

The introduction of legislation banning smoking in the workplace: The Irish experience

Martin Keane
Drug Misuse Research Division
Health Research Board
73, Lower Baggot Street
Dublin 2 - Ireland
MKeane@hrb.ie

Introduction

This article describes the rationale behind legislation to ban smoking in the workplace in Ireland and highlights some key developments during the lead up to the introduction of legislation. The article also presents some evidence to show that the implementation of the smoking ban is supported by high levels of compliance and that overall the ban enjoys overwhelming public support. Some preliminary research findings are reported to show that so far it appears that the smoking ban is contributing to improved air quality in pubs and improved health among pub workers.

Rationale for the ban and its emergence

Enclosed workplaces became smoke-free by law in Ireland on 29 March 2004 under provisions in the Public Health (Tobacco) Acts, 2002 and 2004. There are two sections to the legislation that bans smoking in the workplace. **Section 46** of the Public Health (Tobacco) Act, 2002 as amended by Section 16 of the Public Health (Tobacco) (Amendment) Act, 2004 requires the *display of no smoking signs in the workplace*. While **Section 47** of the Public Health (Tobacco) Act, 2002 as amended by Section 16 of the Public Health (Tobacco) (Amendment) Act, 2004 covers the *Prohibition of smoking in the workplace*. In effect, this means that it is illegal for persons to smoke cigarettes in offices, shops, factories, bars, restaurants and other enclosed work places. The primary aim of this legislation is to afford protection to workers and members of the public from exposure to second-hand Environmental Tobacco Smoke (ETS)

The legislation banning smoking in the workplace is the culmination of up to fifteen years efforts involving politicians, public servants, trade unions and public health specialists to highlight the dangers of passive smoking. At various stages these efforts were vehemently opposed by the tobacco industry and the Vintners lobby. (Barry 2005¹; Howell 2004²).

Matters came to a head when research by Allwright *et al* (2002)³ was published near the end of 2002. This research commissioned by the Office for Tobacco Control (OTC) and the Health and Safety Authority (HAS) examined the International evidence on the dangers of passive smoking. The report concluded that;

- ETS is carcinogenic and causes lung cancer and probable other cancers
- ETS causes heart disease
- ETS causes respiratory problems in adults and children
- ETS has adverse effects on reproduction, including low birth weight
- Legislative measures are required to protect workers from the adverse health effects of ETS exposure

¹ Barry, J. (2005) Ireland's Workplace Smoking Ban. *Drugs: Education, prevention and policy*, Vol. 12, No. 1, February 2005, 1-4.

² Howell, F (2004) Ireland's workplaces, going smoke free. *British Medical Journal*, 328, 847-848

³ Allwright, S., McLoughlin, J.P., Murphy, D., Pratt, I., Ryan, M.P., & Smith, A. (2002) Report on the health effects of environmental tobacco smoke (ETS) in the workplace. Dublin; Office of Tobacco Control/Health and Safety Authority

This made the case for legislation against smoking in the workplace pretty much unanswerable and in December 2002 when the report was published the Minister for Health and Children of the day, Mr. Michael Martin announced that legislation would be introduced with effect from 1st January, 2004. This would leave a year for debate around the measure and allow for those affected to make the necessary adjustments. It would also give the two main protagonists in this debate, the Minister for Health and Children and Hospitality Industry an opportunity to test the public mood.

A key factor during the run up to the introduction of legislation was the use of research by both sides in the debate. On the one hand, the scientific case for introducing the smoking ban rested almost entirely on research by Allwright (2002). On the other hand, the Licensed Vintners Association (LVA)⁴, the Vintners Federation of Ireland (VFI)⁵, the Irish Hotels Federation (IHF) and other members of the hospitality industry also relied heavily on research to challenge the Government case for an outright ban.

