

Guidance for Employers and Managers

**Public Health (Tobacco) Acts
2002 and 2004
Section 47 - Smoking Prohibitions**

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Background

As far back as 1986, the US Surgeon General proclaimed, "Passive smoking is a cause of disease including lung cancer, in healthy non-smokers". Agreement with this view has grown steadily since then and the leading international scientific authorities concur that exposure to environmental tobacco smoke (ETS) causes serious and fatal diseases. In 2002 the International Agency for Cancer Research (IARC) of the World Health Organisation declared ETS to be a known human carcinogen and highlighted that it is a cause of increased risk of coronary heart disease. Awareness of the harmful effects of environmental tobacco smoke (ETS) places an onus on governments to protect public health by providing legislation to protect the general public from involuntary smoking.

An independent scientific report commissioned by the Office of Tobacco Control and the Health and Safety Authority "The Health Effects of Environmental Tobacco Smoke (ETS) in the

Workplace", 2003, concluded that exposure to ETS or second-hand smoke, also known as passive smoking, causes lung cancer, heart disease and respiratory problems. The report also concluded that workers need to be protected from exposure to ETS at work; that current ventilation technology is ineffective at removing the risk of ETS to health; and that legislative measures are required to protect workers from the adverse health effects of ETS exposure.

Subsequently, a prohibition on smoking in enclosed workplaces, including licensed premises, was introduced under Section 47 of the Public Health (Tobacco) Act, 2002 as amended. Section 47 revoked the Tobacco (Health Promotion and Protection) Regulations, 1995 that had prohibited and restricted the consumption of tobacco products in designated areas and facilities. Section 47 prohibits the smoking of tobacco products in workplaces with certain exceptions (see section 2).

Overview

This document is one of a series intended to inform employers/managers of their obligations in respect of Section 47. A separate sector specific guidance document has been produced for the Licensed Trade as part of the series, in consultation with relevant parties. Further sector specific guidance will be prepared as required in response to common queries.

This publication seeks to provide guidance to employers, occupiers, managers and other persons for the time being in charge of workplaces on how they may seek to comply with their legal obligations under Section 47 of the Public Health (Tobacco) Act, 2002 as amended and is without prejudice to any other legal obligations under criminal or civil law. Nothing in these Acts obliges an employer or manager to permit smoking or to provide a smoking area.

The introduction of the workplace smoking ban will assist employers/managers in meeting their pre-existing common law duty of care and their statutory responsibility to provide a reasonably safe working environment.

The exemption of a place or premises from the ban does not absolve the employer/manager of these responsibilities. Employers and managers with responsibility for premises that are exempted from the workplace smoking ban are advised to review their policies with a view to eliminating exposure where possible but at least to minimise exposure to ETS. Any smoking in exempted places or premises should be located such that smoke from these areas cannot enter the enclosed workplace and should ensure that employee exposure is minimised.

The experience of employers in implementing workplace smoke-free policies has demonstrated the importance of having a written smoke-free policy as part of the change management process. Successful implementation of smoke-free policies requires good communications with employees, thoughtful consultation, sufficient time for change and understanding towards smokers.

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1. Aim

This publication provides employers/managers with guidance on how they may endeavour to comply with their obligations arising from Section 47 of the Public Health (Tobacco) Act, 2002 as amended, which prohibits smoking in enclosed workplaces.

For further information concerning the application of the law employers/managers should contact the enforcement agencies i.e. the health boards (environmental health service) and the Office of Tobacco Control.

2. Relevant Legislation

Section 47 (1) of the Public Health (Tobacco) Act, 2002 as amended by Section 16 of the Public Health (Tobacco) (Amendment) Act, 2004 prohibits the smoking of a tobacco product in a specified place.

