

# Smokefree Prisons

## Introduction

Many jurisdictions worldwide have implemented smokefree laws that apply to indoor public places and workplaces.<sup>1</sup> However, prisons are often exempt. This factsheet sets out the rationale for making prisons smokefree, identifies which jurisdictions have smokefree prisons, the impact of smokefree policies in prisons, and further issues that emerge from the evidence. It also sets out the process for going smokefree announced in September 2013 by the National Offender Management Service (NOMS) for England and Wales.

## Why make prisons smokefree?

Prisons are places where people live and work. Inmates and staff have as much right as the general population to be protected from toxic tobacco smoke in their home and workplace. There are several reasons for making prisons smokefree:<sup>2</sup>

- The need to protect staff and prisoners from the effects of secondhand smoke
- The need to improve prisoner health
- To minimise the risk of legal challenges by non-smoking prisoners or prison staff
- To reduce the risk of fires
- Lower maintenance costs
- Lower insurance rates
- To make it easier for prisoners to quit smoking

## Legal position in the United Kingdom

Under the regulations to bring the smokefree public places law into effect, which prohibited smoking in virtually all indoor workplaces, prisons in England were given a partial exemption,<sup>3</sup> as were prisons in Scotland<sup>4</sup> and Northern Ireland<sup>5</sup> but not in Wales.<sup>6</sup> In adult prisons in the UK, including Wales, smoking is prohibited in all indoor areas except cells occupied by smokers over 18 years of age.

There are no exemptions for juveniles aged under 18 and the areas set aside in youth offender institutions for juveniles are totally smokefree.<sup>7</sup>

Mental Health Units in England have been smokefree since 2008 as they do not have exemptions. The high security hospitals, Rampton, Broadmoor and Ashworth, are covered by the regulations requiring psychiatric premises to be smokefree. The high security hospitals have extended this to cover their entire premises, outdoors as well as in. This was legally challenged by inmates of Rampton but the High Court judged that being allowed to smoke was not a fundamental human right, under the European Convention on Human Rights, and the case was lost. The Court also noted the duty of care to staff, and that when a risk to staff from secondhand smoke was identified, there was a duty to take 'all reasonable precautions' to protect staff from that risk.<sup>8</sup>

A number of prisoners are now pursuing legal action, on the basis that being forced to breathe in tobacco smoke involuntarily is a breach of their human rights.<sup>9</sup> A legal challenge by a prisoner in the privately operated Parc prison in Wales was halted by the High Court in June 2015, on the basis of a commitment that the prison would become smokefree by 31 January 2016.<sup>10</sup>

### Air quality in prisons in England and Wales

Air quality measurements undertaken in 2007/8 concluded that: “*There seems little doubt that allowing a continuation of smoking behaviours in prison settings does expose staff and fellow inmates to unhealthy levels of particulate contamination.*”<sup>11</sup> Subsequent and more detailed air quality assessments carried out in 2014/15 have confirmed this finding. For example, a study of the air quality in four English prisons found that levels of PM<sub>2.5</sub> (particulate) pollution in smoking areas of prisons were extremely high, with mean levels during the day that far exceeded World Health Organization long-term mean and short-term maximum air quality guidance limits. The authors concluded that: “*Smoking in prisons thus represents a significant health hazard to prisoners and staff.*”<sup>12</sup>

### Policy position on smoking in prisons

A Prison Service Instruction from 2011 states that non-smokers must not be required to share a cell with a prisoner who is actively smoking.<sup>13</sup> However, in practice, this has not been enforced uniformly and non-smoking prisoners have been exposed to secondhand smoke. Prison staff are also exposed to tobacco smoke, particularly when inspecting cells, prompting the Prison Officers Association to call for more rigorous restrictions.<sup>14</sup>

In 2013 Public Health England, NHS England and the National Offender Management Service (NOMS) published a joint commitment to support the development of smoke-free prisons.<sup>15</sup> In September 2013 it was reported that the Prison Service planned to phase out the smoking exemption and that a number of “early adopter” prisons would implement a smokefree policy followed by a rolling out of the policy to all prisons.<sup>16</sup> However implementation of this policy was delayed.

On 28th September 2015 the Director General of NOMs wrote to the Justice Select Committee confirming that prisons in England and Wales would be going smokefree in a staged process. At the end of the process all open prisons would be smokefree in enclosed places, the remainder of the prison estate would become smokefree indoors and out. The timing is as follows:

- From 31 October all open prisons would prohibit smoking in enclosed places.
- From 31 October all prisons would start to implement smokefree wings on a voluntary basis (currently around 40% of prisons already have smokefree wings) Staff and inmates will be able to opt in to working and living in smokefree wings.
- From 31st January 2016 prisons in Wales would become smokefree (indoors and out)
- A group of prisons in the southwest of England would also be early adopters and become smokefree by March/April 2016
- The remainder of the prison estate will subsequently become smokefree, but the timing of the roll out is still to be determined.