From June 2003, the LVA and the VFI criticised the Minister for Health and Children on what they perceived as a lack of meaningful consultation on the likely impact of the smoking ban on their business. Both bodies were also critical of the Minister for Health for ignoring what they called a crucial recommendation included in the expert report by Allwright (2002) calling for research to assess occupational exposures to ETS in Ireland and the resultant adverse health conditions. They were also critical of some aspects of the expert report.⁶ For example, they argued that the report relied on outdated evidence to rule out the use of ventilation systems to improve air quality in pubs. They pointed out that the report examined evidence for the effectiveness of ventilation systems that produced one change of air per hour. They argued that new ventilation systems were capable of clearing the air in pubs for up to twelve times per hour and that these needed testing in the Irish context in line with the recommendation outlined in the expert report. To support their case they drew attention to research by Dr. Andrew Geens and Max Graham from the University of Glamorgan that apparently showed that ventilation is effective in controlling the level of contamination in air quality in pubs.⁷

The LVA and the VFI also criticised the expert report for not including an expert in ventilation systems on their expert committee. However, they failed to point out that the expert report did include expert opinion from a group of international experts in ventilation that concluded;

"dilution ventilation, used in virtually all mechanically ventilated buildings, will not control second hand smoke in the hospitality industry" (Allwright 2002: 34).

Both sides were also highly critical of the role played by the Health and Safety Authority (HSA) for the manner in which they presented at public meetings designed to inform on the implications of the ban claiming that meetings were presented in didactic format as opposed to discursive.⁸

The VFI and LVA also commissioned an economic impact study that predicted a total ban on smoking in the workplace leading to an 8% drop in pub sales, around 69 Million Euro losses to the Exchequer and an employment loss of around 3,000 jobs.⁹ They also cited research carried out in New York that reported a loss of jobs, revenue and overall reduction in trade since the introduction of smoking ban in pubs and restaurants.¹⁰ An opinion poll commissioned by the LVA and VFI reported that a majority of the public favoured separate smoking areas over a total ban. While in September an opinion poll carried out by a local

⁴ LVA represents Dublin pubs

⁵ VAI represents rural pubs (outside Dublin)

⁶ Press release 17 June 2003 www.vfi.ie

⁷ For a summary of this research see Geens A. & Graham, M. (2005) No ifs or butts. Reprinted from the Building Services Journal March 2005.

⁸ Press Release 9 June 2003 www.vfi.ie

⁹ This study was carried out by Anthony Foley from the Dublin City University Business School on behalf of the LVA and the VFI.

¹⁰ Press Release 10 October 2003 www.vfi.ie

newspaper group appeared to show that only 37% of the public were in favour of an outright ban.

On the 28 August 2003, the LVA and VFI ¹¹ embarked on their biggest attempt to persuade the Minister to consider an alternative approach to the blanket ban. They announced a package of initiatives and a timeframe for implementation and review as an alternative. The package was entitled 'Customer Choice and Common Sense' and included the following measure;

- 50% of pubs designated non-smoking from January 2004
- No smoking at the bar counter from January 2004
- Commitment to install ventilation equipment to effect a minimum of 12 air changes per hour with independent verification of ventilation standards
- Two year timeframe for completion of ventilation equipment
- Government and industry review and assessment in November 2005
- Derogation for owner managed pubs with five employees or less
- Government scientific research into levels and impact of ETS in the workplace as required by the expert report (Allwright 2002)

Initially it was planned to introduce the ban with effect from the 1st January 2004 however this was deferred until the end of March 2004 to allow the Minister inform the European Union on a number of exemptions to the law. For example, prisons, hotel rooms, nursing homes, hospices and private dwellings were exempt from the ban. Eventually the ban on smoking in the workplace came into effect on 29 March and this last minute delay may well have helped smokers cope with going outside public premises as the weather is generally more unpleasant in January in Ireland.

