

# Briefing: The implementation of smokefree prisons in England and Wales

This briefing sets out how smokefree prisons were rolled out in England and Wales, the timeline and process of implementation, and the lessons to be learned for other jurisdictions considering making prisons smokefree.

26 November 2018

## INTRODUCTION

On the 29th September 2015, it was announced by the Government that all prisons in England and Wales would be going smokefree in a staged process (prisons in Scotland and Northern Ireland are managed by the devolved administrations). At the end of October 2015 all open (category D)<sup>1</sup> prisons went smokefree indoors, and a process was started for rolling out smokefree policies indoors and out in closed prisons. The process was completed in July 2018, by which time all closed prisons in England and Wales were smokefree, a total of 103 prisons in England and 3 in Wales, with accommodation for over 82,000 prisoners.<sup>2</sup>

Prisons in Scotland will be smokefree from 30th November 2018. Northern Ireland is continuing to implement the exemption in the legislation allowing prisoners to smoke in their cells.<sup>3</sup>

## HISTORY OF THE IMPLEMENTATION OF SMOKEFREE POLICIES

Smokefree legislation in enclosed public places was implemented throughout the United Kingdom during 2006/7 in response to the evidence of the harm caused by exposure to secondhand smoke.<sup>4</sup> The Health Select Committee, the Royal College of Physicians (RCP), Action on Smoking and Health (ASH) and others,<sup>5</sup> all argued that the legislation should include prisons. However, the prison service successfully argued for an exemption, on the basis that prisons were dwelling places as well as workplaces, and that prohibiting smoking would lead to significant control problems.

In 2007, in response to the legislation allowing an exemption, a Prison Service Instruction was published which permitted prisoners to smoke in single cells or cells shared with smokers, while acknowledging “*The desirability of attaining a 100% smoke free prison estate in the future.*”<sup>6</sup> However, smoking was prohibited in juvenile prisons, and wings of prisons for juveniles, and no prisoners under 18 were allowed to smoke. Also, the high security psychiatric hospitals, Rampton, Broadmoor and Ashworth, which are the responsibility of the NHS rather than the prison service, went completely smokefree throughout in 2007. In other parts of the UK, when a new prison was opened in the Isle of Man in 2008, smoking was prohibited from the outset and in Guernsey, smoking in prison has been prohibited since January 2013.<sup>7</sup>

ASH continued to advocate for the implementation of smokefree policies throughout the prison system, and a number of legal cases were brought on behalf of prisoners concerned about the impact of secondhand smoke on their health. In 2013 the prison service, together with Public Health England and NHS England published a joint commitment to support the development of smokefree prisons and a working group was set up to oversee the process, which ASH was represented on.<sup>8</sup> However, implementation was extremely slow, due to lack of ministerial commitment and concerns about prison instability.

Rollout of smokefree policies finally started after it was revealed in the media in 2015<sup>9</sup> that air quality tests carried out as early as 2007 had found harmful levels of secondhand smoke in prisons. These findings were reinforced by further research commissioned by the working group,<sup>10</sup> backed up by a medical opinion which concluded that air quality “*exceeded the WHO 24 hour limit some of the time, the annual limit much of the time, and the safe limit for second-hand smoke exposure (zero) almost all of the time.*” and went on to say that it is “*evident that even the smallest amount of exposure to second-hand smoke carries a reasonable probability of injury.*”<sup>11</sup> In light of the overwhelming evidence of the harmful levels of secondhand smoke the prisons minister announced on 29 September 2015 that prisons in England and Wales would start going smokefree, starting with open prisons in October 2015.<sup>12</sup>

## IMPLEMENTATION OF SMOKEFREE PRISONS IN ENGLAND AND WALES

HM Prison and Probation Service worked in partnership with NHS England and Public Health England, the organisations responsible for prison health, to deliver the project.<sup>13</sup> Implementation was slow, and a cautious approach was taken. Because of the large estate involved, the prison service decided not to implement the policy throughout all prisons at once but to stage the process, with the lessons learned from early adopters being taken into account as the policy was rolled out throughout the estate. Prisons only proceeded to go smokefree when it was assessed appropriate to do so. The process put in place involved:

- Senior management governance and leadership – with a working group meeting monthly to ensure proper oversight.
- A comprehensive risk assessment which was regularly updated with mitigation strategies put in place.
- Stakeholder communication and engagement.
- Effective management of nicotine addiction,<sup>14</sup> including smoking cessation support, and the provision of e-cigarettes through prison shops to enable individuals who remain addicted to nicotine to manage their cravings.

## DESIGNING POLICIES TO MAXIMISE COMPLIANCE

For policies to be effective they must be enforceable. The evidence from other jurisdictions, such as Australia and Canada, was that partial smoking bans, for example where smoking is permitted outdoors, are insufficient. If prisoners are allowed to keep their cigarettes but are only allowed to smoke them during the very limited time they are allowed outside, they can 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 an 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>15</sup> It has been found that if there is a perception among some prison staff that smoking tobacco is less of a concern than use of other drugs or behavioural problems this can result in poor enforcement of the smoking policy,<sup>16</sup> and this is particularly a problem where there is only an indoor ban, so prisoners still have legitimate access to tobacco.

