely accepted that the principal reasons children start smoking are (a) peer pressure and (b) the influence of family members.

Banning smoking in al fresco dining areas will make no difference whatsoever. Family members will continue to smoke but if they are denied the opportunity to smoke outside, away from the family home, they are more likely than ever to smoke in and around the home, in front of their own children.

Ironically, if the sight of adults smoking outside is an issue for some people, it's a direct result of the existing smoking ban that doesn't allow designated smoking rooms inside cafes, bars and restaurants. In other words, the primary reason people smoke outside is because the law forces them to do so!

Choice, etiquette and manners

One side effect of the smoking ban has been to make some non-smokers ridiculously sensitive to even a whiff of tobacco smoke. They know it won't endanger their health but they object to the smell. For goodness sake, if councils ban everything because a handful of self-righteous people don't like something they are only briefly exposed to (and can easily avoid), residents and visitors are going to be overwhelmed by rules and regulations.

The real issue is one of choice and etiquette. Those who want to ban smoking in al fresco dining areas ignore the fact that smoking is already banned inside every pub, restaurant and café. There is no reason therefore why anyone should ever be inconvenienced by someone smoking while they are eating because all they have to do is eat indoors where the entire establishment is 'smoke free'. Is it such a hardship to eat indoors if you are so offended by someone smoking outside?

At least non-smokers have a choice. In contrast, having been prohibited from lighting up inside, those who wish to smoke do NOT have the choice to do so inside where it's warm and comfortable. Instead, if they wish to smoke while eating or drinking, they are forced to go outside, regardless of the weather.

In short, society already accommodates those who do not wish to be exposed to other people's tobacco smoke. Smokers, in contrast, have no such choice. They HAVE to go outside.

Note: FOREST would happily support a campaign that encourages smokers to be considerate when lighting up in outdoor dining areas. In defence of smokers, however, the overwhelming majority have changed their behaviour voluntarily without the need for unnecessary or draconian rules and regulations. Considerate smokers are not hard to find. Today, inconsiderate smokers are a very small minority of the population. Don't penalise the majority of smokers for the actions of a few.

A solution in search of a problem

How big a problem is smoking in al fresco dining areas? Can the Roads Committee provide a list of pre-consultation complaints that were received from patrons of outdoor dining areas? Have there been any observational studies that can demonstrate why this issue needs to be addressed with further regulations? Or is the perceived 'problem' based on anecdotal evidence alone?

Prior to the introduction of the ban on smoking in enclosed public places most middle-aged people like myself had experienced the occasional smoky pub or café. People older than me may also have experienced a smoky auditorium, train compartment and so on. Smoky pubs were increasingly rare, however, even before the smoking ban was introduced, because a significant number had already invested in air filtration systems that successfully removed many of the particles from environmental tobacco smoke. Restaurants, by and large, had gone 'smoke free' long before smoking bans were introduced.

Today I genuinely cannot remember the last time I was seriously inconvenienced by exposure to someone else's tobacco smoke. If it does happen it's a very rare event. (According to a new study, published this year, there has been a 97 per cent reduction in second-hand smoke exposure in Scotland over the last 20 years.[9] The situation is no doubt true in Jersey.

The truth is, unless you live with a smoker you will only rarely be exposed to tobacco smoke. On the few occasions you are it will probably be for no more than a few seconds, and on the equally rare occasion you wish to sit outside and enjoy a meal al fresco, remember this – non-smokers have a choice to sit inside where it's warm and 'smoke free'. The person who wishes, quite legitimately, to have a cigarette with his beer, wine, coffee or meal, doesn't have that choice. He or she HAS to sit outside. Now, even that small liberty is under threat.

Relatively few people are worried about people smoking in outdoor public spaces because few seriously believe exposure to tobacco smoke in the open air is a threat to their health and there's little to suggest they should be worried. The campaign to ban smoking outside is not for the convenience of non-smokers, it's for the convenience of a tobacco control industry that desperately needs another issue to justify the millions of pounds of public money it receives from central and local government.