Compliance Checks

Since the introduction of the ban, compliance checks within the hospitality industry have been implemented by Environmental Health Officers (EHOs) from the Environmental Health Section of the Health Service Executive. This work is part of the National Tobacco Control Inspection Programme and is coordinated by the Office of Tobacco Control (OTC). Compliance is defined as no one smoking and no evidence of smoking contrary to the law.

From the introduction of the ban in March 2004 to the end of that year, data available from the OTC shows high levels of compliance within the hospitality industry with 94% of premises inspected during the period complying with the legal restrictions around smoking in the workplace i.e. no one smoking and no evidence of smoking in contravention of law (*See Table 1*)

Table 1. National Compliance Data: March – December 2004

Business Type	Inspections	Compliance
Hotel	1,454	93%
Restaurant	6,873	99%
Licensed Premises	14,400	90%
Other	12,230	97%
Total	34,957	94%

Source: *Smoke-Free Workplaces In Ireland: A One Year Review*. Dublin; Office of Tobacco Control

¹¹ The LVA and VFI represent close to 7,000 publicans in Dublin and Nationally

Compliance levels regarding Section 47 of the Public Health (Tobacco) Act that prohibits smoking in the workplace continued to show consistently high levels of compliance in 2005 with a 95% compliance rate in the hospitality sector. (See Table 2)

Table 2: National Compliance Data (2005)

Business Type	Complaints	Inspections	Section 47; % compliant	Section 46; % compliant
Hotel	57	1,456	94%	90%
Restaurant	49	7,854	98%	88%
Licensed Premises	758	9,843	87%	91%
Other	323	15,889	98%	84%
Total	1,187	35,042	95%	87%

Source: Office of Tobacco Control Annual Report 2005

Section 46 of the Public Health (Tobacco) Act, 2002 that requires the display of no smoking signage in the workplace showed consistently high levels of compliance in the hospitality sector with 86% compliance from March to December 2004 and 87% compliance rate in 2005.

Compliance Checks outside the hospitality industry are carried out by the Health and Safety Authority (HAS) and cover enclosed workplaces such as factories and offices in the manufacturing, construction, mining and quarrying, transport, storage and real estate sectors. From 7,480 inspections carried out during the period March to December 2004, the HSA reported a 92% compliance rate.¹²

Smoke-Free Compliance Line

The Office of Tobacco Control has operated a Smoke-Free Compliance Line since the introduction of the ban in March 2004. In the period from the end of March 2004 to end of December 2004, a total of 1,881 complaints from the public were recorded with the majority of calls received in the first month and then showing a steady decline per month.

Prosecutions

During the period March to December 2004 prosecutions were taken against twelve premises for non compliance with the legislation and all were successful.¹³ In 2005, prosecutions were taken against thirty eight premises covering both Section 46 and 47 of the Act and thirty seven were successful with one being dismissed.¹⁴

Public attitudes and behaviour regarding compliance

¹² Smoke-Free Workplaces In Ireland: A One Year Review. Dublin; Office of Tobacco Control

¹³ IBID

¹⁴ Office of Tobacco Control Annual Report 2005. Dublin; Office of Tobacco Control

The Office of Tobacco Control commissioned market research on public attitudes towards compliance with the smoking ban.¹⁵ The results are based on a survey with a sample of 1,000 members of the public and include the following outcomes;

- 96% of all indoor workers surveyed report their work atmosphere was not smokey since introduction of law
- 98% of those surveyed who visited the pub within the previous fortnight reported the atmosphere to not smoky. Comparable figure before the introduction of the law was 46%
- 99% of all smokers surveyed who visited the pub within the previous fortnight either smoked outside or did not smoke at all. One in five smokers chose not to smoke at all when out socialising.

Public opinion on smoke free workplace legislation

Following one year of the ban a survey conducted among a sample of 1,000 members of the population aged 15 years and older revealed high levels of public support for the ban and a wide recognition among the public that the ban represents a positive public health measure.¹⁶ These findings were particularly interesting as they represented large proportions of smokers.