Prisoners will be supported to quit smoking and for those who wish to use them, electronic cigarettes will be available to purchase in prison shops.

Elsewhere in the UK, The Isle of Man prison was the first to go smokefree in Europe when it adopted the policy in 2008, coinciding with the closure of an existing prison and its replacement with a brand new facility. Since 1 January 2013, the use of all tobacco products has been prohibited at Guernsey’s jail where prisoners are allowed to use electronic cigarettes as a nicotine substitute.<sup>17</sup>

## Where are prisons smokefree already?

Prisons in the USA have been adopting smokefree policies since the 1990s. The cultural shift was significant and fairly rapid in the US. In 1986, 53% of US prisons still provided free tobacco to inmates. By 2007, no prisons were providing free tobacco and 60% of prisons had gone completely smokefree.<sup>2</sup> All 105 federal prisons are now smokefree in indoor areas and, as at April 2014, 20 out of 50 states have made their correctional facilities smokefree and tobacco-free both indoors and outdoors.<sup>18</sup> This change was achieved in a country with the highest rate of incarceration in the world and, largely, without the support of NRT or other forms of stop smoking support for prisoners.

In Canada federal prisons adopted a smokefree policy in indoor areas in 2006. All Canadian provinces now have smoking bans which apply to both indoor and outdoor areas.<sup>19</sup>

In New Zealand prisons have been smokefree (indoor and outdoor) since July 2011. In its initial report in August 2012, the NZ Corrections Department found high compliance and acceptance of the policy by prisoners and consequently good protection of both prisoners and staff from secondhand smoke.<sup>20</sup>

In Australia most states have now implemented smokefree or tobacco-free policies. The Northern Territory was the first to implement a tobacco-free policy in July 2013, with no smoking and no tobacco allowed on site.<sup>21</sup> Queensland followed suit in May 2014 and the states of New South Wales, South Australia, Tasmania and Victoria implemented policies during 2015.<sup>22</sup>

## Positive impact of smokefree policies in prisons

### Improved air quality

As part of a study into air quality in prisons, the implementation of smokefree policies in North Carolina resulted in a significant improvement in air quality. The study found that, on average, levels of respirable suspended particulates (an accepted marker for secondhand smoke levels) decreased by 77% in these prisons after the law took effect compared to levels obtained before ban implementation.<sup>23</sup> Other studies also support these findings indicating that smokefree policies in prisons are “effective in reducing, but not eliminating, these exposures”.<sup>24</sup> A more recent study which examined the impact of the New Zealand smoking ban found that indoor air pollution levels were halved following the ban.<sup>20</sup>

### Health benefits

The principle benefit of smoking bans in prisons is the reduction in secondhand smoke. This is particularly important given the high levels of exposure observed in prisons.<sup>23,24</sup> In the Isle of Man, the smokefree policy has proven to be a success with the benefits for prisoners far outweighing any difficulties in enforcement.<sup>25</sup>

A US study measured the impact of smoking bans in prisons on smoking attributable illness and mortality between 2001 and 2011. During this time the number of states with any smoking ban increased from 25 in 2001 to 48 by 2011. The researchers found that in prisons with a smoking ban there was a 9% reduction in smoking related deaths, particularly deaths from heart and lung disease. In prisons where smoking bans had been in place for nine or more years there was also a reduction in deaths from cancer.<sup>26</sup>

### Opportunity to stop smoking

Despite the high smoking prevalence, prisoners are just as likely as other smokers to want to quit<sup>27,28</sup> and imprisonment provides an opportunity to access stop smoking advice and therapy. Studies have shown quit rates among prisoners who accessed stop smoking support to be comparable to those in the general population. A review of a series of pilot projects in England and Wales using a social marketing approach found that just as in the general population,

prisoners seeking help to quit may benefit from personalised support, pharmacological aids, access to staff for advice between sessions, and more diversionary activities.<sup>29</sup> Evidence from New Zealand suggests that half of all smokers who quit while in a smokefree facility leave prison intending to remain non-smokers.<sup>30</sup>

### **Economic benefits**

Helping tobacco users to quit results in considerable cost savings in health care expenditure. A US study found that for every dollar a state spends on smoking cessation treatments, it saves an average of \$1.26 - a 26% return on investment.<sup>31</sup> In New Zealand, it has been estimated that the smoking ban in NZ prisons could potentially save the New Zealand economy over \$113 million dollars annually.<sup>32</sup> Other cost savings can be achieved through lower risk of fires, reduction in cleaning costs, and savings for individuals who quit smoking, easing financial stress.