Definitions

For the purposes of Section 47 a 'specified place' is defined as including:

- (a) a place of work,
- (b) an aircraft, train, ship or other vessel, public service vehicle, or a vehicle used for the carriage of members of the public for reward other than a public service vehicle, insofar as it is a place of work,
- (c) a health premises, insofar as it is a place of work,
- (d) a hospital that is not a health premises, insofar as it is a place of work,
- (e) a school or college, insofar as it is a place of work,
- (f) a building to which the public has access, either as of right or with the permission of the owner or occupier of the building, and which belongs to, or is in the occupation of—
 - (i) the State,
 - (ii) a Minister of the Government,
 - (iii) the Commissioners of Public Works in Ireland, or
 - (iv) a body established by or under an Act of the Oireachtas, insofar as it is a place of work,
- (g) a cinema, theatre, concert hall or other place normally used for indoor public entertainment, insofar as it is a place of work,
- (h) a licensed premises, insofar as it is a place of work, or
- (i) a registered club, insofar as it is a place of work.

Exemptions

Section 47 exempts certain classes of places or premises as follows:

- (a) a dwelling,
- (b) a prison,
- (c) subject to paragraph (d), a place or premises, or a part of a place or premises, that is wholly uncovered by any roof, whether fixed or movable,
- (d) an outdoor part of a place or premises covered by a fixed or movable roof, provided that not more than 50 per cent of the perimeter of that part is surrounded by one or more walls or similar structures (inclusive of windows, doors, gates or other means of access to or egress from that part),
- (e) a bedroom in—
 - (i) a premises registered under Part III of the Tourist Traffic Act 1939 in a register established and maintained under that Part,
 - (ii) a premises for the time being specified in a list published, or caused to be published, under section 9 of the Tourist Traffic Act 1957, or
 - (iii) any other premises in which a person carries on business, being a business that consists of or includes the provision, in those premises, of sleeping accommodation to members of the public,

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Exemptions Continued

- (f) a room that, in furtherance of charitable objects, is used solely for the provision of living accommodation,
- (g) in premises owned or occupied by a person whose main objects are the provision of education, a room that, in furtherance of those objects (other than objects relating to the provision of primary or secondary education), is used solely for the provision of living accommodation,
- (h) a nursing home,
- (i) a hospice,
- (j) a psychiatric hospital, or
- (k) the Central Mental Hospital.

For relevant definitions refer to a copy of the Public Health (Tobacco) Act, 2004.

Offences

Under Section 47(2) of the Public Health (Tobacco) Acts a person who smokes in contravention of subsection (1) of that section is guilty of an offence.

Under Section 47(3) of the Acts, where a person smokes in contravention of subsection (1) of that section, the occupier, manager or any other person for the time being in charge of the place where the contravention occurs shall each be guilty of an offence.

Section 47(4) of the Acts establishes a defence for a person against whom proceedings are brought under Section 47(3), provided that they can demonstrate that they have made all reasonable efforts to ensure compliance with Section 47.

Under Section 5(2A) of the Acts a person found guilty of an offence under Section 47 is liable on summary conviction to a fine of up to €3,000.

3. Scope

This document seeks to provide guidance on the practical steps that can be taken by employers, managers and other persons in charge of workplaces in which smoking is prohibited by

Section 47 in endeavouring to make “all reasonable efforts” under section 47(3) and 47(4) of the Acts and is without prejudice to any other legal obligations under criminal or civil law.

4. Compliance / Enforcement

Employers and managers should make all reasonable efforts to ensure that their staff, customers and visitors are aware of the prohibition on smoking in order to facilitate compliance with the law.

Employers and managers should make all reasonable efforts to ensure that employees, customers and other visitors to their premises (e.g. sub-contractors) do not smoke in contravention of the law.

Employers and managers who are made aware of a person smoking in contravention of the law should make all reasonable efforts to ensure that the contravention ceases and is not repeated.

The recommended minimum reasonable efforts required are:

- a). Developing and implementing a smoke-free policy which ensures adequate communication by employers, managers and those present in the workplace; and ensures that infringements by employees, customers, etc. are dealt with under local disciplinary procedures or otherwise as set out in more detail over-leaf (see section 5).
- b). Displaying “No Smoking” signs to alert staff, customers and visitors of the workplace smoking ban (see section 6).
- c). Removing all ashtrays and other like receptacles; and providing external stubbing bins at entrances where appropriate.

