

D r a f t

Guidance for the Irish licensed trade

The Tobacco Smoking
(Prohibition) Regulations 2003

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(Prohibition) Regulations 2003

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Background

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 causes lung cancer, heart disease and respiratory problems. The report particularly notes that bar staff and other hospitality workers are a unique risk group because exposure in their workplaces is particularly high.

Subsequently the Minister for Health and Children introduced the Tobacco Smoking (Prohibition) Regulations 2003, under Section 47 of the Public Health (Tobacco) Act, 2002. These regulations prohibit smoking in all enclosed parts of licensed premises in so far as they are places of work. The Regulations will be enforced by officers authorised by the chief executive officers of the Office of Tobacco Control and of the health boards under Section 48 of the Act.

The hospitality sector has expressed particular concerns about the difficulties in introducing smoke-free bars. In response to these concerns the Office of Tobacco Control has developed

specific guidance in conjunction with the relevant representative bodies for this part of the hospitality sector in order to facilitate compliance with the smoking ban.

This publication seeks to provide guidance to occupiers, managers and other persons involved in the licensed trade including bars, restaurants and nightclubs, on how they may seek to comply with their legal obligations under Section 47 of the Public Health (Tobacco) Act 2002, and is without prejudice to any other legal obligations under criminal or civil law.

The experience of employers in implementing smoke-free policies in other settings has demonstrated the value of having a written smoke-free policy as part of the change management process.

Protection of third parties and compliance with legal obligations are the basis for such policies. 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 occupiers, managers and other persons involved in the licensed trade including bars, restaurants and nightclubs, with guidance on how they may endeavour to comply with their obligations arising from the Tobacco Smoking (Prohibition) Regulations 2003 that prohibit smoking in the enclosed workplace.

In addition, occupiers, managers and any other persons in charge of licensed premises including bars, restaurants and nightclubs are encouraged to contact the enforcement agencies i.e. the health boards and the Office of Tobacco Control for advice and / or assistance concerning the application of the Regulations.

2. Relevant Legislation

Article 2 of the Tobacco Smoking (Prohibition) Regulations 2003 prohibits smoking in places of work, including licensed premises and registered clubs in so far as they are places of work.

Article 2(A) of the Regulations exempts a place or part of a premises wholly uncovered by a roof, whether fixed or moveable, and an outdoor part of a place or premises covered by a fixed or moveable roof provided that not more than 50% 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).

Section 47(3) of the Public Health (Tobacco) Act 2002 makes it an offence for a person to contravene a regulation made under that section.

Under Section 47(4) of the Act the occupier, manager and any other person for the time being in charge of the place where smoking has been prohibited by regulation shall each be guilty of an offence where there is a contravention of a regulation under this section.

Section 47(5) of the Act establishes a defence for a person against whom proceedings are brought under Section 47(4) provided they can demonstrate that they have made all reasonable efforts to ensure compliance with the provisions of the regulations alleged to have been contravened.

Under Section 5(2) of the Act a person found guilty of an offence under Section 47 is liable to a fine not exceeding €1900, or to imprisonment for a term not exceeding 3 months, or to both (under review).

3. Scope

This document seeks to provide guidance on practical steps that can be taken by the occupier, manager or other person in charge of a licensed premises where smoking is prohibited under the Regulations in

endeavouring to make all reasonable efforts under Sections 47(4) and 47(5) of the Public Health (Tobacco) Act 2002, and is without prejudice to any other legal obligations under criminal or civil law.

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4. Compliance / Enforcement

Occupiers, managers and any other persons in charge of licensed premises should make all reasonable efforts to ensure their staff and patrons are aware of the prohibition on smoking in order to facilitate compliance with the law.

Occupiers, managers and any other persons in charge of licensed premises who observe or are made aware of a person smoking in contravention of the Regulations should make all reasonable efforts to ensure that the contravention ceases and is not repeated.

The following are the recommended minimum reasonable efforts required:

- a) Developing and implementing a smoke-free policy (see section 5 below);
- b) Displaying the required No Smoking signs (see section 6 below);
- c) Removing all ashtrays and other like receptacles;
- d) Informing a person smoking in a bar, restaurant or nightclub that he/she is committing an offence under the Regulations;
- e) Refusing service to individuals who are smoking in violation of the Regulations;
- f) Requesting any person smoking in the premises to extinguish the smoking material or to leave.

5. Smoke-free Policy

Occupiers, managers and any other persons in charge of a licensed premises should together establish and implement a written policy and procedures to ensure compliance with the Tobacco Smoking (Prohibition) Regulations 2003 as they are each potentially liable under Section 47(4) of the Public Health (Tobacco) Act 2002.

The policy should clearly identify which members of management / staff have responsibility for its implementation and include

procedures to be followed in the event of non-compliance. The policy should contain a statement advising all employees of their right to work in a smoke-free environment and information, if necessary, 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. (a model smoke free policy for the licensed trade is shown opposite).

6. Signage

Every bar, restaurant and nightclub should have No Smoking signs conspicuously displayed so that the signs are clearly visible to all employees, customers and visitors while in the premises.

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

No Smoking signs should be made of durable material and identify the person (owner/manager)

to whom a complaint should be made in the event of non-compliance.

All such signs should contain the international symbol for no smoking — a lighted cigarette in a red circle with a red line through it.

All such signs shall contain the name of the person in charge and to whom a complaint should be made in the event of a person smoking in contravention of the regulation.

A sample No Smoking sign is shown on page 7.

Model Smoke-Free Workplace Policy for the Licensed Trade

Purpose

Passive smoking or second-hand smoke also known as Environmental Tobacco Smoke (ETS) 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 air space 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 [.....] 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 enclosed 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 Regarding 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 overleaf.

Staff and customers who contravene legislation prohibiting smoking in the workplace are also liable to criminal prosecution and a fine of up to €1900 (under review).

Smoking Cessation

Information on how to obtain help quitting smoking is available from [.....]
e.g. the National Quitline (1850 201203) or the Health Promotion Service of the local health board.

Procedure if a customer smokes in contravention of the Tobacco Smoking (Prohibition) Regulations 2003

- 1. Draw the customer s attention to the No Smoking notices and advise that they are committing an offence by smoking on the premises.**
- 2. Advise the customer 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 regulations.**
- 3. If the customer continues to smoke refuse service and immediately request that they leave the premises.**
- 4. If the customer refuses, implement normal procedure for anti-social/illegal behaviour in the premises.**
- 5. Maintain an appropriate record of all such incidents and notify all staff of action taken.**
- 6. In all cases where physical violence is threatened or encountered, notify and/or seek the assistance of the Garda .**

Sample No Smoking Sign



**SMOKING IN THESE PREMISES
IS AGAINST THE LAW**

Manager / Person in Charge [.....]

Notes



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