



**Policy name: Smoke Free Policy Framework**

**Reference:** N/A

**Issue Date:** 27 January 2020

**Implementation Date:** 1 May 2018

**Replaces the following documents (e.g. PSIs, PSOs, Custodial Service Specs) which are hereby cancelled:**

- PSI 09/2007 Smoke free legislation
- PSI 09/2007W Smoke Free legislation Welsh Prisons

**Introduces amendments to the following documents (e.g. PSIs, PSOs, Custodial Service Specs):** Incentives Policy Framework

**Action required by:**

<input type="checkbox"/>	HMPPS HQ	<input checked="" type="checkbox"/>	Governors
<input checked="" type="checkbox"/>	Public Sector Prisons	<input type="checkbox"/>	Heads of Group
<input checked="" type="checkbox"/>	Contracted Prisons	<input type="checkbox"/>	Community Rehabilitation Companies (CRCs)
<input type="checkbox"/>	National Probation Service	<input type="checkbox"/>	HMPPS-run Immigration Removal Centres (IRCs)
<input type="checkbox"/>	HMPPS Rehabilitation Contract Services Team	<input type="checkbox"/>	Contract Managers in Probation Trusts
<input type="checkbox"/>	Other providers of Probation and Community Services	<input type="checkbox"/>	Under 18 Young Offenders Institution

**Mandatory Actions:** All groups referenced above must adhere to the Requirements section of this Policy Framework, which contains all mandatory actions.

**For Information:** By the implementation date Governors<sup>1</sup> of Public Sector Prisons and Contracted Prisons must ensure that their local procedures do not contain the following:

Allowance of smoking on prison property in smoke-free prisons

Governors must ensure that any new local policies that they develop as a result of this Policy Framework are compliant with relevant legislation, including the Public Sector Equality Duty (Equality Act 2010).

**Audit/monitoring:** N/A

**Resource impact:** N/A

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<sup>1</sup> In this document the term Governor also applies to Directors of Contracted Prisons.

**Deputy/Group Director sign-off:** Stephen O'Connell, Deputy Director, Prisons

**Approved by OPS for publication:** Phil Cople, Joint Chair, Operational Policy Sub-board,  
December 2018.

## Revisions

Date	Changes
27/01/2020	References to IEP have been changed to the Incentives Policy Framework (IPF), which came into force on 13 January 2020

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## 1. **Purpose**

- 1.1 The Prison and Young Offender Institute (Amendment) Rules 2018 allows for a smoke free prison estate in order to improve air quality and to minimise the dangers from passive smoking whilst promoting a healthier lifestyle. It is our intention to maintain a totally smoke free environment in the closed estate whilst allowing prisoners to smoke in the open estate at designated times and in designated areas.

## 2. **Evidence**

- 2.1 Air quality testing reports in sample prisons in 2015 indicated higher levels of exposure to second hand smoke in communal areas than had previously been known. HMPPS is committed to creating a healthier environment in our prisons. We have a duty of care to protect staff, prisoners and visitors from the harmful effects of second hand smoke (SHS).
- 2.2 Fire related incidents have reduced in early adopter prisons and continue to decrease across the estate as the roll out of smoke free is embedded.
- 2.3 Medical research confirms that a smoke free environment minimises the risk of second hand smoke related health conditions as well as improving the health of individuals who have previously smoked.

### References:

Singleton N, Farrell M & Meltzer H. Substance Misuse among Prisoners in England and Wales. London: Office for National Statistics. 1999

Lester C, Hamilton-Kirkwood L, Jones N. Health Indicators in a prison population: asking prisoners. Health Education Journal 2003; 62:341-349.

Plugge EH, Foster CE, Yudkin PL, Douglas N. Cardiovascular disease risk factors and women prisoners in the UK: the impact of imprisonment. Health Promotion International 2009; 24:334-343.

Public Health England (PHE). Survey of local prisons. Unpublished, 2014.