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[9] [Second-hand smoke exposure falls by 97 per cent over 20 years](#) (Scotsman, 3 September 2018)

"The next logical step"

Banning smoking in al fresco dining areas is merely the latest in a long line of anti-smoking initiatives designed to denormalise smoking and smokers. There is no rhyme or reason to it other than it's the 'next logical step'. In other words, we've banned smoking in indoor public places, we've banned tobacco vending machines, we've hidden tobacco behind sliding doors so consumers can't see the packs, we've persuaded the government to put cigarettes in dull brown packs with grotesque images all over them, what shall we do next? Oh yes, let's ban smoking outside and make smokers' lives just a little more intolerable.

The stated goal of the anti-smoking industry is not merely to reduce smoking rates (a perfectly legitimate aim if achieved by education and persuasion rather than coercion and prohibition) but to denormalise a legal habit and, by association, millions of consumers. Denormalisation is a disturbingly Orwellian concept. To suggest that the 15 per cent of the adult population who consume a legal product are abnormal is an extraordinary insight into the minds of many politicians and anti-smoking campaigners.

As night follows day denormalisation will eventually lead to criminalisation. We've seen it in hospital grounds where 'voluntary' bans are frequently ignored. So what do the authorities do? A hospital in Nottingham wants the local council to introduce a by-law so smokers can be prosecuted for smoking in the open air. The Scottish Government has actually introduced legislation that will make it an offence, punishable by on-the-spot fines, for patients, visitors and staff to light up anywhere on hospital grounds.

The same will no doubt apply to those who transgress a new regulation on smoking in al fresco dining areas. Aside from the question of enforcement, are we seriously suggesting that people should be prosecuted for the victimless crime of smoking outside a café, bar or restaurant where food is served? In our view, such measures are a gratuitous and inappropriate use of power.

Smoking bans are regressive

Anti-smoking campaigners will applaud any move towards what they call a 'smoke free' world, but an attack on people's right to smoke in the open air where they are harming no-one apart, perhaps, themselves is also an attack on many ordinary people.

Extending the ban to outdoor areas would represent a triumph of paternalistic, middle class values. Like punitive increases in tobacco duty, smoking bans hit the poorest the hardest because it is generally accepted that most smokers come from less well off backgrounds.

Freedom of choice and personal responsibility

Whatever happened to freedom of choice and personal responsibility? Prohibiting smoking in outdoor public areas is an assault on both. Worse, it would infantalise every resident and visitor to St Helier because it will deny them the right to make their own decisions based on common sense and general civility.

Instead of allowing people to make their own choices and decisions, the Committee is threatening to do it for them because some people have lost faith, apparently, in our ability to manage own lives and how we interact with other people in a public space. Smokers don't need to be told how to behave around other people. The overwhelming majority of smokers know it can be annoying to some non-smokers if they light up in their immediate presence. Most of the time, therefore, they don't do it or, if they do, they often ask first. ("Do you mind if I …?") Alternatively the outside space in which they're smoking will be deserted or sparsely populated.

The point is, people should be allowed to interact with one another without the need for constant government intervention. Each and every day of our lives we make decisions about our behaviour. Smoking is usually a matter of civility. Most people are civil to one another and they don't need legislation or 'voluntary bans' dictating how they behave in every public space.

What do other towns and countries do?

It is worth noting that if St Helier was to adopt such a policy it would be one of the few places in Europe to do so. Indeed, we cannot think of a single town or city in Europe where there is a blanket ban on smoking in al fresco dining areas.

In England Brighton is the only city to consider and consult the public on such a policy. In 2015 Brighton City Council conducted a three-month consultation on smoke-free zones that attracted 1,898 responses – one of the highest response rates the council had ever received. The reaction to extending the smoking ban to outdoor areas was generally negative and as a result proposals to ban smoking on beaches, in parks and al fresco dining areas were dropped.[10]

In 2017 a strategy drawn up by Haringey Council in London included "extending smoke-free areas" to pub beer gardens and al fresco dining areas. Again, the proposal attracted a negative reaction and was dropped. According to one report:

> Tory local government minister Marcus Jones accused "municipal killjoys" of "peddling bad and mad ideas" and vowed to block the scheme. He added: "If implemented, these ill-founded proposals would lead to massive pub closures." [8]

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[10] Brighton and Hove beach smoking ban bid dropped (BBC News, 16 December 2015)

Ireland is the only EU member state whose government is considering a proposal to ban smoking in al fresco dining areas. To date however no decision has been made and there has been no public consultation on the matter.