A review of prison smoking policies by the Offender Health Research Network in 2014 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 appeared to be more difficult to manage and enforce.<sup>17</sup> It was therefore decided that closed prisons, the majority of the prison estate, would go smokefree throughout. However, the policy for open prisons in England and Wales would be that smoking was prohibited indoors only, and this was implemented with immediate effect in October 2015. In 2018, as the rollout was being completed, the policy of allowing smoking outdoors in open prisons was reviewed. The working group recommended that open prisons also go smokefree throughout to be consistent with the rest of the prison estate. However, it was decided not to proceed with this at the current time.

Air quality testing is going to be undertaken in an open prison, as well as the original tested sites, to determine whether the current policy of allowing smoking outdoors in open prisons is sufficient to ensure that prisoners and staff are not exposed to secondhand smoke indoors.

Contraband tobacco can also be an issue with studies showing that tobacco black markets quickly develop in prisons following implementation of a tobacco ban.<sup>18</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, staff involvement in smuggling cigarettes to inmates, and officer vigilance in enforcing the smoking policy.<sup>19</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>

## EFFECTIVE MANAGEMENT OF NICOTINE ADDICTION

Smoking rates among prisoners are much higher than the general population and in countries without prison smoking bans, smoking is a social norm. 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>21</sup> Prisoners tend to come from disadvantaged communities, and have high rates of mental health problems and substance abuse, all of which are associated both with high smoking rates and greater difficulty in quitting.<sup>22</sup> Imprisonment can lead to uptake of, or increased, smoking.<sup>23</sup>

Despite the high smoking prevalence, prisoners are just as likely as other smokers to want to quit and imprisonment provides an opportunity to access stop smoking advice and therapy.<sup>24</sup> 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 can benefit from personalised support, pharmacological aids, access to staff for advice between sessions, and more diversionary activities.<sup>25</sup> A survey of prisoners in New Zealand found that half of all smokers who quit while in a smokefree facility left prison intending to remain non-smokers.<sup>26</sup>

Nicotine withdrawal can, however, result in prisoners becoming distressed when smokefree policies are being implemented.<sup>27</sup> In England and Wales it was decided from the start that the rollout would have to be combined with the effective management of nicotine addiction. This included both access to stop smoking treatment, and, for those prisoners who wanted to continue to use nicotine, access to e-cigarettes.

E-cigarettes were introduced as an alternative to smoking in prison shops in phase one of the project in August 2015. Initially only disposable e-cigarettes were available, but after trials rechargeable devices were introduced. In addition, an advance purchase scheme was introduced for prisoners with insufficient funds to purchase e-cigarettes, to reduce debt and other associated problems. The provision of e-cigarettes is considered by the prison service to have been a 'game changer' in helping facilitate a successful transition to smokefree. Prior to the project starting around 50,000 prisoners were buying tobacco, as of July 2018 prison shops were selling over 65,000 vaping products weekly to over 33,000 prisoners and sales have continued to increase since then.<sup>28</sup>

## TIMELINE

**2 April 2007** - Implementation of smokefree legislation in Wales.

**2 April 2007** - Prison Service Order PSI 09/2007 and 09/2007W issued.

**31 March 2007** - Rampton high security psychiatric hospital goes smokefree (indoors and out)<sup>29</sup> and subsequently so do the other two high security hospitals: Broadmoor and Ashworth.

**1 July 2007** - Implementation of smokefree legislation in England.

**1 October 2007** - Age of sale for cigarettes raised from 16 to 18.

**1 July 2008** - Implementation of smokefree legislation in England for psychiatric premises.

**24 July 2009** - Appeal court decision that prohibiting smoking for those detained in a high security psychiatric hospital, did not contravene the patients' human rights and was lawful.<sup>30</sup>

**August 2015** - Disposable e-cigarettes go on sale in prison shops.

**31 October 2015** - Smoking prohibited in enclosed places in open prisons in England and Wales.

**31 January 2016** - Smokefree closed prisons (indoors and out) start to be rolled out. All Welsh prisons go smokefree on this date.

**31 January 2016 to May 2016** - Eight early adopter prisons in southwest England become smokefree.

**27 February 2017** - HMP Berwyn opens as a smokefree prison in Wales.

**11 September 2017** - All long-term and high security prisons in England become smokefree.

**October 2017** - Rechargeable e-cigarettes go on sale in prison shops.

**July 2018** - All closed prisons in England and Wales smokefree.

## BENEFITS OF GOING SMOKEFREE

The benefits of going smokefree accrue to prisoners, staff and the state.

- Staff and prisoners are protected from the harmful effects of secondhand smoke.
- The risk of litigation over the harm caused by secondhand smoke by non-smoking prisoners or prison staff is reduced.
- Prisoners who previously smoked have improved health and cost savings, easing financial stress.
- Fire risk is reduced and there are reductions in repair and cleaning costs.