Public Health England, (PHE) Reducing Smoking in Prisons: Management of tobacco use and nicotine withdrawal, 2015

Air Quality Reports

## 3. **Outcomes**

- Improved air quality
- Reduction of second hand smoking risks
- Reduction of fires and arson related incidents
- A fair and consistent approach, including to non-compliance by prisoners, staff and visitors
- The provision of a regime which encourages and supports abstinence from smoking
- The provision of a range of stop smoking support to assist prisoners to abstain from smoking.

#### **4. Requirements**

- 4.1 The Prison and Young Offender Institute (Amendment) Rules 2018 substitute a new rule 25(2) into the Prison Rules 1999, which states as follows; “No prisoner shall be allowed to smoke or have any tobacco, except in accordance with any directions of the Secretary of State.”
- 4.2 Health Act 2006 – It is an offence to fail to prevent smoking in a smoke free place under Section 8 of the Health Act 2006. The Supreme Court Judgement in Black found that Part 1 of the Health Act 2006 does not apply to public sector prisons as a matter of law because it does not bind the crown.
- 4.3 In Wales the relevant legislation is Public Health (Wales) Act 2017. (<http://www.legislation.gov.uk/anaw/2017/2/contents/enacted>)
- 4.4 Unless specified, this policy applies in England and Wales.
- 4.5 All prisons in England and Wales are commissioned to provide stop smoking services in partnerships with relevant health providers. (See Guidance on Minimum Service Offer for English Prisons and the devolved process for Prisons in Wales where health provision is governed under separate process.)
- 4.6 There is a requirement that all prisoners are to be identified on reception and recorded on C-NOMIS as being either a tobacco smoker (“Y”), e cigarettes/vaping devices user (“V”) or a non-smoker (“NS”) with a method of updating this status as and when a prisoner changes status relating to smoking. Prisoners will then be offered support in line with the Minimum Service Offer (MSO).
- 4.7 Non-smokers may request not to share a cell with a vaper and this should be accommodated. (A non-smoker in this context does not use vapes or electronic cigarettes whilst in custody whilst a vaper chooses to use vapes / e-cigarettes whilst in custody. If due to operational requirements, there is a need to allow a vaper to share a cell with a non-smoker this should be for the shortest period possible and recorded on CNOMIS.
- 4.8 Each prison must ensure that there is a process which allows prisoners access to incense sticks via chaplaincy (according to their religion) and a staff controlled method to light the incense stick. Incense sticks have been deemed by the World Health Organisation to be harmful to an individual’s health. Non-incense stick users must not share a cell with an incense stick user unless for operational reasons in which the sharing of cell must be for as shortest period possible and recorded on CNOMIS.
- 4.9 Governors are to ensure that Safer Custody and Substance Misuse Strategies reflect and support the smoke free processes.
- 4.10 Mother and Baby Units must be smoke free and no use of e cigarettes/vaping devices will be allowed inside the Mother and Baby Unit building. A designated vaping area outside of the Mother and Baby Unit building must be positioned away from any external area which is used by the mothers and their babies. This is in line with NHS guidelines to protect the lungs of babies and infants.
- 4.11 In line with NHS policy, Governors and Healthcare Providers will agree a local vaping policy for In Patient Units. Such policies should include arrangements for vaping in single occupancy cells and/or designated areas.