- 93% think the law was a good idea
- 80% of smokers think the law was a good idea
- 96% think the law is successful
- 89% of smokers think the law is successful
- 98% believe workplaces are now healthier
- 94% of smokers believe the workplace is now healthier as a result of the law

Health effects of smoke free legislation

A number of studies are ongoing to determine the health effects arising from the introduction of the smoking ban. Preliminary results from two studies shows an improvement in air quality in Dublin pubs and improvement in the health of bar workers. For example, a study of forty pubs throughout Dublin City and County assessed the levels of air pollution in pubs before and after the introduction of the smoking ban.¹⁷ Analysing data from 24 of these pubs the study reveals that air quality has improved substantially since the introduction of the ban (See Table 3)

Table 3: Air Quality in Dublin Pubs looking at airborne particle levels pre and post introduction of smoking ban

Results	Pre-smoke free	Post smoke free	% change
Ave PM10 (large particles)	79	37.4	-53%
Ave PM2.5 (small particles)	40.2	4.97	-87.6%

Source: McCaffrey *et al* (2005)

¹⁵ TNS MRBI Survey February 2005 cited in Smoke-Free Workplaces in Ireland: A One Year Review. Dublin; Office of Tobacco Control

¹⁶ TNS MRBI survey March 2005 cited in Smoke-Free Workplaces in Ireland: A One Year Review. Dublin; Office of Tobacco Control

¹⁷ McCaffrey, M., Goodman, P.G., Clancy, L. (2005) Particulate pollution levels in Dublin pubs pre and post the introduction of the workplace smoking ban. Dublin; Scientific Symposium "The health impact of Smoke-free workplaces in Ireland cited in Smoke-Free Workplaces in Ireland: A One Year Review. Dublin; Office of Tobacco Control

A study carried at St. James Hospital in Dublin documented a marked decrease in carbon monoxide in bar workers in Dublin.¹⁸ The study evaluated breath carbon monoxide of 81 bar workers in Dublin before introduction of ban and again one year later post introduction. Analysis of tests on 56 (69%) shows 45% reduction in carbon monoxide levels in bar workers who were non-smokers and a decrease of 36% in ex-smokers.

Allwright *et al* (2005)¹⁹ compared exposure to secondhand smoke and respiratory health in bar staff in the Republic of Ireland and Northern Ireland before and after the introduction of legislation banning smoking in the workplace in the Republic. In non-smoking bar staff in the Republic, salivary cotinine concentration dropped by 80% after the ban compared to 20% drop in Northern Ireland over the same timeframe. Reporting of respiratory symptoms declined significantly in the Republic down 16.7% but not in Northern Ireland 0% difference.

In summary, it can be said that at least three key factors contributed to the introduction of this legislation and the widespread compliance and support that it enjoys;

- Scientific research of sufficient quality to persuade on the dangers of second hand tobacco smoke
- Political commitment of an extraordinary level to act on this research and
- Massive public respect and endorsement for the rights of workers to work in a smoke free environment, particularly in the hospitality industry

18 Agnew, M., Goodman, P.G. and Clancy, L. (2005) Evaluation of lung function of barworkers in Dublin, pre and post the introduction of a workplace ban on smoking in Ireland. Dublin; Scientific Symposium "The health impact of Smoke-free workplaces in Ireland cited in Smoke-Free Workplaces in Ireland: A One Year Review. Dublin; Office of Tobacco Control

19 Allwright, S., Gillian, P., Birgit, G., Mullally, B.J., Pursell, L., Kelly, A., Bonner, B., D'Eath, M., McConnell, M., McLaughlin, J.P., O'Donovan, D., O'Kane, E. and Perry, I.J. (2005) Legislation for smoke-free workplaces and health of bar workers in Ireland: British Medical Journal Oct 2005; 331:1117 ; doi:10.1136/bmj.38636.499225.55