### **Implementation of smokefree policies in prisons**

Concerns have been raised that implementation of smokefree policies is more difficult in prisons than in other places but none of these problems have proven to be insurmountable in other jurisdictions.

### **High smoking prevalence**

Smoking rates among prisoners are much higher than the general population with estimates ranging from 64% to 92% in prisons in Europe, Australia and the US.<sup>33</sup> In the UK, studies undertaken between 2005 and 2010 included estimates of smoking prevalence in excess of 80% in both male and female prisoners.<sup>28</sup>

The high rates of smoking are partly a reflection of the very high rates – around 80% - of mental health problems in prisoners.<sup>28</sup> Prisoners also tend to be from poorer, less well-educated backgrounds where smoking prevalence is higher than average.

### **Problems with partial bans**

Partial smoking bans, for example where smoking is permitted outdoors, have been deployed in some jurisdictions such as Australia and Canada. However, partial bans can be problematic because prisoners are allowed to keep their cigarettes but are only allowed to smoke them during the very limited time they are allowed outside, may suffer withdrawal symptoms during the rest of the day, and may not be permitted outdoors at all due to inclement weather, lack of staffing etc. Allowing tobacco in prisons also makes it harder to enforce the indoor smoking ban or to help smokers cut down or quit smoking. For example in Quebec, Canada, despite the indoor smoking ban, a study found that 93% of inmates who declared themselves smokers reported using tobacco products inside the prison and 48% did not report any reduction in their tobacco use.<sup>34</sup> A review of prison smoking policies by the Offender Health Research Network found that total smoking bans appear to be more effective than partial bans in terms of the benefits they have for both prisoner and staff health, whilst partial bans appear to be more difficult to manage and enforce.<sup>35</sup>

### **Lax enforcement**

For policies to be effective they must be enforced. Unfortunately, there is a perception among some prison staff that smoking tobacco is less of a concern than use of other drugs or behavioural problems which can result in poor enforcement of the smoking policy.<sup>36</sup> In the 2011 survey of Quebec inmates referred to above, of the smokers who were caught smoking, 58% were not punished for violating the indoor ban.<sup>34</sup>

## Disorder concerns

In 2005, when smokefree legislation was being debated in the UK, concerns were raised that a smoking ban in prisons would increase tension and unruly behaviour.<sup>37</sup> In practice, such fears have been proven to be unfounded. Minimal levels of disorder have been reported in English young offender institutions which went smokefree in 2007. One institution reported that despite threats of disorder there was no disruption between offenders and staff when the smokefree policy was implemented.<sup>38</sup> Furthermore, smokefree policies have been implemented in mental health institutions in England. Despite some indications of disorder, the general trend suggests that violence is rare and not an inevitable result of implementing smokefree policies.<sup>18</sup>

## Contraband problems

Contraband tobacco appears to be a more significant problem with studies showing that tobacco black markets quickly develop in prisons following implementation of a tobacco ban.<sup>2</sup> The physical and social environment may also facilitate a tobacco black market. Factors include the architectural design, inmate movement inside and outside of the prison buildings, officer involvement in smuggling cigarettes to inmates, and officer vigilance in enforcing the smoking policy.<sup>39</sup> Following the introduction of the comprehensive smoking ban in New Zealand prisons there was an initial rise in contraband tobacco. However, prisons improved their methods for stopping illicit tobacco entering the facilities and no further problems have been reported.<sup>20</sup>

## Prisoner welfare

Some studies have suggested that nicotine withdrawal resulted in some prisoners becoming distressed when smokefree policies were implemented.<sup>40</sup> While this is not conclusive it might suggest that a solution to some prisoner distress could be the provision of cessation support beyond supplying nicotine replacement therapy (NRT). Other studies found that those prisoners who continued to smoke after a ban on smoking had been implemented were the most nicotine-dependent and had the highest levels of psychiatric distress.<sup>41</sup> These studies stress the importance of effective NRT provision and smoking cessation support to manage the distress among these prisoners.

## Conclusion

Despite initial concerns about the risk of disorder arising from a smoking ban there is a growing body of evidence to show that comprehensive smokefree policies can be successfully implemented in prisons. In particular, evidence from New Zealand suggests that smokefree policies work best with sufficient lead-in time to allow staff and inmates to prepare for the change. Secondly, prisoners should be provided with a good range of stop smoking support. Evidence from Guernsey shows that allowing prisoners to purchase electronic cigarettes can also be helpful. Thirdly, comprehensive policies (covering both indoor and outdoor areas) are preferable to partial policies. The significant health benefits gained by improved air quality and reduced tobacco consumption outweigh any negative factors and provide support for prisons to be made totally smokefree.

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