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5. Smoke-Free Policy

Employers/managers should together establish and implement a written policy and procedures to ensure compliance with the law as they are each potentially liable under Section 47(3) of the Public Health (Tobacco) Act, 2002 as amended (as are occupiers and “any other person for the time being in charge of a place”). This policy may form part of your written Safety Statement, an existing requirement for all employers under health and safety legislation.

The policy should clearly identify the members of management and staff that have responsibility for its implementation and specify the procedures to be followed in the event of non-compliance.

The policy should acknowledge the right of employees to work in a smoke-free environment and information on how to obtain help quitting smoking.

This policy and associated procedures must be communicated to all staff and in particular to new and part-time staff before they commence employment. Action in relation to disciplinary procedures should be undertaken for violations of the smoke-free policy and this should be in line with the procedures used for violation of any other health and safety procedure. (A model smoke-free policy is shown on page 6).

6. Signage

“No Smoking” signs should be conspicuously displayed so that the signs are clearly visible to all employees, customers and visitors while in the premises. All such signs should include the name of the person (owner/manager) to whom a complaint should be made in the event of non-compliance.

A “No Smoking” sign should be permanently displayed in a conspicuous position at each entrance to the premises, at service counters, in toilet facilities and staff rooms.

“No Smoking” signs should contain the international “No Smoking” symbol and be durable. (A model “No Smoking” sign is shown on page 8).

Model Smoke-Free Workplace Policy

Purpose

Exposure to second-hand smoke/Environmental Tobacco Smoke (ETS) also known as passive smoking is a cause of disease, including lung cancer and heart disease, in third parties. Neither the simple separation of smokers and non-smokers within the same airspace nor the provision of ventilation can eliminate exposure to

ETS and the consequent health effects of such exposure. This policy has been developed to protect all employees, service users, customers and visitors from exposure to ETS, to ensure compliance with legal obligations and to ensure a safe working environment.

Policy

It is the policy of [INSERT NAME OF BUSINESS] that all of its workplaces are smoke-free and that all employees have a right to work in a smoke-free environment.

Smoking is prohibited throughout the entire workplace with no exceptions. This policy applies to all employees, consultants, contractors, customers and visitors.

Implementation

Overall responsibility for policy implementation rests with the occupier, manager or other person for the time being in charge of the workplace. All staff have an obligation to adhere to, and facilitate the implementation of this policy.

The person in charge [.....] shall inform all existing employees, consultants and

contractors of the policy and their role in the implementation and monitoring of the policy. All new and prospective employees, consultants and contractors shall be given a copy of the policy on recruitment/induction by the person in charge.

Policy Infringements

Infringements by staff will be dealt with under local disciplinary procedures. Infringements by customers, clients etc., will be dealt with in accordance with the procedure set out below.

Employees, consultants, contractors, customers and visitors who contravene legislation prohibiting smoking in the workplace are also liable to a criminal prosecution with an associated fine.

Smoking Cessation

Information on how to obtain help quitting smoking is available from [.....] e.g. The National

Smokers Quitline (1850 201 203) or the Health Promotion Service of the local health board.

Procedure if a person smokes in contravention of the law prohibiting smoking in the workplace

- 1.** Draw the person's attention to the "No Smoking" signs and advise that they are committing an offence by smoking on the premises.
- 2.** Advise the person that it is also an offence for the occupier, manager and any other person for the time being in charge of the premises to permit anyone to smoke in contravention of the law.
- 3.** Advise the person that the business has a smoke-free policy to ensure a safe working environment for staff and customers. And that under the policy staff are obliged to refuse service to customers who persist in smoking.
- 4.** If the person continues to smoke immediately request that they leave the premises.
- 5.** If the person refuses, implement normal procedure for antisocial/illegal behaviour in the premises.
- 6.** Maintain an appropriate record of all such incidents and notify all staff of action taken.
- 7.** In all cases where physical violence is threatened or encountered, notify and/or seek the assistance of the Gardaí.

Model “No Smoking” Sign

No Smoking

It is illegal to smoke in these premises



Proprietor: _____

**Please notify
complaints to:** _____

Maximum Fine €3000 – Public Health (Tobacco) Acts



www.smokefreeatwork.ie
provides information on
smoke-free workplaces



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