- 4.12 There must be clear signage communicating smoke free environment boundaries and designated vaping areas for staff, prisoners and visitors. In Wales these signs must be bilingual. Governors are to ensure that smoking policy is clear that e-cigarettes (both disposable & rechargeable) for prisoners can only be used in prison cells in smoke free prisons. (Except Mother and Baby Units – see Paragraphs 4.10 and 4.11 above).
- 4.13 Vaping device charging units are only authorised for prisoner’s vaping devices.
- 4.14 As per directions of the Secretary of State, which are expressed in this published Policy Framework, open prisons represent an exception to the general position in rule 25(2) that no prisoner shall be allowed to smoke. Tobacco may be purchased and smoked in open areas as a privilege in the open prison estate by prisoners, but only at designated times and in designated areas. No smoking will be allowed in any buildings and separate areas will be designated for vaping.
- 4.15 Open prisons must ensure that there are suitable processes in place to ensure that unauthorised tobacco, lighters, vaping devices and vaping refill cartridges are not brought into the establishment as these are List C items. (Conveyance and Possession of Prohibited Items and other related offences – National Security Framework, PSI 2012 -10).
- 4.16 Contracted prisons are legally bound by Part 1 of the Health Act 2006 to ensure that individuals are appropriately challenged for smoking in smoke-free prisons. Under section 8 of Health Act 2006, a person who controls or manages smoke-free premises is under a duty to cause any person who is smoking there to stop smoking. Failure to comply with this duty is a criminal offence, punishable with a fine on conviction. Section 6 of the Public Health (Wales) Act 2017 contains an offence which is framed in very similar terms.

## **5. Constraints**

- 5.1 Governors must ensure that prisoners are not able to purchase tobacco (and associated products to make cigarettes), pipes and pipe tobacco, lighters, matches or cigarettes to use on prison premises once the establishment has gone smoke free.
- 5.2 Governors must ensure that smoking cessation products, e cigarettes/vaping devices/NRT are not removed from a prisoner as a form of punishment.
- 5.3 Access to Nicotine Replacement Products may be controlled where there are reasonable grounds for suspecting that abuse or misuse is suspected or known. Discussions between the prison and Healthcare provider and in line with the Minimum Service Offer or the agreed protocol for Wales will take place to implement control when it is deemed necessary
- 5.4 Governors must ensure that prisoners under the age of 18 are not able to purchase tobacco, e cigarettes or vaping devices as the legal age to purchase these items in the community is 18 years and older.
- 5.5 Governors must ensure that the amended List C items (unauthorised items) are updated to reflect the changes in Prison Rules which place lighters, matches, e cigarettes (definition of e

cigarettes includes vaping devices) onto List C and that this is publicised within the establishment. Authorisation to convey List C items into an establishment must be in accordance with the National Security Framework.

## **6. Guidance**

- 6.1 During implementation of the smoke free policy, Governors must follow the nationally agreed implementation model, including completion of the agreed readiness assessment and capacity dashboard tools.
- 6.2 Final sign off to be smoke free is between the Smoke Free Senior Reporting Officer, Group Director and Governor/Director for that establishment or unless alternative governance arrangements have been agreed by the Senior Reporting Officer.
- 6.3 All prisons in England are commissioned to provide a Stop Smoking Service. All prisons will deliver the Minimum Service Offer for Stop Smoking Services and Support in Custody. The approach to cessation support in Wales was agreed by the Prison Health Improvement Network and relevant smoke free project governance groups. It follows similar principles, including:
- Smokers identified as vulnerable and at risk of self-harm or suicide due to smoke free policy will have safer custody processes applied to support them whilst in custody.
  - Smokers must be seen by a stop smoking adviser within 48 hours of arrival into custody. In Wales; all prisoners will be advised or assessed for smoking cessation as part of the health screening on reception and in the secondary health appointment. Prisoners will be referred to a smoking cessation programme if they wish to participate.
  - Identification of prisoners whose medical condition, emotional wellbeing or medication may be impacted by giving up smoking
  - Providing a prison regime that encourages and supports abstinence from smoking
  - Provision of a range of stop smoking support, including harm minimisation approaches, to assist prisoners to abstain from smoking
  - Developing strategies to address continued smoking seeking behaviour including misuse of Nicotine Replacement Products
  - Post implementation review of service models to ensure they remain fit for purpose in the smoke free environment
- 6.4 Minimum Service Offer (MSO) link <https://www.england.nhs.uk/publication/minimum-offer-for-stop-smoking-services-and-support-in-custody/>
- 6.5 In Wales, health services are devolved to Welsh Government. Local Health Boards (LHBs) are responsible for delivering health services in public sector prisons. In HMP Parc, primary care is provided through a contract with G4S Medical. The approach to cessation support in Wales is agreed through the Prison Health Improvement Network (PHIN) and relevant smoke-free governance groups.
- 6.6 In England and Wales, NHS (or Health care provider) provision of smoking cessation clinics are to be signposted by prison staff and healthcare provider on reception for prisoners arriving at an establishment regardless of their status and to signpost community based smoking cessation clinics to prisoners prior to their discharge from custody.
- 6.7 Mother and Baby Units will be smoke free and expectant mothers are encouraged to access stop smoking services. NHS guidance relating to use of e cigarettes with expectant mothers