Interestingly, Germany represents one of the more liberal European nations when it comes to regulations on smoking in public places. Policies differ from state to state but in several states smoking is still allowed in small bars (at the owners' discretion). One can only speculate why this is the case but some people believe that for historical reasons successive German governments have been reluctant to be too repressive in the way it treats its citizens, including those who choose to smoke.

Germany is not alone however and Austria also gives many cafes, bars and restaurants the right to be 'smoking' or 'non-smoking' indoors and out. In other EU member states such as Belgium there are few bars and restaurants with street or garden terraces that do not welcome smokers. Many 'adapt' their terraces to the cold weather, offering smokers a confortable place to smoke, drink and eat.

Choice, not prohibition, is the key to a free and liberal society and we urge the Roads Committee to follow their example and reject regressive, authoritarian regulations on small businesses and consumers of a legitimate product.

Conclusion

The ban on smoking in all enclosed public places, including every pub, club and restaurant, was justified, or so we were told, because it would improve the health of non-smokers (bar workers especially) who were exposed regularly to other people's tobacco smoke.

Ignoring the fact that many proprietors had gone to great lengths to improve air quality, or that only a minority of adults supported a comprehensive ban, or the lack of hard evidence that 'passive' smoking is, indisputably, a serious health risk, anti-tobacco campaigners were determined to stub out smoking in all enclosed 'public' places.

Now, just over a decade later, those same campaigners want to ban smoking in the open air when there is no evidence that exposure to environmental tobacco smoke outside presents ANY risk to other people's health. Indeed, the worst that can be said of smoking outside is that some people don't like the smell or, heaven forbid, the sight of someone lighting up.

Smokers contribute huge sums in tobacco duty that far outweigh the cost of treating smoking-related diseases. As net contributors to society, adults who choose to smoke deserve to be accommodated without further discrimination or threats of fines. Allowing adults to light up outside cafes, pubs and restaurants (at the landlord's discretion) seems very little to ask when smoking is already banned in every indoor public space and the overwhelming majority of outdoor public areas are generally smoke free too (in the sense that tobacco smoke doesn't linger for more than a few seconds in the open air).

In other words, there is NO justification for extending the smoking ban to al fresco dining areas. Tobacco is a legal product. Adults must be allowed to light up in outdoor public places without harassment or worse. Smokers must of course show consideration for others when they light up but there should be no place for zealotry in public health. Tolerance, common sense and good manners (on both sides) must be allowed prevail without more rules and regulations designed to control people's behaviour beyond what is reasonable and fair.

Smoking is already banned in every enclosed 'public' place including every privately-run pub and members' club. Unless someone is living with a smoker (and even then many smokers go outside to smoke) very few people are currently exposed, on a regular basis, to other people's tobacco smoke. Today most non-smokers can go for long periods – days, weeks, even months – without being exposed to more than the occasional whiff of tobacco smoke.

Pubs, restaurants and cafes are private businesses. Whether they choose to allow smoking in al fresco dining areas, where there is no risk to anyone else's health, should be up to them. Pubs and bars took a huge hit from the smoking ban with many closing as a direct result. Why should the future of many more businesses – including cafes and restaurants – be put at risk on the altar of tobacco control?

Banning smoking outside, even in al fresco dining areas, is unfair and unreasonable and will do nothing to improve public health. We urge the St Helier Roads Committee to reject the proposal and give owners of outdoor dining areas the freedom to implement policies that best suit their business, not the agenda of a small group of anti-smoking zealots.

Yours sincerely,

Simon Clark
Director, Forest