A reduction in the number of fires and cost of repairs due to fires was found during the rollout of smokefree prisons.<sup>31</sup> The impact on air quality and prisoner health will take longer to evaluate. However, since the rollout fewer prisoners are purchasing tobacco in open prisons, suggesting that many of the prisoners who have stopped smoking or switched to alternatives while in closed prisons, are choosing not to return to smoking again when they transfer to open prisons.<sup>14</sup>

## EVIDENCE OF REDUCTION IN PREVIOUSLY HIGH LEVELS OF EXPOSURE TO SECONDHAND SMOKE FOR BOTH PRISONERS AND STAFF

Now all closed prisons are fully smokefree a post implementation air quality assessment will be undertaken, to provide evidence of the reductions in exposure to secondhand smoke. Air quality tests are being repeated at the same original testing sites, to ensure comparability.

However, there is already good evidence of the impact on air quality of smokefree policies in other jurisdictions which have implemented smokefree policies. In North Carolina a study found that, on average, levels of respirable suspended particulates (the standard marker for secondhand smoke levels) decreased by 77% in prisons after a smokefree prisons law took effect there, compared to levels obtained before smokefree implementation,<sup>32</sup> other US studies support these findings.<sup>33</sup> A more recent study which examined the impact of the New Zealand prison smoking ban found that indoor air pollution levels were halved following the ban.<sup>34</sup>

## EVIDENCE OF HEALTH IMPROVEMENT FOR PRISONERS

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>35</sup> Cardiovascular disease from smoking, however, remains a leading cause of death among incarcerated individuals in the US, where partial bans are still common.<sup>36</sup>

## MYTHS AND REALITY OF PRISONS GOING SMOKEFREE

The major concern raised about prisons going smokefree, both in the UK and elsewhere have been about increased disorder, violence and general unrest that such a policy might cause. UK news media coverage focused on these issues, as well as on the rights of prisoners to smoke, as opposed to the rights of staff and prisoners to protection from secondhand smoke.<sup>37</sup> However, the evidence from the implementation of smokefree prisons in England and Wales shows that any risks that do exist can be successfully managed.

Throughout the project Prison and Probation Analytical Services assessed the impact of the rollout of smokefree on assaults, self harm and drug use in 2016, 2017 and 2018. There was no evidence of a decline in prison safety and security attributable to the smokefree rollout. Indeed, the level of assaults and self-harm went down not up after smokefree policies were implemented.<sup>38</sup>

## LEGAL POSITION ON SMOKING IN PRISONS IN ENGLAND AND WALES

When the high security hospitals went smokefree it was legally challenged by patients at Rampton. 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 in the first instance and on appeal. 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>39</sup>

A number of prisoners have pursued legal action, on the basis that being forced to breathe in tobacco smoke involuntarily is a breach of their human rights.<sup>40</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>41</sup>

However, while private prisons have been found to be subject to the smokefree laws in England and Wales, with "*considerable reluctance*" a Supreme Court judgement concluded that smokefree laws do not bind the Crown, and so crown immunity applies in all but private prisons.<sup>42</sup> This means that if the legislation (with a partial exemption allowing smoking only in designated cells) is not effectively implemented prisoners have no access to the legislative measures supporting enforcement. These include being able to report breaches, and fines for those who do not implement smokefree premises in accordance with the law. The Government has decided to voluntarily make all prisons smokefree, and the legal decision has no impact on the policy, only on enforcement.

Prison rules have been amended to reflect the smokefree status of prisons in England and Wales.<sup>43</sup> These revisions allow prisoners in the smokefree estate to still be able to smoke in designated external areas, but makes it illegal for tobacco products and smoking materials to be taken into a closed prison. The relevant associated Health Act changes are ongoing.

# IMPLEMENTATION OF SMOKEFREE PRISONS OUTSIDE THE UK

Prisons in the USA started adopting smokefree policies in 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>44</sup> All 105 federal prisons are now smokefree in indoor areas and, as of October 2017, 20 out of 50 states have made their correctional facilities smokefree and tobacco-free both indoors and outdoors.<sup>45</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>46</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>47</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>48</sup> Queensland followed suit in May 2014 and the states of New South Wales, South Australia, Tasmania and Victoria implemented policies during 2015.<sup>49</sup>

## CONCLUSIONS

Evidence from the implementation of smokefree prisons in England and Wales supports the conclusions from other jurisdictions such as New Zealand, Australia and the US, that smokefree prisons policies can be successfully implemented, to the benefit of the health and wellbeing of staff and prisoners. Pre-implementation concerns about increased disorder proved unfounded.

The experience in England and Wales reinforce the conclusions that successful implementation is supported by:

- Allowing sufficient lead-in time for staff and prisoners to prepare for the change;
- Having comprehensive policies (covering both indoor and outdoor areas)
- Providing prisoners with support to quit in advance of implementation and effective alternatives to smoking for those not wishing to quit.

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