is available. Mother and Baby Units will be smoke free with no use of e cigarettes/vaping devices permitted within the mother and baby unit building in order to protect harm to the lungs of babies and young infants. Pregnant prisoners who are not in mother and baby units are to be offered advice on options regarding smoke free and the associated risks relating to continuing to use tobacco/e cigarettes/vaping devices whilst pregnant.

- 6.8 Distraction tools for prisoners who are giving up smoking or who are at risk of self-harm are advised to be available to assist in the reduction of risk of self-harm and risk of failing smoking cessation programme.
- 6.9 Governors can opt to allow staff to use e cigarettes/vaping devices inside the establishment in a designated area but not inside any buildings. Governors may alternatively opt to allow staff to use e cigarettes/vaping devices/tobacco in a designated area outside of the establishment but not in any Ministry of Justice building. Clear signage for smoking areas and vaping areas are required. Vaping areas are must be kept separate from smoking areas. Staff are not permitted to recharge any staff owned vaping device on MoJ property therefore Governors must ensure that staff do not bring vaping device chargers into the establishment. Smoking and use of e cigarettes/vaping devices are only to be used during official designated staff break times.

**The Factsheet can be found via the following link:**

**<https://www.gov.uk/government/publications/smoke-free-policy-framework>**

- 6.10 Staff are encouraged to access smoking cessation programmes via their own GP services or alternative smoking cessation clinics external to the establishment. In Wales this would include the Public Health Wales Help Me Quit Service.
- 6.11 When an establishment has moved to smoke free status, the Governor must communicate the possible outcomes for those who fail to comply with the policy. Governors may opt to use the incentives scheme for the first instance of non-compliance and then use the adjudication system for further breaches. Governors are advised to promote the range of penalties under the adjudication tariff for non-compliance and finding of guilt on adjudications. Dependent upon the circumstances, prisoners may be charged under “having an unauthorised item in possession” or “failing to comply with any rule or regulation”. Other charges may be applicable dependent upon the circumstances especially if damage to electrics or fires has occurred.
- 6.12 Reception processes and searching processes need to be updated to reflect that tobacco and lighters/matches are an unauthorised item and must not be allowed to be issued to prisoners at smoke free establishments.
- 6.13 Establishments are to ensure that their processes regarding prisoner mail communications and searching of mail including mail sent under Rule 39 (Legal correspondence) are updated to reflect that tobacco, e cigarettes, vaping devices, lighters and matches are unauthorised and are List C items. Processes need to include what action staff must follow if they suspect that Rule 39 mail contains any unauthorised items.
- 6.14 Open Category Prisons are to ensure that they have local searching policies in place to prevent the trafficking of vaping devices, e cigarettes and tobacco related products into the closed prison estate. Open prisons are to have designated external smoking areas, which are signed and are away from entrances and exits of buildings.

- 6.15 Non-compliance of smoking in designated areas should generally be dealt with under the incentives scheme and the use of the adjudication system for further breaches. Prisoners' induction processes are to include information in relation to smoking in the open estate and informed of the consequences of non-compliance.
- 6.16 Equalities considerations must be taken into account within local equality assessments. Establishments must have monitoring systems in place to ensure that no prisoner is discriminated in gaining access to NRT services and that appropriate support is provided to individuals.